

# Who gains from the Forest Right Act, 2006?

A case study of individual forest rights in Kinnaur District,  
Himachal Pradesh.



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## Background

Himachal has 2/3<sup>rd</sup> of its geographical area designated as “forest land” in legal terms while forest cover exists only on 28% of this area. The government of Himachal issued a blanket notification No. Ft. 29-241-BB/49 dated 25<sup>th</sup> February, 1952, under section 29 of the Indian Forest Act. (XVI of 1927) by which almost all the “waste land” (common/public lands under the revenue department) and forest land was declared as ‘protected forest’ under the jurisdiction of the forest department. The notification was not accompanied with a settlement process – whereby the existing uses of the said common lands would be recognized. However, several land reform related state legislations were passed for the distribution of land to the landless (like *nautor* rules). With commencement of the Forest conservation laws in the form of the Wildlife Protection Act 1972, and the Forest Conservation Act (FCA) 1980, authority to change the land use of forest lands shifted from the State Governments to the Central Government. As per the FCA, 1980 diversion of any forest land for non-forestry activities cannot be done without permission of the Union Ministry of Environment, Forests and Climate Change. With the coming of the FCA, the 'regularization' of any occupation on forest land became impossible through State policies or any State Legislations which were always over-riden by the provisions of central forest conservation laws. In May 2002 the Union Ministry of Environment and Forests passed blanket orders directing all state forest departments to carry out evictions of illegal encroachments on forest lands based on the Supreme Court orders in the Godhavarman case.

In this regard, knowing that there are occupations on forest land in Himachal as well, the State Government, led by the BJP at the time, framed a policy in 2002 to 'regularize' forest land occupations up to five bighas of land in such a manner that own land of the possessor and the land conferred under these rules does not exceed 10 bighas. Close to 1.65 lakh families applied under this policy of Himachal Government. However, the regularization policy was untenable given the legal obstacles due to the central forest

laws. While there is no concrete official data on number of encroachments in Himachal, news reports have mentioned that close to 1.65 lakh individuals have such occupations. The data available with the forest department is only of 12701 cases of encroachment out of which 11240 (85.50%) are of less than 5 bighas and 1461 (14.5%) of more than 10 bighas with a total encroachment of 4107 hectare over forest land.

In addition to the private occupations on forest land, majority of the population of the state depended on these lands for community uses - grazing, fodder, fuelwood and timber. These community users also remained insecure post 1980 as the government especially continued diversion of forest land for large developmental projects like roads, hydropower and mining. Since 1980 a total of 12005 hectares has been diverted for these projects without any consent from the users or any compensation for the resulting loss of livelihoods.

This was the situation not just in Himachal Pradesh but across the country with the most marginalized communities, like scheduled tribes, pastoralists and scheduled castes losing out their access to land. It was in response to the 2002 MoEF orders for removal of forest land 'encroachments' through mass evictions and the inability of State governments to provide relief to the forest dwelling communities across the country (including Himachal Pradesh) that there was a demand for a legislation to protect the interests of people who were dependent on forest lands.

After lobbying and advocacy by several social organizations at the national level it was in 2006 that "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act" was passed by the Indian Parliament. The Forest Rights Act or FRA as it is known enabled the verification and issuing of titles on forest land both for individual and community uses by 'Scheduled Tribes' and 'Other Forest Dwelling Communities' for their bonafide livelihoods.

## **Status of FRA in Himachal**

Despite huge scope of the act in Himachal, the governments (led by both Congress and BJP) in the state lagged behind in the implementation of this Act. As of today 1200 cases have been sanctioned by the government under section 3 (2) of the FRA 2006 for 13 development activities mentioned under this section. However, implementation of section 3 (1) on the recognitions of Individual and Community Forest rights remains weak. Around 17503 FRCs have been formed and 7 community claims in Bharmour, 1 community claim in Kinnaur (Lippa); 53 individual claims in Dalhousie (Chamba) and 76 individual claims in Lahaul and Spiti region have been issued titles under the Act.

The poor implementation of the FRA in the state could be attributed to several factors, the lack of political will being the most dominant one. This lack of readiness itself emerges from a narrative that has been built up within the bureaucracy and the political class vis a vis the applicability of the legislation in the state. On one hand, the absence of a complete understanding of the law, its provisions and the definitions there-in, has been a hindrance. On the other, the State's view of ownership and control of 'forest land' and the stake of the local community is in contradiction with the very spirit of the Act itself.

This became evident over a period of the last decade through the actions of the state governments: the discussions in the State Level Monitoring Committee (SLMC) meetings, the notifications and orders passed by the departments; the correspondence of the state government with the Ministry of Tribal Affairs and Environment about the applicability of the legislation; in the functioning of the sub divisional and district level committees; the judicial orders on 'encroachments' and the departmental interventions in the case; and finally in the interactions with bureaucratic officials and political representatives.

## **Non Implementation of the Act in Kinnaur district**

This report will focus on some of the many arguments that the administration in Himachal has used for not issuing individual forest rights titles, especially in the district of Kinnaur. In the background of this is the order of the Shimla High Court, passed in the year 2015 (CWP no. 1028 of 2002) related to eviction of encroachments on forest lands. Based on the affidavits for regularization of their occupation of forest lands filed by claimants back in 2002, when the state government had announced its regularization policy, the High Court termed these occupations as 'encroachments' and asked for their immediate removal by the Forest Department. Post the High Court order evictions were carried out despite the fact that these occupants could actually have been given a chance to file their claims under FRA.

In the case of the tribal district of Kinnaur, the evictions came to a halt when in a petition, some claimants belonging to the Scheduled Tribe, challenged the eviction order in the Shimla High court and the court in its order (CWP No. 766 of 2018) on 9<sup>th</sup> July 2018 disposed of an eviction order dated 27.3.2018 issued by the Collector (Forest)-cum-Divisional Forest Officer, Kinnaur and asked the case proceedings to be heard afresh within three month time period. As of now not a single hearing has been done in this case.

In Kinnaur district in 51 villages 2599 individual forest claims have been filed, which are at different stages of processing. However, in the claims submitted to the SDLCs, either no decision has been taken or in many cases these have been returned back with frivolous objections. For instance, in case of Lippa village the reason given was that the individual claims are from a revenue village where settlement process was completed in the 1980s itself.

### **Concerns related to FRA**

The three key "concerns" expressed by the departmental representatives at the sub divisional and district levels, which have become causes of delay in the settlement of claims process, formally vide objections raised with FRCs as well as in verbal

conversations and interactions with members of the community and the Himdhara team have been explained below.

**1. The Himachalis are not 'forest dwellers' and their occupations are not for 'bonafide livelihoods'-**

This is an old contention that was raised with the Ministry of Tribal Affairs by the Himachal government subsequent to which the MoTA had provided clarifications. The definition of *"Forest dwelling Scheduled Tribes"* under section 2(c) of the FRA, 2006, *the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.* For the term used *"primarily reside in"* the Ministry of Tribal Affairs (MOTA) who is the nodal agency for the implementation of the provisions of this Act, had issued a circular dated 9.06.2008 No.17014/02/2007-PC&V(Vol. VII) (Attached as Annexure-1), according to this, *"the Scheduled Tribes and Other Traditional Forest Dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definition of 'forest dwelling Scheduled Tribe and 'Other Traditional Forest Dwellers' as given in Sections 2 (c) and 2 (o) of the Scheduled Tribes and Other Traditional Forest Dwellers (recognition of Forest Rights) Act, 2006."* According to Rule 2 (1) (b) *"bonafide livelihood"* means fulfillment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the Act and includes sale of produce arising out of exercise of such rights." This means those growing cash crops like apple or any other are also eligible to apply.

**2. The individual claims are not from un-recorded or un-surveyed settlements or forest villages but from revenue villages hence not eligible**

The clarification of the term 'primarily resides' provided above states that those forest right holders who depend on forest land for livelihood even though they may be residing in revenue village will also be covered under this definition. The Act is not only for forest villages which are very limited i.e. 4526 in the country but for forest dwellers

who depend on forest lands even though they do not necessarily reside in a revenue village. In many states FRCs have been formed at the revenue village level and individual titles have been issued in such cases. In Himachal, revenue villages have customary rights recorded in documents like '*Wazib-ul-Arz*' and '*Naqsha-Haq-Bartan*', but these were mostly communal in nature. However under the **Himachal Pradesh Nautor Land Rules, 1968** the landless and marginal landowners (less than 10 bighas of land under self-cultivation) communities had rights to 'break' new forest land (other than DPF, Reserve forest, Protected areas or in public use) for agriculture (hence '*nau*' new, '*tor*' break). It was due to this, that thousands of people had broken this land and were legitimate occupants of it, until they were overnight turned into 'encroachers' There is sufficient evidence of this especially in *Jamabandi* documents (revenue records) where lands under *najayaz kabzaa* are visible across the state. In Spiti where revenue settlement had happened in the late eighties there are more than 1200 cases of *najayaz kabza* recorded in revenue records and similar cases can be found in other districts also. Same is the case with *nautor* cases which were allotted in late seventies to individuals but titles were not issued due to the Forest Conservation Act, 1980.

### **3. It is the big encroachers who will gain from the FRA individual claims and this act is not going to benefit vulnerable sections of the society**

The inadequacies of the settlement process indicate that there is a strong need for recognition of rights of occupants and that the FRA 2006 provides an opportunity to correct the anomalies in revenue records to provide tenurial security to landless people. However, the administration, in Kinnaur as well as some other areas has been questioning the individual claimants on the grounds that they belong to already landed communities and would be grabbing more land.

In order to assess the veracity of this argument a study was conducted by the Himdhara Environment Research and Action Collective in collaboration with Zila Van Adhikar Samiti, Kinnaur in September 2018. The findings of the study indicate that the apprehensions raised about who gains from the Act are not well founded, and infact the



FRA may just be the best legal mechanism to provide tenurial access to land to those who need it the most.

## **About the Study**

This study analyses the individual claims made under the FRA in 3 sub divisions of Kinnaur District, a scheduled area of Himachal Pradesh. The data was collected from 22 Forest Rights Committees which were selected on the basis of:

- the status of FRA process,
- availability of records and
- representation of the geographic stretch of the study

Due to the weather conditions, issues of accessibility and lack of availability of documented data, data collection was negotiated. The data collected, however, provides a grounded overview of the state of the Forest Rights Act implementation in the region, its inadequacies and the subsequent grievances of the people. Most importantly the analysis reflects the size and nature of the IFR claims made, and the land ownership status of different social groupings of claimants.

Data collection was carried out at primarily through an elaborate examination of all the IFR and CFR claim files of the mentioned villages followed by meetings and discussions with the members of respective Forest Rights Committee, revenue and forest officials, president and secretaries of the concerned panchayats, other administrative officials such as SDMs and ADMs, and other local villagers who also represent as claimants under FRA. In this study collected the information and data on following parameters-

- i. Name of the claimant
- ii. Number of dependents members
- iii. Nature and extent of claim on forest land
- iv. Total land holding
- v. Whether belong to Schedule Caste

vi. Status of IFR and CFR claim

From the Following are 22 villages from where we have collected data on 1351 Individual Forest Rights (IFRs) claims-

**Table 1: FRC wise details of individual forest right claims**

Sl No.	Name of FRC	SDLC	Tehsil	No of IFR Claims filed	Land claimed under IFR (bigha)	No. of SC claimants'
1	Purbani	Peo	Kalpa	44	83.91	19
2	Kalpa	Peo	Kalpa	91	157.82	29
3	Shudarang	Peo	Kalpa	26	51.69	10
4	Raang	Peo	Kalpa	34	57.51	7
5	Khwangi	Peo	Kalpa	61	233.23	36
6	Rakchham	Peo	Sangla	53	56.3	13
7	Kilba	Peo	Sangla	133	522.94	62
8	Chanso	Peo	Sangla	39	117.59	16
9	Kharogla	Peo	Sangla	65	133.72	6
10	Nigani	Bhaba	Nichar	18	52.02	5
11	Kaafnoo	Bhaba	Nichar	59	248.07	32
12	Urni	Bhaba	Nichar	40	148.65	12
13	Lippa	Pooh	Pooh	47	207.21	8
14	Rarang	Pooh	Moorang	137	504.01	33
15	Moorang	Pooh	Moorang	163	567.02	23
16	Thangi	Pooh	Moorang	81	384.85	8
17	Pooh	Pooh	Pooh	68	200.92	13
18	Shalkhar	Pooh	Hungrang	56	192.56	7
19	Leo	Pooh	Hungrang	66	174.29	7
20	Malling	Pooh	Hungrang	40	93.31	2
21	Karla	Pooh	Pooh	8	17.21	0
22	Spilo	Pooh	Pooh	22	31.39	2
Total				1351	4236.22	350

Under FRA, 2006 to file IFR claim under section 3 (1) (a) the information on total land holding is not required, therefore this data was not readily available. Using different sources we obtained land holding data of 417 claimants from 12 villages.

**Table 2: FRC wise details about claimants' with respect to total land holding (in bighas)**

S.No.	Village	No. of claims filed	Claimed land	Total land holding
1	Chansu	21	40.07	176.01
2	Kalpa	88	147.57	910.77
3	Khawangi	57	225.68	307.42
4	Raang	33	56.86	327.10
5	Shudharang	25	51.03	296.56
6	Rarang	18	49.46	203.77
7	Karla	8	17.21	73.00
8	Moorang	104	358.43	703.07
9	Spillo	22	31.39	360.00
10	Urni	5	10.50	42.81
11	Nigani	16	47.14	87.55
12	Kafnoo	20	50.42	208.01
<b>Total</b>		<b>417</b>	<b>1085.76</b>	<b>3696.07</b>

### **Status of IFR and CFR claims in Kinnaur**

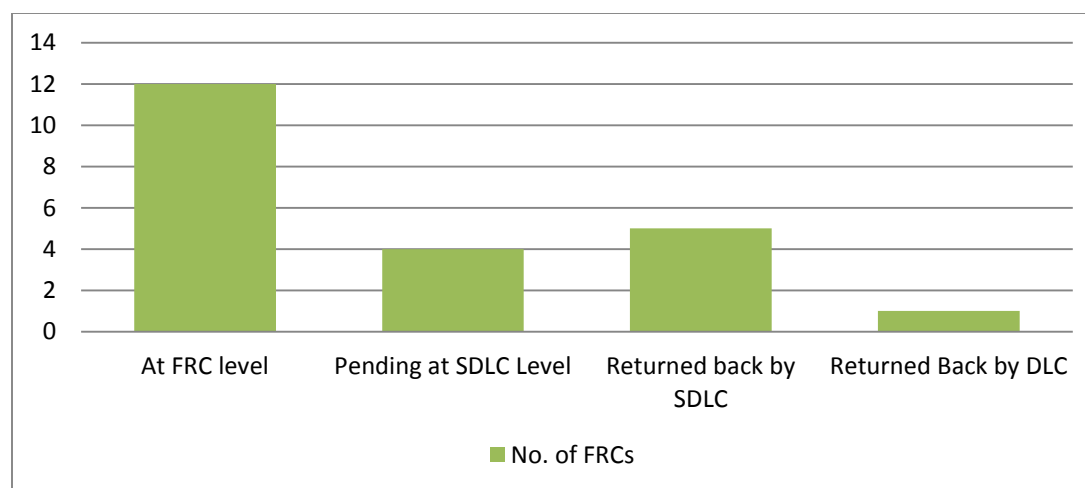
Kinnaur being a tribal district, had Forests Right Act officially implemented in the region in the year 2008 itself but in past 10 years not a single claimant has been given a title yet. Rather than assisting in the process, organizing trainings and building bureaucratic understanding and capacity on FRA implementation, administration has ensured non implementation of the act by its lethargic approach of delaying the submitted claims. The formation of Forest Rights Committees was initiated in 2009 at panchayat level Gram Sabhas and claims were submitted without any information or training on the procedures. These claim files carried procedural faults and were thus subsequently either returned back or in a few cases taken back by the people. It was only in 2014 that the 136

FRCs were re-constituted at the *mohal* (revenue village) level, as is warranted under the Act.

Out of the 22 FRCs studied around 10 had sent their claims to the SDLC and out of these 47 IFR claims of one FRC had reached the DLC level. Even these had been returned back to the SDLC, twice. As of now, not a single IFR claimant has received title under the Act. In case of Community forest resource rights (CFR) only the claim of Lippa village has been approved by the DLC.

**Table 3: FRC wise status of Individual Forest Rights and Community Forest Rights claims**

Stage	No of FRCs with IFR claims	No. of FRCs with CFR claims
At FRC level	12	12
Pending at SDLC level	4	8
Returned back by SDLC to Gram Sabha	5	1
Returned back by DLC to SDLC	1	0
Claims approved	0	1
Total	22	22



**Figure 1: FRCs wise status of IFR claims in Kinnaur**

## Findings:

### 1. How much land is being claimed under FRA?

In 22 villages, a total of 1351 Individual claims were filed under FRA for 4236.22 bighas of land. The average size of land claimed is 3.13 bighas and only 6 claims out of 1351 claims are of more than 20 bighas.

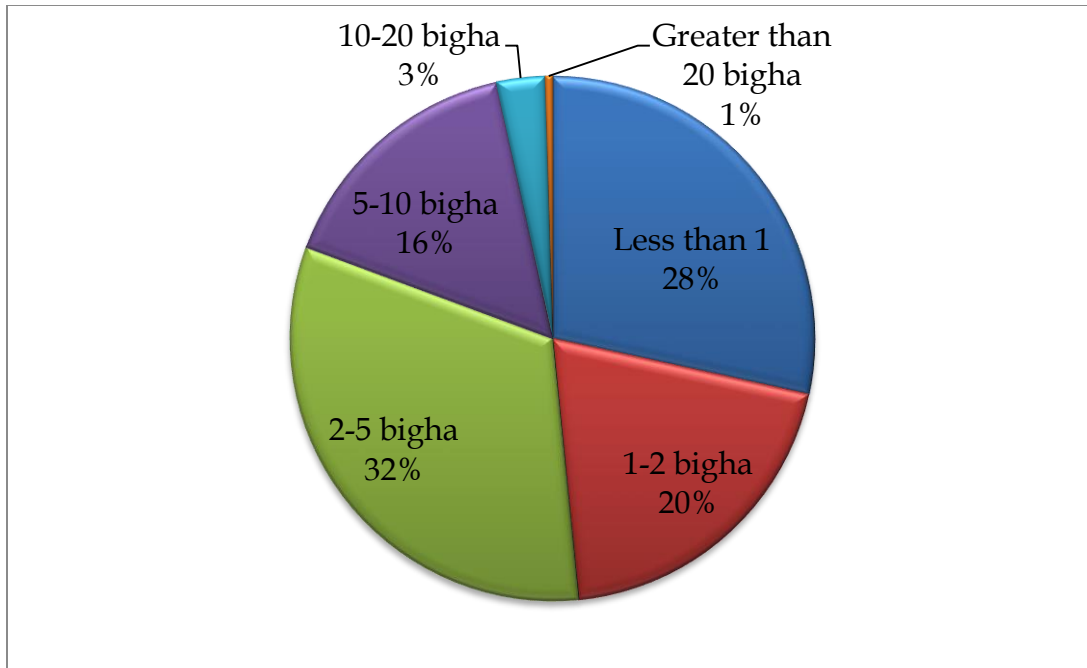
**Table 4: Village wise break up of IFR claims according to the area of occupied land.**

Claimed land categories (in bigha)	Less than 1	1-2	2-5	5-10	10-20	20-30	Greater than 30	Total
Chansu	12	11	10	5	0	0	1	39
Kalpa	39	30	14	7	1	0	0	91
Khwangi	10	14	22	11	4	0	0	61
Kharogla	34	13	10	8	0	0	0	65
Kilba	24	20	50	34	5	0	0	133
Purbani	17	14	9	3	1	0	0	44
Rakcham	33	10	10	0	0	0	0	53
Rang	16	8	9	0	1	0	0	34
Shudharang	9	10	4	3	0	0	0	26
Thangi	5	12	35	23	4	2	0	81
Rarang	24	29	49	28	7	0	0	137
Moorang	45	17	58	37	6	0	0	163
Spillo	11	5	6	0	0	0	0	22
Karla	2	2	4	0	0	0	0	8
Lippa	6	10	18	10	2	0	1	47
Malling	14	9	13	4	0	0	0	40
Shalkhar	16	8	18	12	2	0	0	56
Leo	26	9	18	13	0	0	0	66
Pooh	14	14	30	9	1	0	0	68
Kafnoo	9	18	19	6	5	0	2	59
Nigani	3	3	10	2	0	0	0	18
Urni	15	4	20	0	1	0	0	40
<b>Total</b>	<b>384</b>	<b>270</b>	<b>436</b>	<b>215</b>	<b>40</b>	<b>2</b>	<b>4</b>	<b>1351</b>

The data reveals that out of a total of 1351 individual claims, 81% of the claims were of occupations of less than 5 bighas (out of this also 48% claims are of less than 2 bigha) and 96.5% of claims under 10 bighas. Only 0.44% of the total individual claimants have claimed for more than 20 *bighas* of land – 2 in Nichar, 3 in Morang and 1 in Sangla Tehsil. This challenges the argument that the FRA will lead to land grabbing or that those taking the benefit of the act are large encroachers.

**Table 5 Categorization of claims filed under FRA, 2006 according to land size (in bighas)**

S.No	Tehsil	Claims of less than 5 bighas		Claims from 5 to 10 bighas		Claims from 10 to 20 bighas		Claims of 20 or more bighas		Total claims
		No.	%	No.	%	No.	%	No.	%	
1	Kalpa	225	87.89%	24	9.38%	7	0.52%	0	0.00%	256
2	Nichar	101	86.32%	8	6.84%	6	0.44%	2	1.71%	117
3	Sangla	237	81.72%	47	16.21%	5	0.37%	1	0.34%	290
4	Morang	308	71.96%	98	22.90%	19	1.41%	3	0.70%	428
5	Pooh	88	89.80%	9	9.18%	1	0.07%	0	0.00%	98
6	Hangrang	131	80.86%	29	17.90%	2	0.15%	0	0.00%	162
<b>Total</b>		<b>1090</b>	<b>80.68%</b>	<b>215</b>	<b>15.91%</b>	<b>40</b>	<b>2.96%</b>	<b>6</b>	<b>0.44%</b>	<b>1351</b>



**Figure 2: Claimed Land Categories under FRA, 2006 (in percentage)**

## 2. Who are the claimants of IFRs under FRA?

The generalized argument against implementation of the act is that the people with already large landholdings are the encroachers of forest lands whose occupations will be regularized by the Act. According to the data showcased by the Agricultural Census (2010-2011) in Kinnaur district 32.28% landholdings are below 0.5 hectares and 73% farmers are either marginal or small farmer and only 0.26% are big farmers.

**Table 6: Land holding size in Kinnaur (Agricultural Census 2010-11, Kinnaur district)**

Landholding Size	Number of people involved	% of people involved
Marginal (less than 1 hectare)	1838	43
Small (1-2 hectare)	1275	29.83
Semi medium (2- 4 hectare)	929	21.74
Medium (4-10 hectare)	221	5.1
Large (10 hectare and above)	11	0.26
<b>All classes</b>	<b>4274</b>	<b>100</b>

Of 417 people who have made IFR claims under FRA, we found that 36% of these claimants have land holdings of less than 5 bighas followed by 31% of the 417 claimants who have landholdings between 5-10 bighas. It is these two groups of marginal land holders who form nearly 2/3<sup>rd</sup> of the claimants claiming the most land i.e. 37% (being claimed by those who own 0-5 bighas) and 34% of total claimed land (by those who own 5-10 bighas) respectively.

Another critical revelation in this data is that those in the 0-5 landholding category are claiming virtually the same amount of land that they already own. This indicates that the dependence on the occupied land is for survival and is forming a critical component of their livelihood, without which they would not be able to manage their subsistence needs.

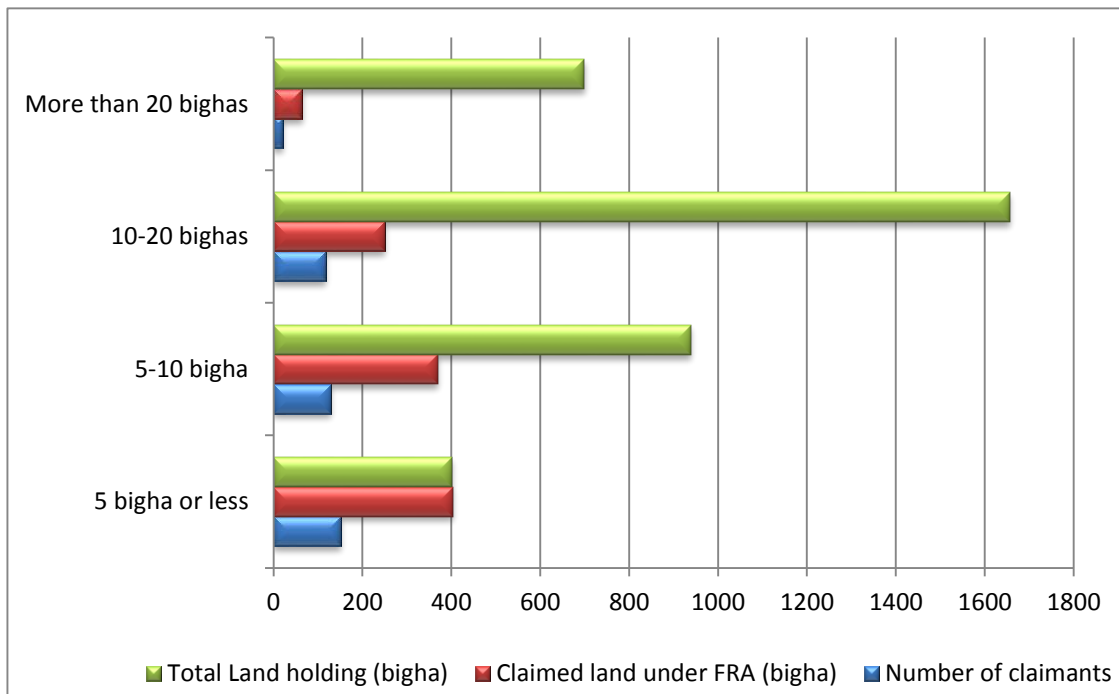
**Table 7: Categorization of claimant according to land holding (in Bighas)**

	<b>5 bigha or less</b>	<b>5-10 bigha</b>	<b>10-20 bighas</b>	<b>More than 20 bighas</b>	<b>Total</b>
<b>Number of claimants</b>	150	129	117	21	417
<b>In (%)</b>	36%	31%	28%	5%	
<b>Claimed land under FRA</b>	403.6	369.589	248.62	63.95	1085.76
<b>In %</b>	37%	34%	23%	6%	
<b>Total Land holding</b>	401.58	938.887	1657.18	698.41	3696.06
<b>In (%)</b>	11%	25%	45%	19%	

From the graph it is clear that the landholding pattern is highly inequitable in contrast to the claims filed under FRA. Out of total surveyed claimants only 5% of total claimants have more than 20 bighas of land holding having a share of 19% of total land, however under FRA their share is only 6% of total land claimed whereas the 36% of total claimants who have less than 5 bighas of land holding have a share of 11% of total land but the



share under FRA is 37%. This contradicts the belief that the lands regularized under FRA will be of big farmers. Moreover the claimed land is playing a critical role in the life of the people who have less than 10 bighas of landholding and adding to their small landholding to earn a decent livelihood.

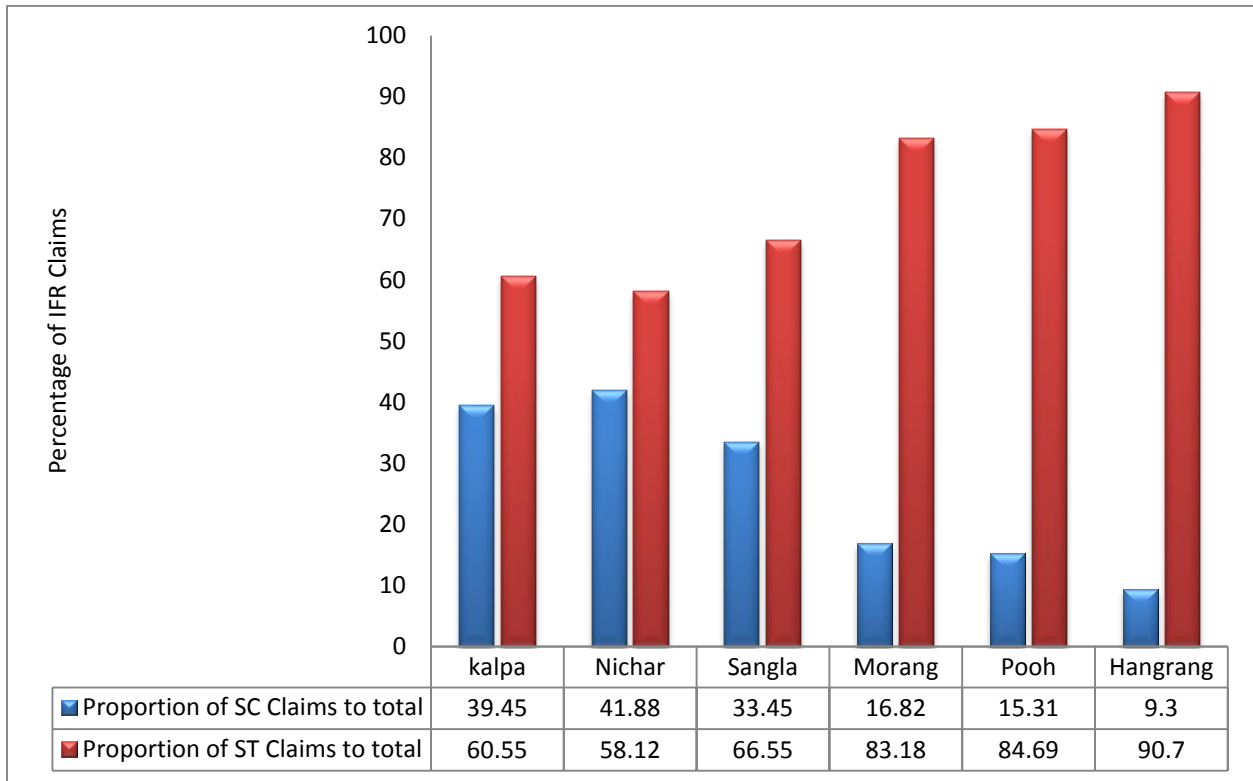


**Figure 3: Categorization of land claimed under FRA according to landholding**

#### 4. What about marginalized communities like Scheduled Castes?

In Census 2011 it has reported Kinnaur District as having 14,750 persons as Scheduled Castes and 48,746 persons as Scheduled Tribes population constituting 17.53 per cent and 57.95 per cent of total population respectively. Contrary to the belief that only the Scheduled Tribe (ST) community will be benefited from the Act, keeping the Scheduled Caste (SC) community at bay, the proportion of SC claims to the SC population residing in Kinnaur is almost 8% more than their average population percentage. This reflects that a greater number of claims received from SC community in comparison to its share

in total population, debunking the argument that the poor will not gain anything out of this act.



**Figure 4: Tehsil wise distribution of IFR claims**

The above data shows that the proportion of SC claims filed has been relatively lower as compared to the total claims filed by ST amongst the total claims submitted, but this distribution of data has to be assessed by focusing upon the nature of the composition of population in Kinnaur. The trend of lower SC claims thus runs parallel with lower SC population as one moves across the *tehsils*, (Table 6). In Nichar and Sangla, 25% and 24% of population falls into the SC category respectively, reducing to about 14% in Kalpa and Pooh.<sup>1</sup> The trend of lower SC claims thus runs parallel with lower SC population as one move across the *tehsils*, which does not necessarily infer that the Act is beneficial to only the ST community.

<sup>1</sup> Census of India, 2011

**Table 8: Proportion of SC population and SC claims (in %)**

Tehsil	SC population of total population	SC Claims of total claims
Hangrang	4.1	9.87
Pooh	23.40	15.30
Kalpa	11.98	39.45
Sangla	16.72	33.44
Moorang	9.66	16.79
Nichar	25.28	42
<b>Total</b>	<b>17.53%</b>	<b>26%</b>

The average size of land claimed under FRA for SC community is slightly more than the average land claimed by ST community whereas the average landholding of ST community is almost 67% more than SC community. This indicates that the Act could reduce the inequity which exists in resource ownership by supporting vulnerable communities in accessing land for housing and cultivation. If all the IFR claims are cleared then the average landholding of these 417 claimants' will increase from 8.86 bigha to 11.47 bigha, which is the bare minimum land required to sustain one's livelihood in mountain regions, especially in a cold desert area like Kinnaur.

**Table 9: Comparison of total land holding to claimed land for SC and ST (in bigha)**

Category	Total No. of claims	Size of Land Claimed	Total Land Holding	Average land size claimed	Average land holding	Claimed +land holding	Average
ST	285	718.35	2894.87	2.52	10.15	3613.22	12.68
SC	132	367.42	801.2	2.78	6.07	1168.62	8.85
<b>Total</b>	<b>417</b>	<b>1085.77</b>	<b>3696.07</b>	<b>2.6</b>	<b>8.86</b>	<b>4781.84</b>	<b>11.47</b>

## **A summary of findings and Conclusion:**

This study looked at the IFR claims of 22 out of 132 FRCs in Kinnaur. An analysis of the 1351 claims revealed that 96.5% of these claims were for less than 10 bighas of land. The total land claimed by 1351 claimants was 4236.22 bighas and the average size of land claimed by 22 FRCs is 3.13 bighas, and out of the total 1351 claims only 6 claims are of more than 20 bighas. *This clearly indicates that there is no large-scale land grab taking place as a result of the act, as is often projected by the administration and government representatives.*

An analysis of 417 claimants (of the 1351) who have made IFR claims under FRA, showed that 36% of these have existing private land holdings of less than 5 bighas followed by 31% with landholdings between 5-10 bighas. *This yet again is contrary to the belief that it is large land holders who will gain from the act. Not only are majority of the claimants marginal land holders, but when analyzed by social grouping, it was found that close to 26% of the claimants are in the category of Scheduled Castes, where as they form only 17.53% of the total population.*

The data also shows that the average land holding size owned by the ST community in Kinnaur is higher than that of the Scheduled Castes but the average size of land claimed under FRA by the SC community is slightly more than the average land claimed by ST community. *This adds a new dimension to the importance of the Forest Rights Act. That this act, if implemented in a fair and just manner, could play a critical role in reducing land ownership inequities in the region.*

Most importantly we found that if the IFR claims of 417 claimants studied are recognized then the average land holding size would increase from 8.86 bigha to 11.47 bigha.

**The FRA was legislated to support the survival of tribal and other communities living in areas where dependence on 'forest lands' is high. It is important to recognize that the dependence on forest lands as commons as well as for cultivation and habitation is found across the state of Himachal. If the findings from Kinnaur are anything to go**

**by, then the State government should be on its feet to expedite the implementation of this legislation.**

## **Recommendations**

1. Clear instructions to all the members of District Level Committees (DLC) and Sub-Divisional Level Committees (SDLC) to expedite the issuing of title/decision over the claims pending at SDLCs and DLCs in a time bound manner under FRA 2006 - In district Kinnaur, as our data has shown, FRCs have submitted both individual and community claims under the FRA, 2006. In this regard, and in tune with the 30/08/16 order of High Court of Shimla that expedites the cases under Section 6 of FRA, 2006, the administration should take final calls on pending claims at SDLC and DLC level in time bound manner.
2. Training of SDLC and DLC members and to issue clarifications regarding the basic objections raised by the members of DLCs and SDLCs- : Given that the members of SDLC and DLCs have both elected representatives and the Government officials, intensive trainings should be conducted for them and separate training programme for both the official and non-official members from the line departments and the members of Forest Right Committees (FRCs) involved in the implementation of the Act.
3. The State Government should apprise the High Court in the case of evacuation of “encroachments” on forest land on the grounds of section 4(1) and 4 (5) of the Forest Right Act, 2006- According to sections 4 (1) of FRA, 2006 the Central government has recognized and vested forests rights mentioned in Section 3 (1) of the Act. So, after 1st December 2008, the year this Act got implemented, the “encroachments” on forest land should be dealt with as “occupations” on forest land. As FRA, 2006 overrides all other legislation, it means the occupations on forest land cannot be treated as illegal encroachments under the “Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act 1971”, till the recognition and verification process mentioned under Section 6 of the Act is complete. It is the responsibility of the government to

ensure that the right holders are not unduly evicted. According to section 4(5) of the Act, till the process of recognition and verification has been completed, no forest dweller can be evicted from the forest land under their occupation.