

MEMORANDUM OF SETTLEMENT

Between Government of India, Government of West Bengal and Darjeeling Gorkha Hill Council for creating a New Council for the Hill areas of Darjeeling District, under the Sixth Schedule of Constitution of India.

1. The Government of India and the Government of West Bengal have been making concerted efforts to fulfill the aspirations of Hill people of Darjeeling District (West Bengal) relating to their cultural identity, language, education and economic development.
2. On consideration of various demands of Gorkha National Liberation Front (GNLF) and consequent upon Tripartite Meeting held on 25.7.1988 at New Delhi between the Union Home Minister, Government of West Bengal and Shri Subash Ghisingh, President, GNLF, a Memorandum of Settlement (Darjeeling Accord) was signed on 22.8.1988. Pursuant to another meeting between the Union Home Minister and Shri Subash Ghisingh, President GNLF at New Delhi on 25.7. 1988, a further Memorandum of Settlement was signed on 23.8.1988.
3. Pursuant to the above mentioned Settlement, GNLF agreed to **drop the demand** for a separate State of Gorkhaland and an autonomous hill council, viz, Darjeeling Gorkha Hill Council (DGHC), was set up under 'The Darjeeling Gorkha Hill Council Act, 1988' notified by the Government of West Bengal on 15.10.1988. The hill areas under DGHC comprised of the three hill Sub-Divisions of Darjeeling District, viz, Darjeeling, Kalimpong and Kurseong and 13 mouzas of Siliguri Sub-Division of that District.
4. However, Shri Subash Ghisingh (former Chairman and Chief Executive Councilor, DGHC, presently Administrator) had been demanding constitutional status for the DGHC as, according to him, the abovementioned Settlements could not fulfill the aspirations of the people of Darjeeling. A series of tripartite meetings were held between Government of India, Government of West Bengal and Shri Subash Ghisingh to review the implementation of Darjeeling Accord and further issues arising from it. As a result of these meetings, it is hereby agreed in principle to create a self-governing body for the Darjeeling hill areas in the State of West Bengal.

5. Objectives

The objectives of this agreement are to replace the existing Darjeeling Gorkha Hill Council by an Autonomous Self Governing Council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule of the Constitution of India following due consultative, Legislative and constitutional processes by the State and Central Governments so as to fulfill economic, educational and linguistic aspirations and the preservation of land-rights, socio-cultural and ethnic identity of the hill people; and to speed up the infrastructure development in the hill areas.

6. Area

The area of the proposed Council under the Sixth Schedule shall comprise all the mouzas, villages and areas as per Annexure A to be notified by the State Government. *Any further alteration to the list can be made on the basis of mutual agreement between the Govt. of West Bengal and DGHC, prior to the enactment of Constitution Amendment Act.* The above mentioned mouzas, villages and areas shall be comprised in 3 contiguous hills Sub-Divisions

viz, Darjeeling, Kalimpong and Kurseong of Darjeeling District after reorganization of the existing Sub-Divisions of Darjeeling district by the Government of West Bengal within a period of 3 months of the signing of this agreement.

7. Status of New Council

7.1 The Government of West Bengal would repeal at appropriate time the existing ‘The Darjeeling Gorkha Hill Council Act, 1988’ to pave the way for creation of a new autonomous Council under Sixth Schedule of the Constitution of India. Government of India would initiate necessary consultative, legislative and constitutional steps to amend Article 244 of the Constitution appropriately, to include administration of the hill areas of State of West Bengal in the Sixth Schedule.

7.2 The provisions of the Sixth Schedule as and when amended and other relevant Articles of the Constitution of India will apply to the new Council, *mutatis mutandis* in terms of this Settlement. The safeguards for the non-tribal in the new Council area, inter-alia, will include the following:

7.2.1 Provisions of para 1(2) of Sixth Schedule regarding Autonomous Regions will however not be applicable to the new Council.

7.2.2. A provision will be made in para 2(1) of the Sixth Schedule for increasing the number of members for new Council up to 33 out of which 10 will be reserved for Schedule Tribes, 15 for non-tribal communities, 3 open for all communities and 5 to be nominated by Governor of West Bengal from the unrepresented communities. From new Council area of which at least two should be women. Nominated members will have the same rights and privileges as other members including voting rights. Election from the 28 constituencies of the new Council shall be on the basis of adult franchise. The terms of the elected members of the new Council shall be for 5 years.

7.2.3. Safeguards for the settlement rights, transfer and inheritance of property etc, of non-tribal will be suitably incorporated in para 3 of the Sixth Schedule. Any such Law may be made by the new Council in this regard will not in particular:

(a). Extinguish the rights and privileges enjoyed by any citizen of India in respect of his land at the commencement of the new Council, and

(b). Bar any citizen from acquiring land either by way of inheritance, allotment, settlement or by way of transfer if such citizens were eligible for such bonafide acquisition of land within the new Council area.

7.2.4. Provision will be added in para 6 of Sixth Schedule that in the new Council area, language and medium of instruction in educational institutions will not be changed without approval of the State Government.

7.2.5. Para 10 of the Sixth Schedule will not be applicable to the new Council area

7.2.6. The amendments to the Sixth Schedule shall include provision in such a manner that non-tribal are not disadvantaged in relation to the rights enjoyed by them at the commencement of the new Council and their rights and privileges including land rights are fully protected.

7.3. These amendments will be carried out after following due consultative and legislative processes

8. Powers and functions

8.1. The new Council shall have legislative powers in respect to subjects mutually agreed with State Government to be transferred to it. The list of Subjects is given in *Annexure B. Any further alteration to this list can be made on the basis mutual.*

8.2. There shall be an Executive Council comprising not more than 6 Executive Members from amongst the members of the General Council, one of whom shall be the Chief and another one the Deputy Chief of the said Executive Council. To ensure adequate representation for the non-Tribal members in the Executive Council, at least 2 members of the Executive Council would be non-Tribal. There shall be no bar on nominated members being appointed as members of the Executive Council.

8.3. The New Council shall have the full control over the officers and staff appointed by it and this and connected with the delegated subjects working in the Council area. In case of all India Service Officers and State Government officer on deputation to the Council, it can only recommend suitable action to the State Government. Annual Confidential Reports of all the officers shall, however be written by the appropriate authority in the new Council.

8.4. The new Council shall also be competent to make appointments for all posts under its control in accordance with the rules of appointment followed by the Government of West Bengal. However, the posts, where recruitment is made on the recommendation of West Bengal Public Service Commission, shall not be covered under this provision. The new Council may constitute a Selection Board for appointments to be made by it and may also make rules, with the approval of the Governor of West Bengal, to regulate appointments and to ensure adequate representation for all communities living the new Council area.

8.5. All new posts within the Council are created with the concurrence of State Government. The Council shall also abide by the decision of the Government of West Bengal in respect of abolition of / temporarily keeping vacant any post.

8.6. Development functions and bodies within the competence of DGHC shall be transferred to the new Council.

8.7. The new Council would have the same powers of supervision over the lower tiers of Panchayats as the existing DGHC. The existing arrangement of lower tiers of Panchayats would continue under the new Council. In the event, Panchayati Raj System ceases to be in force in the new Council area, the powers of the Panchayati Raj Institutions in such matters shall be vested with the new Council.

8.8. The Offices of the District Magistrate and Superintendent of Police will be outside the superintendence and control of the new Council.

8.9. The State Government would provide an amount, to be decided every year on population ration basis, as grants-in-aid in two equal installments to the new Council for executing development works. The proportionate share for new Council shall be calculated on the basis of the plan funds available after setting aside the funds required for earmarked sectors and the

salary. This amount may be reduced proportionately if the State plan allocation is reduced or there is plan cut due to resource problem. In addition, the new Council will be paid a suitable amount of plan funds and non-plan funds to cover the office expenses and the salaries of the staffs working under their control. The new Council shall disburse the salaries of the staffs under their control and would ensure strict economy in the matter.

8.10. The new Council shall prepare a plan with the amounts likely to be available for development works, both under State share and Central share, covering any or all the activities of the departments under their control. The Council shall have full discretion in selecting the activities and choosing the amount for the investment under the same in any year covering all groups of people in a fair and equitable manner. This plan will be a sub set of the State plan and would be treated as its integral part. Once the plan of the State, including the new Council plan, gets the approval of the Planning Commission, the new Council authority shall start execution of their plans in the new Council area. Modifications, if any, made by the Planning Commission in the new Council proposal shall be binding on the new Council authority. The State Government shall not divert the funds allocated to the new Council to other heads and also ensure its timely release. The new Council may have Planning Department to prepare the plans for the new Council is to be submitted to Planning Commission through the Government of West Bengal.

8.11. The Executive functions of the new Council shall be exercised through its Principal Secretary who shall be an officer of the rank not below that of Commissioner/Secretary of Government of West Bengal. The sanctioning powers of Government of West Bengal shall be vested with the Principal Secretary of the new Council and sanctioning powers of head(s) of the Department(s) including for technical sanction shall be conferred on the senior most officer of that Department preferably not below the rank of Additional Director, who may be designated as Director of the new Council for that department. The principal Secretary and other officers shall exercise their powers under the overall guidance and supervision of the new Council.

9. Additional Development Packages for the new Council

9.1. The State Government, within the limitation of financial and other constraints, may offer or allow the new Council to offer, possible and sustainable additional incentives for attracting private investment in the new Council area and would also support projects for external funding.

9.2. In order to accelerate the development of the region and to meet the aspirations of the people, the Government of India will provide financial assistance of Rs 30 crore per annum for 5 years for projects to develop the socio-economic infrastructure in the new Council areas over and above the normal plans assistance to the State of West Bengal. Suitable mechanism will be built in the system to ensure that the funds are transferred to the new Council in time and a regular interval. A list of projects which should be considered to be taken up in the new Council areas is a Annexure C.

10. Interim administration: Immediately after signing of the Agreement and till such time the process of Constitutional amendment is carried out, and the new Council is put in place, the administration of the area shall continue to be with the existing DGHC constituted under the existing Act. To achieve the objectives of the present MoS, The steps as enumerated hereunder would be taken by the parties to the settlement:

Sd/- Sd/- Sd/-
(Subash Ghisingh) (V. K. Duggal) (A. K Deb)
Administrator Home Secretary Chief Secretary
DGHC Government of India Government of WB

- i. Transfer of 16 Mouzas/Villages from Siliguri Sub-Division to Kurseong, Sub-Division and consequent legislative enactments, if any, required to include them in DGHC area.
 - ii. Elections to the DGHC and to Panchayat bodies in the DGHC area in accordance with the relevant provisions of the Constitution / existing Laws of the Central / State Governments.
 - iii. Resolution by State Legislative Assembly recommending the grant of Sixth Schedule status for Darjeeling Hill areas and any other Legislative process as may be necessary precedent to initiating process for amending Article 244 of the Constitution.
 - iv. Amendment of Article 244 of the Constitution.
 - v. Amendment of Sixth Schedule through Parliamentary Act and enactment of any other consequential Parliamentary Act(s)
 - vi. Dissolution of the DGHC and repeal of the DGHC Act 1988 with appropriate saving clause
 - vii. Election and Constitution of new Council within six months of enactment of Parliamentary Acts
11. This in principal Memorandum of Settlement is the **full and final settlement** of the Darjeeling Hill Areas issue and no further demands in this regard would be entertained. The implementation of this Memorandum shall be periodically reviewed by the Government of West Bengal with DGHC. Signed on the 6th of December, 2005 at New Delhi in the presence of Shri Shivraj V. Patil, Hon'ble Union Home Minister and Shri Buddhadeb Bhattacharya, Chief Minister of West Bengal

Annexure A

List of Villages / Mouzas to be included in the proposed Council under Sixth Schedule for Darjeeling Hill Areas

1. All the Mouzas under the Darjeeling Sub-Division of Darjeeling District
2. All the Mouzas under the Kurseong Sub-Division of Darjeeling District
3. All the Mouzas under the Kalimpong Sub-Division of Darjeeling District
4. (a). List of Mouzas under Siliguri Sub-Division of Darjeeling District which are already part of DGHC and which are proposed to be transferred to Kurseong Sub-Division
 - (1). Lohagar Tea Garden (J.L No. 2 of Naxalbari P.S.) to Mirik P.S
 - (2). Lohagar Forest (J.L. No. 3 of Naxalbari P.S.) to Mirik P.S

- (3). Rangmohan (J.L No 5 of Naxalbari P.S) to Mirik P.S
- (4). Bara Chenga (J.L. No 6 of Naxalbari P.S) to Mirik P.S
- (5). Panighata (J.L No 76 of Naxalbari P.S) to Mirik P.S
- (6). Pantapari Forest (J.L No 81 of Naxalbari P.S) to Mirik P.S
- 7). Sitong Forest (J.L No 1 of Pradhanagar P.S) to Kurseong P.S
- (8). Champashari Forest (J.L No 4 Pradhannagar P.S) to Kurseong P.S
- (9). Mahanadi Forest (J.L No 5 of Pradhannagar P.S) to Kurseong P.S
- (10). Sukuna Pratham Khanda (J.L No 6 of Matigara P.S) to Kurseong P.S
- (11). Sukuna Forest (J.L No 7 of Matigara P.S) to Kurseong P.S
- (12). Paharu (J.L no 10 of Matigara P.S) to Kurseong P.S
- (13). Chhota Adalpur (J.L No 11 of Matigara P.S) to Kurseong P.S
- (14). Shalbari Chhat Dwitiya Khanda (J.L No 33 of Pradhannagar P.S) to Kurseong P.S

4 (b). List of Mouzas under Siliguri Sub-Division of Darjeeling District to be included in the proposed Council and which are proposed to be transferred to Kurseong Sub-Division of Darjeeling District:

1. Sevoke Hill Forest (J.L No 2 of Pradhannagar P.S) to Kurseong P.S
2. Sevoke Forest (J.L No 3 of Pradhannagar P.S) to Kurseong P.S

Annexure B

List of Subjects proposed to be transferred to the New Council

1. The allotment, occupation or use or setting apart of land other than any land which is a reserved forest, for the purpose of agriculture or grazing, or for residential or other non-agricultural purposes, or for any other purpose likely to promote the interest of the inhabitants of any village, locality or town. Such allotment, occupant or use, or setting apart of land shall be subject to the provisions of the West Bengal Land Reforms Act. 1955 and the rules made there under:
2. The management of any forest, not being a reserved forest. Explanation • “Reserved forest” shall mean a reserved forest as constituted under the Indian Forest Act. 1927:
3. The use of any canal or watercourse for the purpose of agriculture:
4. Agriculture

5. Public Health and Sanitation, Hospitals and dispensaries
6. Tourism
7. Vocational Training
8. Public Works • Development and Planning
9. Construction and Maintenance of all roads except National Highways and State Highways
10. Transport and development of transport
11. Management of burials and burial grounds, cremations and cremation grounds
12. Prevention, Protection and Improvement of livestock and prevention of animal diseases, veterinary training and practice.
13. Pounds and the prevention of cattle trespass
14. Water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage
15. Fisheries
16. Management of markets and fairs, not being already managed by Municipal authorities, Panchayat Samitis or Gram Panchayats
17. Education-Primary, Secondary and Higher Secondary
18. Works, Lands and Buildings vested in or in the possession of the General Council
19. Small-Scale and Cottage Industries

Annexure C

List of Projects to be taken up by new Council:

1. Upgradation of existing educational infrastructure by way of renovation / addition of buildings, providing modern facilities for reaching such as computers, science laboratories etc. from primary level to college level in Council area.
2. Establishment of a cultural complex at Darjeeling to promote and develop Hill tradition and cultural heritage.
3. Establishment of super-specialty hospital with all modern facilities at Darjeeling and upgradation of sub-divisional and block level hospitals and PHEs.
4. Establishment / improvement of the sports infrastructure in district and Sub-divisional Headquarters.

5. Provision of Food processing, plants, integrated agro processing Park and Cold storage facilities.
6. Development of floriculture in the Hill Areas.
7. Establishment of modern dairy, fishery, horticulture and poultry farms / training Centres at different places to encourage youths for self-employment.
8. Development of adequate infrastructure to promote tourism in Council areas.
9. Upgradation and strengthening of the existing facilities in veterinary hospitals in Council areas.