



WEST BENGAL

Promise and Performance of the Forest Rights Act, 2006: The Tenth Anniversary Report

Contributing Organization and Individual

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The Tenth Anniversary Report

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ABBREVIATION

FRA: Forest Rights Act
PESA Act: Panchayats Extension to Scheduled Area Act
ST: Scheduled Tribes
OTFD: Other Traditional Forest Dwellers
CFR: Community Forest Resource Rights
CR: Community Right
IFR: Individual Forest Rights
PA : Protected Area
PVTG : Particularly Vulnerable Tribal Group
NTFP : Non Timber Forest Produce
FRC : Forest Rights Committee
FPIC : Free Prior Informed Consent
SLMC : State Level Monitoring Committee
SDLC : Sub-Divisional Level Committee
DLC : District Level Committee
ITDA: Integrated Tribal Development Agency
JFM : Joint Forest Management
LWE : Left Wing Extremism
CFR-LA : Community Forest Rights Learning and Advocacy
FSI : Forest Survey Of India
FD : Forest Department
FCA : Forest Conservation Act
MoTA : Ministry Of Tribal Affair
MoEFCC : Ministry Of Environment Forest and Climate Change
CAMPA : Compensatory Afforestation Management and Planning Authority
MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act
IAY : Indira Awas Yojna
CAF : Compensatory Afforestation Fund
VFR : Village Forest Rule
VSS : Vana Samrakshana Samithi
FDCM : Forest Development Corporation Management
NFP : National Forest Policy

INTRODUCTION

The passage of the Forest Rights Act (FRA) promised the reversal of a major 'historical injustice' which dates back to the colonial times. Setting up of the forest department on the one hand, and leasing out/settlement of large tracts of forests in favour of private landowners like the zaminders on the other, denied traditional forest communities of their customary rights and access to forests. The FRA further promised justice and economic wellbeing to not only the traditional forest dwelling communities but also to the large number of settlers who were brought particularly to the forest landscapes of North Bengal as indentured forest labour. Has the FRA succeeded in delivering justice to more than 1 Crore forest-dependent people of West Bengal, particularly in relation to the entrenched power of the status quo forestry institutions and related commercial interests?

West Bengal covers only 2.7% of India's land area but supports 7.55% of its population (2011 census), leading to a population density of 1,028 persons / km². Of the state's 9.13 crore population, 5.49% are Scheduled Tribes (mainly Santals) many of whom reside in forest areas, and many more households in rural areas depend on forests for their livelihoods.

As the state gradually annexed forest lands from the mid-19th century, (recorded forest area is currently 13.38 % of the state's geographical area), they deprived local people of a wide range of customary rights. These deprivations, which largely continue to the present, 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 indentured/bonded labour 'forest villages'.

There was surprisingly little change post-Independence, and indeed the Forest Department 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, both villagers and FD staff, lost their lives whilst the forests rapidly deteriorated.

The situation varied across the different regions of the state. In the southwest conflict was to some extent mitigated after the 1970s, as the 'Joint Forest Management' (JFM) model came into being both in South 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. Although this led to improved forest condition, 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' from the late 19th century onwards for a captive labour force of tribal forest peoples through a system that was essentially a bonded labour relationship. The system continued after independence, and it was only after intense mobilisations in the 1960s that the FD even conceded to pay wages to the labour. However, the forest villagers remained without revenue village status where they had no rightful entitlement over their village/homestead lands and so have not been able to access even routine developmental services. As protected areas spread many now find their struggle for rights further compounded.

While the provisions of the Forest Rights Act 2006 promise redress of the major rights deprivations in West Bengal, foresters severely contested the passage of the Forest Rights Act 2006, and the antipathy on the part of the Forest Department has persisted into the implementation phase. As a result, West Bengal presents a dismal and pitiful scenario so far as implementation of the FRA is concerned. From the very beginning, the official process has been overshadowed by political imperatives and bureaucratic indifference. There has been no attempt whatsoever to follow the statute in letter and spirit. The first set of administrative orders were issued in March 2008, by not the Backward Classes department, which is the statutory nodal agency in West Bengal for implementation of FRA, but the Panchayat Department. This and the subsequent orders issued by the Backward Classes department contained major violations of the law. Since then, the process for FRA implementation has never been thoroughly revisited. Our study has found that the implementation of the Act shows extreme disparity with what is prescribed in the Act and Rules.

/// OBJECTIVES OF THE STUDY

This study assesses the extent to which the Forest Rights Act 2006, perhaps the most significant institutional reform in forestry sector since India's Independence, is being implemented across the state of West Bengal, and whether the process of implementation has succeeded to realize the promises and the opportunities the landmark legislation continues to offer in an overall scenario of rights deprivation.

The study attempts an assessment of the potential forest area over which rights can be recognized in West Bengal under the FRA. The estimate can help in guiding implementation and setting up of specific targets for rights recognition under the FRA. It also allows the policy makers as well as forest-dependent communities to assess how far the law has been implemented. Finally, the study identifies key bottlenecks in FRA implementation and provides recommendations for the way forward.

/// METHODOLOGY

Identifying and assessing the Potential (promise): Forest-dwelling Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) have been accessing forests since time immemorial. Forests do not serve only as a source of livelihood for many communities, but permeate the deep social fabric, conditioning and shaping various cultural and spiritual practices in the process. Forests as a life support system thus offer something more intrinsic and organic than purely statutory and administrative classification; consequently, actual forest usage is seldom governed by the dictates of officialdom. This consideration informs this study which tried to quantify forest areas that should be recognized under FRA primarily through a simple two-step process. First, by looking at Census data (2011) and other data (state Forest Department's records, Forest Survey of India) as available, an assessment of forest area listed as a land-use category within revenue village boundaries has been attempted. Secondly, additional forest areas falling outside the village boundaries but customarily used by STs and OTFDs and thus eligible for recognition under the FRA have been assessed by using data provided by state forest department. Besides, help of archival data has also been sought to enumerate the approximate numbers of potential rights holders under FRA.

Apart from the data on potential, the study also looks at major potential benefits that FRA has on offer if implemented to its full potential. These include poverty alleviation, mitigation of climate change and food security.

Measuring the Performance: The data on rights recognition under FRA was obtained from official reports of the state government submitted to the Ministry of Tribal Affairs. District-wise information was obtained from a report prepared by the state government. The Government data was cross-verified with other information and data, including published reports and primary sources of information.

Way forward and Recommendations: The recommendations in the study draw from the findings of the study as well as discussions with key actors who are involved with FRA implementation in West Bengal.

KEY FINDINGS

POTENTIAL OF FRA IN WEST BENGAL

Extent of Forest Area Potentially covered by FRA

Inside Village Boundaries: At least 521835 ha of forest land in West Bengal (8 Districts for which data was available—see Table 1) which lie inside village boundaries and has been traditionally used and protected by the forest communities can be recognized under FRA, mostly as community forest resource (CFR). A percentage of this will also be recognized as individual occupancy rights. This information, derived from census, forest department and other data, refers to the minimum of forest land which can be recognized under FRA. The district-wise data of forest areas eligible to be recognized under FRA within village boundaries is provided in Table 1 in the Annexure.

Outside village boundaries: A considerable amount of forest area which can be claimed as CFRs as well as individually cultivated/otherwise used forest land is located outside village boundaries in West Bengal. It is impossible to make an accurate assessment of the area without ground-level mapping. To arrive at an approximate number, we have done a lower and a higher estimate. In the lower estimate, it is assumed that 30% of forest area outside village boundaries will be covered by FRA. For the higher estimate, it is taken that 60% of the forest area falling outside village boundaries will be under FRA. Using this method, we assess that the forest area lying outside village boundaries and potentially claimable under FRA for West Bengal ranges between 70932 ha to 141860 ha. A district-wise high and low estimate for FRA potential outside village boundaries is included in Annexure (Table 1).

Total Extent of Forest Area under FRA: We estimate, based on the above computations, that the total potential area of forest to be covered by FRA in West Bengal ranges between 592764 ha to 663692 ha.

A district wide high and low estimate for total FRA potential is given in Annexure (Table 1).

Potential of FRA: Strengthened Community Conservation and enhanced tenurial security

There were indeed great promises for achieving effective community conservation through implementing the FRA and ensuring tenurial security for a large number of forest-dwelling people in North Bengal, South West Bengal and the Sunderbans.

Below, we divide the forest-dwelling people of West Bengal into three broad categories according to geographic and ecological parameters:

1. Forest Villages of North Bengal: according to an unofficial census conducted by North Bengal Forum of Forest People and Forest Workers(NBFFPFW), there were more than 250 forest settlements in North Bengal, including forest villages/temporary taungya villages/fixed demand holdings and unsurveyed settlements, with an approximate population of 250000 plus. Neither official census figures nor the forest department's records offer more credible data: Census data do not include hamlet level figures in most cases and the departmental records have not been updated for a long time. All residents of forest villages and temporary taungyas were erstwhile plantation workers, who have ancestrally cared for the forest plantations. Forest villages are located either inside or on the fringes of old plantations, all of which should qualify as potential CFRs. Accordingly, North Bengal should have at least 200 plus community forests or CFRs, with an approximate area of 60000 hectares (at an average 300 hectare/village).
2. Rights holders in erstwhile private forests in Jungle Mahal area in the districts of mainly Bankura, West and East Medinipur and Purulia, partially Bardhaman and Birbhum. There would be an approximate population of around 10 lakhs, most of whom had ancestral rights in the private forests before 1955. These rights included rights to small timber, firewood, lac and silk-rearing and grazing, besides a range of NTFP rights. All these rights were illegally and wrongfully 'extinguished' by executive fiat when the private forests were taken over by the forest department between 1955 to 1969. Some of the forests in Purulia were managed by the department even before the wholesale take over (for instance, the forests in the Matha-Bandowan-Quilapal area) in the interests of the Rightsholders. The rights which were recorded in the departmental working plan were later denied. Because all the old rights could be reclaimed under the FRA, the above group of 'old Rightsholders' is a major potential group for realisation of community rights including to CFRs as well as individual rights.
3. People associated with Joint Forest Management or its unofficial variants that sprang up in the 1970s and 80s, although probably having some overlaps with the rightsholders group mentioned in 2 above, represent by far the largest segment of officially recorded population of forest dwellers in the state (see annexed (Table 6). Because all the Joint Forest Management Committees (JFMCs) have been recognized as carrying out conservation actions in clearly demarcated pockets of forests over a specific period of time, all the forests protected and conserved by the JFMCs should qualify as potential CFRs once the concerned Gram Sabhas stake their claim over that territory. For instance, in Bankura district alone, close to at least 100000 hectares of forests are potential CFRs, according to data given by the forest department. Up until 2012, West Bengal had 649607.09 hectare of forests protected by 4398 Joint Forest Management Committees, with a total of 526383 members, of which 126110 are STs, and the rest are OTFDs belonging to S.Cs and other castes. It follows that the Forest Department of West Bengal admits that there are 4398 community conserved areas in the state.

Poverty Alleviation, Livelihood and other benefits through FRA

The FRA addresses a wide range of rights deprivations. At its core are two rights –private cultivation/habitation and community control of forests.

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. 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 PVTGs, rights over their customary habitat (territory) and also recognition of rights in Pas
5. Conditional benefits being enjoyed by villagers under the administrative order for JFM will get replaced by statutory recognition of their customary rights. This need not be just for JFM forests but all customary forests, including in North Bengal 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 villages and the occupants will have entitlements on the land on which their homes are erected and which they are cultivating. If the forest villages of North Bengal are converted into revenue villages, the villages will then be entitled to investment of rural development funds by the state. This will bring the forest village people, 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. The flow of work has evidently increased in the last few years, since implementation of FRA has started, but a lot is still left to be desired.
7. 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.
8. For the Forest villages tenurial security over individual and collective forest land, and the right to collect and market NTFPs would provide secure and regular incomes.
9. Bank loans and alternative aid by other state and non-state agencies to develop the forest land over which their rights have been recognised for forest management and sustainable harvesting, planting commercial species, cultivation of new cash crops by underplanting, irrigation and organic fertilization to improve productivity of the agricultural crops.
10. Management Rights of gram sabhas over their community forest resources consistent with biodiversity protection, forest conservation and forest protection, to improve their economic and cash income
11. Promotion of eco-tourism in areas over which the collective or individuals have acquired the rights of management.

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 above expectations however will be more effective where the claims for community forest resource rights are secured. Such rights may include some or all of the following over a large forest block: collection of NTFPs, grazing, fishing, planting, marketing of forest produce etc. The community can create cooperatives to engage in multi-faced forest based enterprises from NTFP collection, their processing to add value to the produce, quick transportation and marketing of the products to the consumers. The villagers will then recoup a large part of the excessive profits that commercial intermediaries are currently making through handling the forest produce. The cooperative can also deliver on afforestation, re-forestation, tree cutting, timber processing and sale, NTFP collection, processing, home use and disposal. If the institution is democratically managed, the large number of poor who constitute the community in West Bengal villages would get a new avenue of economic and social growth and the constituent families would be immensely benefited.

In North Bengal, the gain will be more conspicuous if the forest villages are converted to revenue villages. While, over the 1990s and in the beginning of the new century, in the south of the state some benefits from forest use have been agreed to by the state under JFM, the situation in North Bengal has been the opposite. Much of the forests were declared as wild life protection areas and were thus declared off-limits to daily use of the local forest dependent people. The forest villages that were inhabited by the lease holders sometimes for more than half a century (on annual leases) did not get renewal of their leases. FD also took actions to disconnect the residents from FD activities thus making them unemployed.

THE FRA IMPLEMENTATION PERFORMANCE

Summary of Implementation

1. So far, not a single CFR right has been recorded in the state. On the contrary, official communication from the Department of Backward Classes Welfare (BCW), the nodal agency for FRA in West Bengal to the MOTA has time and again referred to the JFMCs as instances of CFRs.
2. Individual forest rights claims have been recognised arbitrarily without following due process. In most cases, the concerned gram sabhas have neither met nor resolved about the claims. The claims have mostly been processed through the forest department. According to the figures given out by the Backward Classes Welfare Department (BCWD), Government of West Bengal, up until February 2014, 31497 land pattas were issued, and 312 community claims have been recognised. Thus, according to BCWD, only a meager 16651.33 acres of land came under FRA for IFR and another 240.22 acres as community claims. In all probabilities, the recognition of a meager 240 acres for 312 community rights implies that these were for diversion of forest land for development facilities under section 3(2) and not any of the community rights under section 3(1) of the FRA. A 2014 note appended to the BCWD website clearly mentions the nature of such 'community claims': More than 450 "Community Forest Resource (CFR) Rights under Forest Rights Act (2006)" have been "claimed by Lamps for Kendu Leaves and other Minor Forest Produce" in West Medinipur, Bankura and Purulia Districts. It needs to be mentioned that the FRA does not provide for any claimant or rightsholder other than Gram Sabhas and their members. How could LAMPS, which is a large, centralised cooperative, become entitled to community rights under FRA is beyond comprehension.

3. IFRs for OTFDs have not been recognized.
4. The institutional mechanism for FRA implementation has either completely collapsed or was never allowed to take off. SDLCs and DLCs hardly ever met (RTI enquiries about the frequency of such meetings in North Bengal/West Bengal either came back unanswered or remain pending), and the state level monitoring committee was formed only in 2012. It didn't meet even once and has been reconstituted again in 2016. So far as it could be ascertained, the newly formed Committee is yet to have a meeting.
5. The BCWD does not maintain any updated records about FRA implementation in public domain other than the 2014 note mentioned above.
6. Gazette notifications were issued in late 2014 for converting 99 forest villages in Jalpaiguri and Alipurduar districts. However, since then the process has been dragging its feet. Demarcation of the villages had either been done or attempted through the mediation of the forest department and without consulting the concerned Gram Sabhas, in total violation of MoTA's guidelines for converting forest villages. Furthermore, 13 villages have been excluded from the conversion notification schedule.
7. In a complete contrast to the above, communities in various parts of North Bengal have started asserting their rights through a process of self-implementation of the FRA. CFRs have been self-declared in more than 25 Gram Sabha areas in Alipurduar, Darjeeling and Jalpaiguri districts. This has invited litigations, harassment and persecution against the community members and led to a situation of prolonged conflict between the administration and the people.

Problems with Implementation

The Act came into force on January 1st 2008. In March, the Government of West Bengal issued two simultaneous Government Orders for implementation in the state. However, these orders re-interpreted the Act:

- The gram sabha (a hamlet/village level assembly) was replaced by the gram sansad, a pre-existing body formed under the State Panchayat Act representing an assembly of a cluster of hamlets/villages. The clear provision in the FRA for hamlet/village-level gram sabhas of forest villages was violated, making it difficult for individuals and or hamlet/village gram sabhas 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 controlled by political bodies. Again, this is a major deviation from the Act and Rules, and so a violation of law.
- The orders also changed the 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 by the GoWB to control the rights recognition process through both the political apparatus and providing direct formal involvement of the Forest Department field staff who have a vested interest in the proceedings.

- **Extent of implementation:** All eligible villages have not been reached by the official implementation process. In North Bengal, the process sporadically touched the forest villages, completely excluding the large number of forest-dependant population in the forest-adjoining revenue villages as well as the tea gardens. In South-West Bengal, the process had degenerated into a politically motivated patta-distribution exercise before the 2009 Parliamentary Elections and the 2011 Assembly Elections. Since then, the process has come to a halt in South-West Bengal. In the Sunderbans area in South and North 24 Parganas districts, the process hasn't started at all. There has neither been any transparent identification of villages eligible under FRA nor monitoring of the field process.
- **Level of Understanding of provisions of Act among senior officials:** The block level senior officials were only aware of the process outlined in the Government Orders issued in March 2008 rather than the provisions of Act itself or the FRA Rules. Neither the concerned Panchayat nor the Gram Sabha members have been made aware of the diversity of rights which can be claimed through a due awareness process.
- **Wrong level of local FRC formation:** The Formation of Forest Rights Committees was started at the Gram Sansad level (a cluster of villages) instead of the gram sabha level (one village or hamlet). This change is actually a dilution of representation of the gram sabha.
- **Faulty FRC formation process:** The process was very unsatisfactory across many villages. Frequently notice for the gram sabha meeting was not given with adequate time. Consequently, quorums have often not been achieved in the meetings. Furthermore, FRC membership has been selected by the officials and sometimes political leaders rather than elected by the community members. This happened mainly because the Government Orders directly impinged upon the legal territory, prescribing inclusion of forest officials and other representatives of the Government agencies in the FRC as permanent invitees, and by suggesting that Gram Unnayan Samitee (a politically controlled institution) will supervise the FRC and GUS members may ideally be co-opted in the FRC.
- **Lack of training and awareness raising:** There seems to have been none. The result is most claimants did not understand the way the form was to be filled or about the nature of evidences they have to provide to establish claims. Sometimes the information given officially was not only inadequate but misleading. For instance, in North Bengal it was said that only the 'recorded forest villages' will be eligible under the FRA.
- **Community claims:** The GOWB kept on submitting erroneous and misleading information to the central Ministry of Tribal Affairs (MoTA). For instance, in a letter sent by Dr. Upendra Nath Biswas, Minister in Charge, Backward Classes Welfare Department, West Bengal to the MoTA in 2013 there was repeated mention about Joint Forest Management as instances of functional CFR management:

"....Para 4 of your letter about Community Rights and Powers over forest management. It is mentioned that the state government is using police and forest officials against people trying to protect the forest. This is not at all correct. In fact, the State Government has taken initiatives to involve forest dwellers in protection of forest. The Forest Department takes up felling operations based on working plans duly approved by the Government of India. The area felled for timber is again re-generated by afforestation. The timber harvest and afforestation programmes generate employment to tribal and forest dwellers. Besides, the State government distributes 25% of the sale value of timber to the members of the Joint Forest Management Committee. In West Bengal, the Forest Rights Committees enjoy full power and are actively involved in the settlement of individual and community rights. All these Scheduled Tribes and other forest dwellers are also included in the Joint Forest Management Committees."

And again:

"The Forest Department is making best and sincere efforts to arrest the illegal felling of trees. The Forest Department in Jalpaiguri District of North Bengal with large area of forest cover has registered 289 cases in 2010-11, 326 cases in 2011-12 and 465 cases in 2012-13 under the Wildlife Act and Forest Protection Act. The local people are also involved for protection of forest through joint management Committee."

The reference to JFMCs and their participatory nature does not justify state government's inaction regarding community forest resources and Gram Sabha's statutory role in managing those; nor does it provide a substitute to the powers and duties of the Gram Sabha related to community rights and community forest resources and their forest protection, regeneration and conservation. The letter mentioning the forest rights committees but ignoring the Gram Sabha despite clear legal provisions is an indication of the reluctance or refusal to recognize Gram Sabhas as institutions for forest governance. The reference to the JFMCs is in direct violation of the letter and spirit of the FRA, the MoTA guidelines for its implementation issued on 12 July 2012 and also the Amended Rules of 6 September 2012. It does not say why GS committees formed under Section 5 Rule 4(1)(e) read with Sec. 3(1)(i) have not been facilitated by government agencies anywhere in West Bengal, and how could administratively constituted JFMCs be in any way considered as their substitutes?

- **Forest Department interference in process:** While the claims should not have been passed to the FD, the FRCs after getting the applications sent them with their comments to Forest Rangers in most areas in SW Bengal rather than to the SDLC. The Forest department continues to interfere in all matters pertaining to implementation of the FRA throughout the state. In Sunderbans, it has almost forcibly stopped implementation of the Act.
- **Local plot verification:** Only in some cases in North Bengal, the local block development office sent survey teams to measure the claimed land. Even this happened mostly unilaterally, and without any involvement of the FRCs.
- The above-mentioned letter of BCWD Minister claimed:

"The tribals and other forest dwellers enjoy ownership and control over minor forest produce like honey, lac, sal seeds, kendu leavers etc without any charges. The West Bengal Tribal Development Cooperative Corporation Ltd under the Department implements the scheme of purchasing forest produce (kendu leaves, lac etc) from tribals at a fixed price which is much higher than the local market price. In respect of other non-timber forest produce the Forest Department itself provides minimum support price."

The situation on the ground is entirely to the contrary. Forest dwellers do not enjoy any ownership over forest produce in the forests of North Bengal. The forest department demands royalty for issuing Transit Permits for any NTFP going out of forest, and only in the protected forests of Jungle Mahal individual collection of NTFPs is allowed free of charge, subject to the decision of the concerned forest officer. There is neither ownership nor control in a legal sense, because rights have not been settled in any protected and reserved forest of West Bengal, and the same goes for the designated wild life areas. In Sunderbans, the forest department has criminalized free collection of honey, and it forces collectors who go with a forest department permit to sell their honey to the West Bengal Forest Development Corporation at a vastly underpriced rate: the price which used to be Rs 40/kg has recently been hiked to Rs 75/kg, both of which are way below the market rates of Rs 150-250.

Instead of being liberal in its interpretation of the law and promoting democratic implementation envisaged in the Act and its Rules, the implementers are taking recourse to delay, non-transparency and other forms of obstruction to smooth progress. The affected people are becoming conscious of the wrongs with the information being passed on to them by local NGOs and by researches like ours. We expect that the implementation will improve with the protests and objections of the people as already seen in North Bengal.

Criminalization of Community Conservation Process in North Bengal

- The Forest Department filed a number of complaints with Hasimara Police Outpost, Jaigaon and Alipurduar Police Stations in Jalpaiguri (subsequently Alipurduar) district against the members of various Gram Sabhas in two Ranges (Kodal Basti and Chilapata) under Coochbehar Forest Division (Wild Life Division 3). While the first complaints were filed sometime around October 2008, subsequently FIRs were lodged again in January 2010, April 2010, April 2013, October 2013 and October 2015. The Police Station of Kalchini, Alipurduar and Hasimara Outpost under Alipurduar had initiated a number of criminal cases against Gram Sabha members, many of which are still pending. The Gram Sabha wanted to stop the forest department from carrying out clear felling coupes (CFC) in 50 over years old plantations adjacent to a declared Wildlife Sanctuary and National Park (Jaldapara), famous for its Asiatic one-horned rhino. The area and its old plantations are part of an important wild life corridor that is inhabited as well as used as a migration passage by herds of wild elephants and Gaurs, among other animals. The Chilapata forests, including old plantations which now resemble dense forests, contain rich biodiversity. When the Gram Sabhas in 12 forest villages of Coochbehar Forest Division adopted a joint resolution on October 2008 asserting community control over the area's forests under section 3(1)(i) of FRA and to stop all ecologically harmful activities including clear felling coupes (CFCs) in old plantations as required under Sec.5 of FRA, the forest department branded them as criminals and started filing complaints against Gram Sabha members. These actions of the Forest Department are a violation of FRA punishable under Sec.7 of FRA. The Forest department has constantly tried to use the JFMCs against the Gram Sabha, and had threatened the Gram Sabha members with withdrawal of forest village development fund provided by the GoI under the tribal sub-plan and other development schemes, in case they didn't agree to form JFMCs.
- All the Gram Sabhas had formed committees under Rule 4(1)(e) for the 'protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act'. Moreover the Gram Sabha is vested with powers under Rule 4(1)(f) to integrate their decision against CFC 'with the micro plans or working plans or management plans of the forest department'. During repeated incidents of the Gram Sabha members stopping CFC in Chilapata forests, the Gram Sabhas of Mantharam and North Khairbari had sent official resolutions against the forest department to the concerned forest officials, and also to the Chairperson of the concerned SDLC. The GS members had to mobilize and stop the CFC at both Mantharam and North Khaibari because the forest department decided to ignore the GS notice in violation of FRA. The forest department and the state Government cannot fell trees or forests under their Working Plan prescription in a CFR which is used by forest dwelling scheduled tribes, and over which the GS has staked a formal claim. The state forest department

also cannot legally ignore Gram Sabha notices issued under Section 5 of the FRA. This is also reaffirmed by the Supreme Court in the Niyamagiri Mining case where the Court reiterated that 'Section 5 lists out duties in whom the forest rights vests and also the holders of forest rights empowers them to carry out duties. Those duties include preservation of habitat from any form of destructive practices affecting their cultural and natural heritage'.

The likely impact of the implementation on the local livelihood at present and its prospects

While implementation has been uniformly slow, unsatisfactory and often violative of the law, it may improve over time as forest movements and members of the civil society are consciously and vigorously pursuing the matter.

If the FRA is truly implemented, many individual forest dwelling and evicted families will have legal and free access to forests and forest lands for dwelling and livelihood, and for conservation and management. Exercising customary rights of sustainable use over community forest resources will be restored. JFM privileges now enjoyed by administrative orders will get recognised as statutory rights. The forest villages of North Bengal will be converted into revenue villages and the villagers will have legal rights to habitation, cultivation and developmental facilities enjoyed by other villages.

POLICY RECOMMENDATIONS

1. In the interests of just and quick implementation of FRA, and in the light of Guidelines issued by the MoTA on July 12, 2012 and the Amended Rules of September 6, 2012, and subsequent directions and correspondence from MoTA, the State Government should immediately issue a fresh set of directives and orders to the DLC and SDLC chairpersons in all districts with forests in West Bengal. Special care must be taken to ensure that the huge forest dwelling Scheduled Tribe and Other Traditional Forest Dwelling population in the Sunderbans, including those dependent on forests in the Sunderbans Tiger Reserve, are covered in the process. It is unfortunate and a clear violation of the law that the FRA implementation process in the state has not covered the Sunderbans.
2. The fresh set of directives and orders that the GoWB should issue should include the following:
 - a) Clarification that all forest villages (as defined in the FRA) in the state can form hamlet level or actual village level GSs, and all such GSs and FRCs already formed by the communities according to the provisions of the law should be recognized.
 - b) Clarification that GSs as per the law have to be at the hamlet or village level, and these GSs should not be confused with Gram Sansads formed under the state panchayat act. If any community of forest dwelling STs and OTFDs explicitly want such Gram Sansads to function as GSs formed under FRA, that should not be discouraged. However, a position that only Gram Sansads are entitled to form FRCs is a direct violation of the law. The directives should make it clear that the GSs of all types of villages as defined in section 2 (p) of the law are eligible to elect their own FRCs from among their members. No official or non-official outsiders can be members of FRCs.

- c) Clarification that GSs have to form their own committees under Rule 4(1)(e) of the law for the 'protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act'. Moreover, the Gram Sabha is vested with the powers under Rule 4(f) to prepare conservation and management plans with the help of their 4(1)(e) committees for their community forest resources and integrate them (including their decision against CFC where appropriate) with the micro plans or working plans or management plans of the forest department'. It needs to be clarified that the function of this committee would be different from that of the FRC, though both committees can have common members. In any case, neither of the committees should be confused with the administratively formed JFMCs.
- d) Directive that the process of demarcation of the boundaries of CFRs by the GSs in all villages coming under this act should be taken up as a priority and that all existing community processes—being undertaken according to the provisions of the Act for forest conservation and management on the ground—must be recognized and supported; further that all GSs including those which have started such processes must be encouraged to submit form 'C' for claiming CFRs, and that this applies to GSs in all forest areas including those in national parks, sanctuaries, tiger reserves and other protected areas.
- e) Directive that all forest villages (as defined in Section 2(p)iii, and not only those settlements recorded as forest villages in forest department's records) have to be converted to revenue villages as per Section 3.h, Rule 12.5 of the law and MoTA's guidelines dated November 08 2013 in a time bound manner. This directive should also state that individual land titles already issued to the forest villagers in the state under this act should be reclassified as patt lands (lands duly recorded with the land and land reforms department) after conversion, and that the process of issuing new titles will remain suspended until the conversion process is complete. New individual titles must not be issued in forest villages without first converting such villages because the land status would de facto change after conversion, and land records of the converted villages will be available with the land and land reforms department instead of the forest department. Land titles issued subsequent to conversion would have much-needed revenue codes.
- f) Directive that all OTFDs in the state, including those residing in forest villages, are entitled to submit claims for forest rights as per law and their claims should not be arbitrarily dismissed or kept pending for an indefinite period without giving a valid reason in writing; further that any two kinds of evidence can be provided by the claimants in support of their claims as specified in the FRA Rules.
- g) Directive that no royalty and fees can be charged by forest department or any other agency on NTFP collection. Further that transit permits should not be required for NTFPs collected under GSs supervision until the permit regime is changed, according to Rule 2.1 of the Act. The directive should specifically include that NTFPs can be collected from all forest areas including national parks, sanctuaries, tiger reserves and other protected areas, and also that the collectors cannot be forced to sell the NTFPs collected to forest development corporations or any other agency.

ANNEXURES

Table 1: District-wise potential area under FRA in West Bengal

District	Total Geographical Area	Total Forest Area	FRA Potential (within village Boundaries)	FRA Potential (Outside Village Boundaries)		Total CFR Potential (ha)	
				Lower Estimate (30%)	Upper Estimate (60%)	Lower Estimate	Higher Estimate
1	2	3	4	5	6	7	8
Darjeeling	314900	120400	82610.48	11337	22674	93947	105284
Jalpaiguri	622700	179000	122504.1	16949	33898	139453	156402
Coochbehar	338700	5700	4259.2	434	864	4693	5123
Bardhaman	702400	27700	17809.8	2967	5934	20776	23743
Birbhum	454500	15900	4681.7	3366	6732	8047	11413
Puruliya	625900	87600	65786.3	6544	13088	72330	78874
Paschim Medinipur	936800	171935	109872	18619	37238	128491	147110
Purba Medinipur	471300	1831.97	1646.5	56	112	1702	1758
Bankura	688200	148200	112665.2	10660	21320	123325	133985
West Bengal	5155400	758267	521835	70932	141860	592764	663692

Table 2: District wise Potential Population eligible for rights under FRA

District Name	Number of Villages	Total Population	Potential Population with rights under FRA			
			STs	OTFDs-SCs	OTFDs- Others	Total
Darjeeling	616	1,118,860	135890	21687	249455	407032
Jalpaiguri	733	2,812,495	155782	339945	295628	791355
Coochbehar	1194	2,529,652	9273	393934	336730	739937
Bardhaman	2502	4,639,264	76123	221397	370246	667766
Birbhum	2455	3,052,956	34784	50420	97113	182317
Puruliya	2667	2,556,801	313136	227462	754718	1295316
Paschim Medinipur	8694	51,90,771	301456	198479	826038	1325973
Purba Medinipur	2994	45,03,161	1191	33948	174854	209993
Bankura	3823	3,296,901	149417	224327	419870	793614
West Bengal	25678	20006929	1177052	1711599	3524652	6413303

Source: District Census Handbooks 2011, State of Forest Report, Government of West Bengal

Table 3: District-wise Individual Forest Rights claims submitted and approved

Name of the District	IFR Claims Received by FRC	IFR Claims Submitted (Numbers)	IFR Claims Recognised (Numbers)	IFR Claims non-recognised	IFR Claims Recognised (Area in Acres)	IFR Claims Submitted (Area in acres)	IFR Claims non-recognised (Area in Acres)
Darjeeling			88		86.130		
Jalpaiguri			3834		6105.512		
Coochbehar			140		176.600		
Bardhaman			3165		453.990		
Birbhum			505		73.810		
Puruliya			7093		3704.87		
Paschim Medinipur			7966		1776.84		
Purba Medinipur							
Bankura			9549		4823.23		

Note: Data on implementation of FRA in various districts of West Bengal is scanty. The only district-wise information available in public domain is a brief note prepared in February 2014 appended to the Backward Classes department's website: http://www.anagrasarkalyan.gov.in/other/fra-report/fra-rpt_28-02-14.pdf. Data given in the table comes from the note.

Table 4: District-wise Latest Recognition Status of 'Community' Claims

District	CFR Claims Submitted (Numbers)	CFR Claims Recognised (Numbers)	CFR Claims Pending	CFR Claims Recognised by Govt. (Area in Acres)
Darjeeling				
Jalpaiguri		89		191.914**
Coochbehar		0		0
Bardhaman		177		11.640
Birbhum		31		12.610
Puruliya		1		10.000
Paschim Medinipur		9		2.720
Purba Medinipur				
Bankura		5		11.340
West Bengal*	561*	312	249	240.224

**Note: A ground-level check at forest villages in Moraghat Range of Jalpaiguri Forest Division revealed that what is officially being claimed as CFR rights seem to be common lands in the villages such as places of worship, play ground and so on. Because the entire village inclusive of its total land-use is getting converted, treating village common lands as CFRs is violative of the law.

*Total number of claims filed at Gram Sabha level 3198. The data, derived from the note in http://www.anagrasarkalyan.gov.in/other/fra-report/fra-rpt_28-02-14.pdf, is evidently misleading and confusing.

Table 5: District-wise promise and performance of the FRA (in Ha.)
(for IFRs and Community claims)

District	Total Forest Area	FRA Potential (lower estimate in ha)	FRA Potential (higher estimate in ha)	FRA performance (ha)	Unmet potential for the FRA (lower in ha)	Unmet potential for the FRA (higher in ha)	Other Forest Area (low estimate in ha)	Other Forest Area (high estimate in ha)
Darjeeling	120400	93947	105284	34.86	93912	105249	26453	15151
Jalpaiguri	179000	139453	156402	2548.48	136905	153854	39547	22598
Coochbehar	5700	4693	5123	71.47	4622	5052	1007	577
Bardhaman	27700	20776	23743	188.43	20588	23555	6924	3957
Birbhum	15900	8047	11413	34.79	8012	11378	7853	4487
Puruliya	87600	72330	78874	1503.35	70827	77371	15270	8726
Paschim Medinipur	171935	128491	147110	728.26	127763	146382	43444	24825
Purba Medinipur	1831.97	1702	1758		1702	1758	129	73
Bankura	148200	123325	133985	1956.48	121369	132029	24875	14215
Grand Total	758267	592764	663692	7066.12	585700	656626	165502	94574

Source: District Census Handbooks 2011, http://www.anagrasarkalyan.gov.in/other/fra-report/fra-rpt_28-02-14.pdf

Table 6: District-wise JFM Committees and Performance of FRA (in Acres.)

Name of the District	Area under JFM (in hectares)	No. of JFMC Members	IFR Claims Recognised (Numbers)	IFR Claims Recognised (Area in Acres)	'Community' Claims Recognised (Numbers)	'Community' Claims Recognised (Area in Acres)
Darjeeling	70853	18576	88	86.130	0	0
Jalpaiguri	128689	44748	3834	6105.512	89	191.914
Coochbehar	4103	3141	140	176.600	0	0
Bardhaman	20194	23589	3165	453.990	177	11.640
Birbhum	9208	17531	505	73.810	31	12.610
Puruliya	73932	76269	7093	3704.87	1	10.000
Paschim Medinipur	129537	122153	7966	1776.84	9	2.720
Purba Medinipur	28211	33531				
Bankura	126029	142353	9549	4823.23	5	11.340
Total	515800	481891	32340	17200.22	312	240.224

Source: State of Forest Report 2014, Directorate of Forests, Government of West Bengal, http://www.anagrasarkalyan.gov.in/other/fra-report/fra-rpt_28-02-14.pdf

Chart 01: District-wise Potential Forest Area Coming under FRA (ha.)

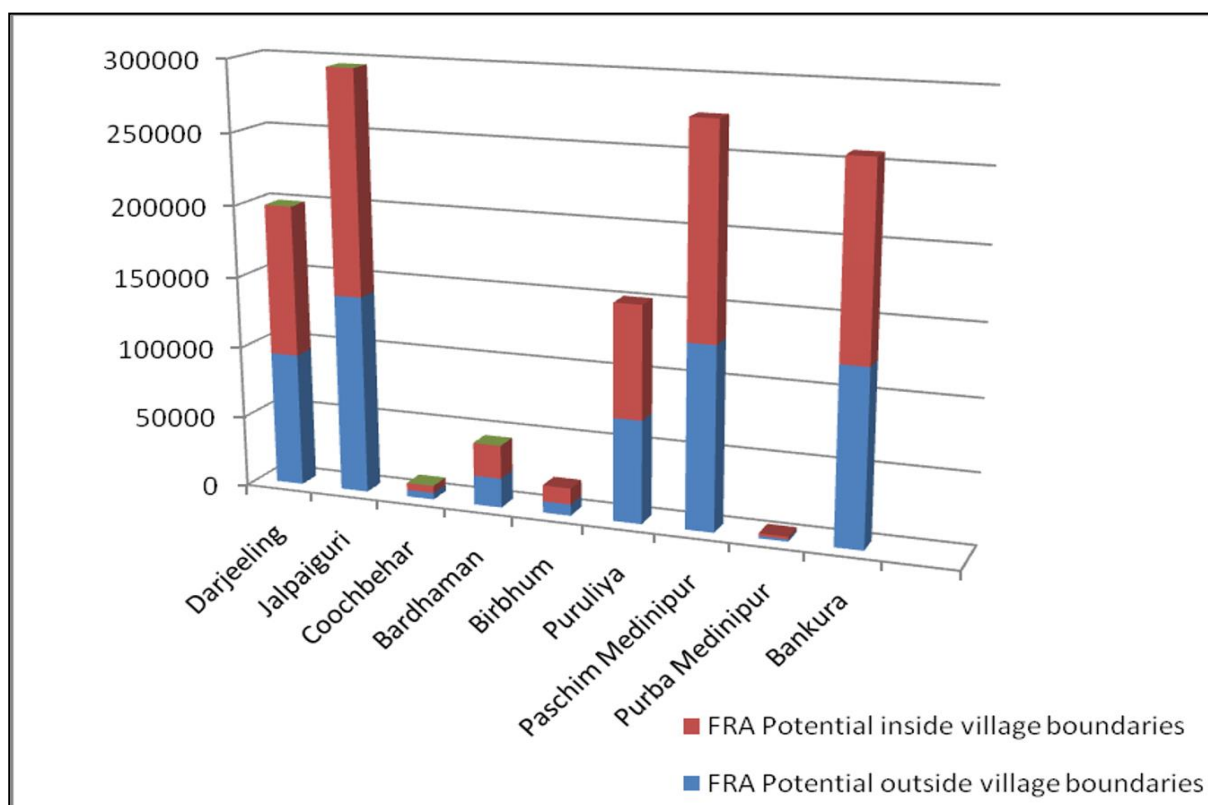


Chart 02: District-wise Promise and Performance of FRA (for IFRs), Lower Estimate (Area in ha)

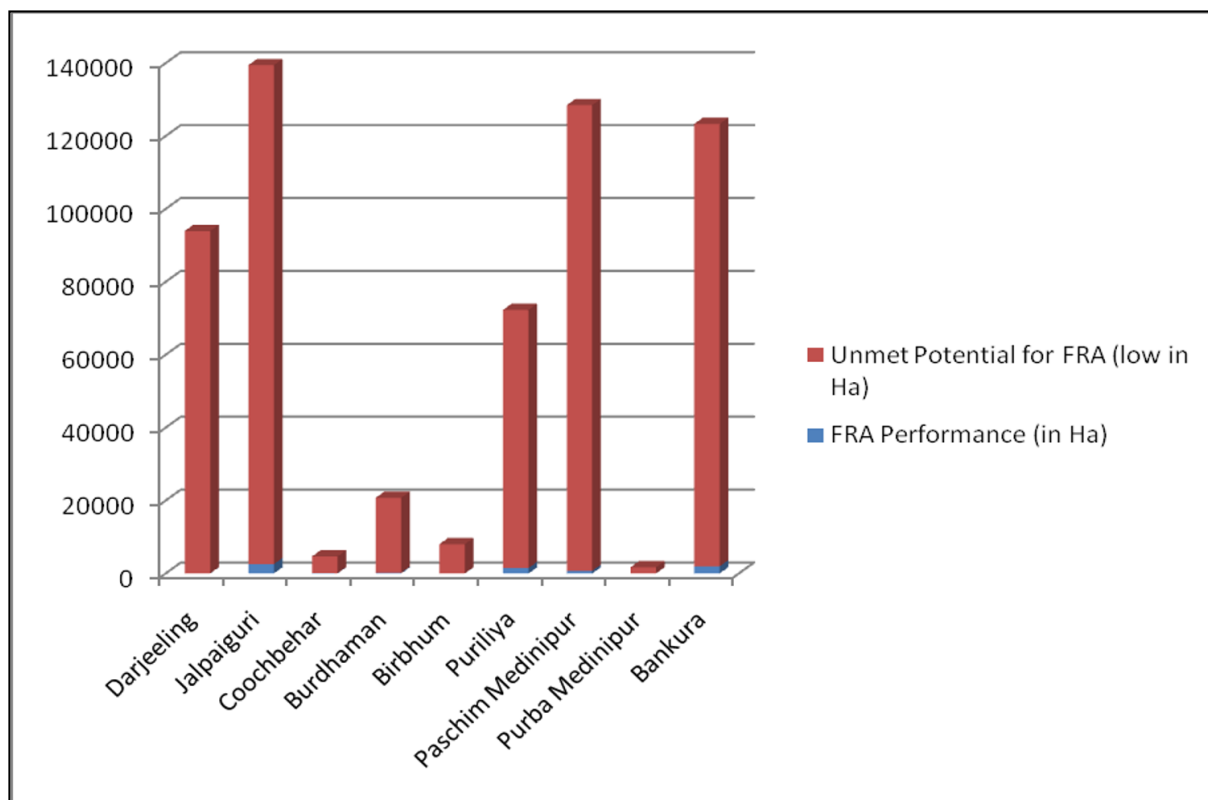


Chart 03: Total extent of forest area coming under FRA (lower est. in ha.)

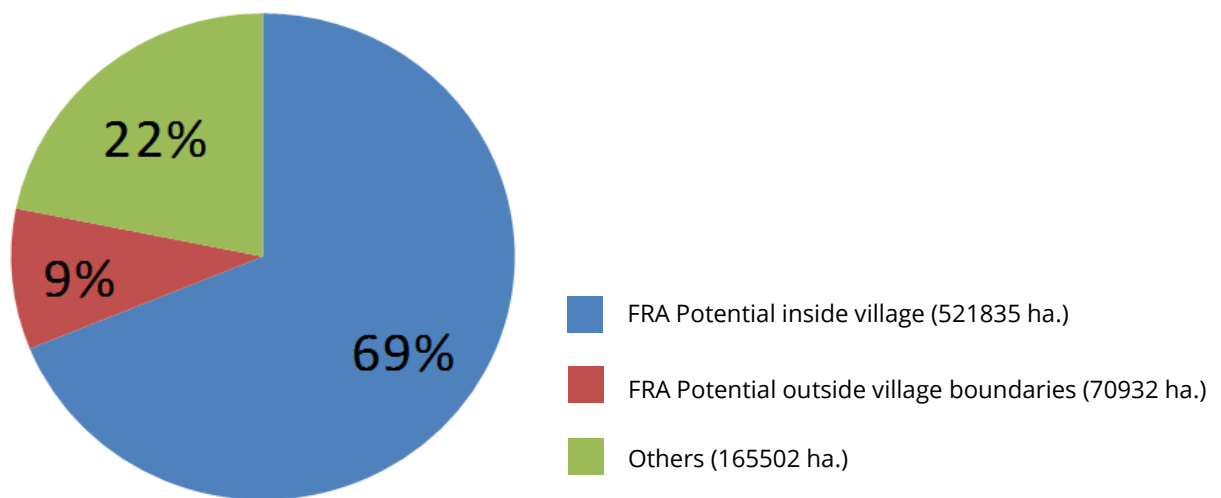


Chart 04: Potential Rights holders Population West Bengal (from 8 Districts)

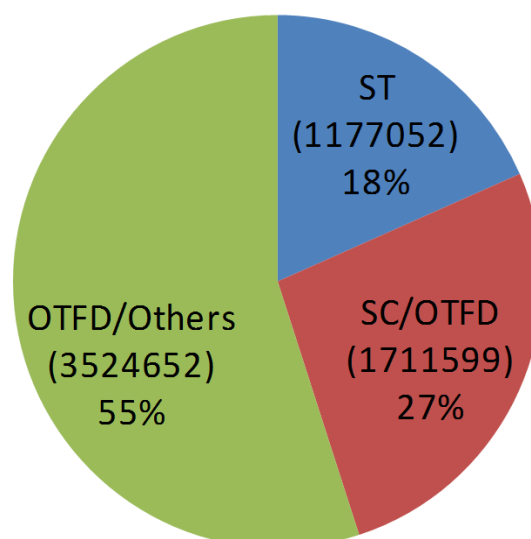
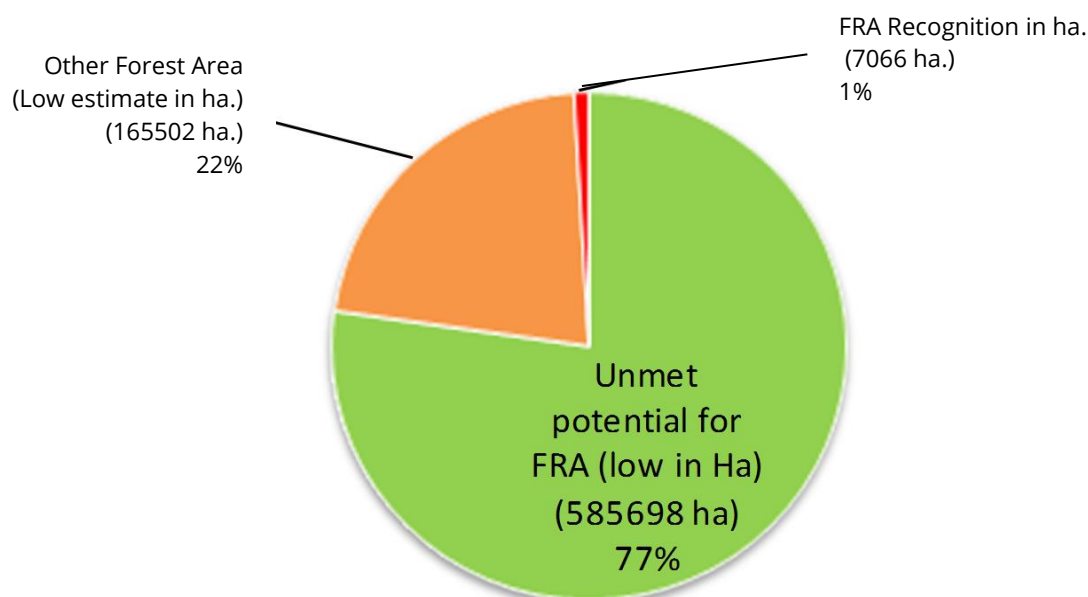


Chart 05: Promise and Performance of FRA (low estimate in Ha.)



Other forest area (low estimate in ha) = total forest area – FRA potential (low estimate in ha).

ⁱ The State of Forests Report by Forest Survey of India included a 'forests in villages' column in 1999. The column has since then been apparently discontinued because the State of Forests Reports for the subsequent years do not include such data. According to the 1999 Report, West Bengal had 8571 villages showing forest as a land use, with a population of around 8.4 million. Given a margin for escalation during the intervening years, the forest-dwelling population in West Bengal might be put at around 10 million plus, or 1 Crore plus.

ⁱⁱ Ghosh, S(2007): Commons Lost and 'Gained'? Forest Tenures in The Jungle Mahals of South West Bengal, Overseas Development Group, University of East Anglia, Norwich, UK

ⁱⁱⁱ Ibid

^{iv} For instance, reply of Dr.Upendra Nath Biswas, Minister in Charge, Backward Classes Welfare Department, West Bengal dated 3.06.2013 to letter of Minister, MoTA to CM, West Bengal, D.O.. No. MTA&PR/VIP/8/88/20 13 dated 4 April 2013

^v http://www.anagrasarkalyan.gov.in/other/fra-report/fra-rpt_28-02-14.pdf



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