

To,

Shri Jai Ram Thakur,

Chief Minister, Himachal Pradesh.

Date: 8 December, 2018

Subject- Speedy implementation of Forest Right Act, 2006 in a time bound manner.

Sir,

We as members of the Himachal Van Adhikar Manch, would like to bring your attention to the submission of a memorandum in concern with speedy implementation of the Forest Right Act, 2006 on 1 May 2018, corresponding to which no action has taken place. We therefore would like to reiterate upon a matter that is crucial for the state of Himachal Pradesh and its people.

As you are very well aware, Himachal is a state where 70% of the geographical area is under forest land with 90% of the population dependent on this land for their livelihoods in the form of usage of forests for fuelwood, fodder, medicinal plants, wild fruits etc. Apart from this, lakhs of pastoralists migrate through these lands with their livestock. All these communities, whether belonging to Scheduled Tribes or other forest dependent communities, need your support in protecting and promoting their livelihoods today. This is essential for the survival of the Himachali people.

As you may be well acquainted, the legislation titled '***The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act***' was passed by the Indian Parliament in 2006 to protect the interests of forest dependent people in the entire country. The key provision and objective of this Act is to recognize the claims, both individual and common, of local communities on the forest lands they depend on for their livelihoods-

In the initial phase, the government of Himachal had implemented the Act only in the Schedule – V (Tribal regions) areas of the State which resulted in a serious delay in the process of implementation in the entire State. In 2013, the government after a High Court order and repeated instructions from the Centre decided to implement the Act in non-tribal areas also.

Till now, out of total 17534 revenue villages in the State around 17503 Forest Right Committees (FRCs) have been constituted and 76 Sub Divisional Level Committees (SDLC) and 19 District Level Committees (DLCs) have been constituted in both Rural and Urban areas across all districts. These committees are meant to play a key role in the issuing of titles under the Act.

Table-1- Status of FRCs, SDLCs and DLCs Constituted in the State under the Forest Rights Act, 2006

No. of Revenue Villages	No. of Revenue Villages where FRCs Constituted	No. of SDLCs Constituted		No. of DLCs Constituted	
		Rural	Urban	Rural	Urban
17534	17503	58	18	12	7

It is extremely unfortunate that after forming FRCs in 99.82% of revenue villages, only 129 individuals and 8 community titles have been issued under the Act in Himachal, while in the rest of the country, around 17 lakhs individual titles and 70 thousands community titles have been issued over more than 144 lakhs acres of forest land.

Table-2: State wise details of claims received, titles distributed and the extent of forest land for which titles distributed (individual and community), as on 30.04.2018

No.	States	No. of Titles Distributed up to 30.04.2018		Extent of Forest land for which titles distributed (in acres)		
		Individual	Community	Individual	Community	Total
1	Andhra Pradesh	91758	1372	2,24,262	4,50,380	6,74,642
2	Chhattisgarh	3,98,181	18,178	8,36,502	1836959	26,73,461
3	Gujarat	83699	3516	1,29,572	11,61,351	12,90,923
4	Himachal Pradesh	129	7	6	4671	4677
5	Jharkhand	58053	2090	1,02,918	99,782	2,02,700
6	Karnataka	14,667	1406	20,814	28156	48969
7	Kerala	24,599	NA	33,018	NA	33018
8	Madhya Pradesh	2,22,051	27,280	8,03,537	13,20,990	21,24,527
9	Maharashtra	1,06,898	5748	5,77,026	44,35,945	50,12,971

10	Odisha	4,15,319	6460	617176	341572	958747
11	Rajasthan	37317	92	56828	500	57328
12	Telangana	93639	721	3,00,284	4,54,055	7,54,339
13	Tripura	1,27,029	55	459985	91	4,60076
14	Uttar Pradesh	17712	843	18854	1,20,802	1,39,657
15	West Bengal	44444	686	21014	572	21586
TOTAL		17,96,755	70,164	42,07,241	102,55,831	144,63,072

Source: Status Report of FRA Implementation, April 2018, Ministry of Tribal Affairs

Himachal being a mountain region with high dependence of population on “forest land,” FRA should have been in the fore front in terms of issuing titles. Following are the key reasons that have caused major hindrances in the implementation of the Act:

1. **Lack of Political Will:** The partial implementation of the Act from its beginning has been a result of misgivings and lack of understanding about the act amongst the highest officials in the bureaucracy as well as political representatives.
2. **Lack of training and awareness** about the legislation and its provisions amongst the responsible government officials including block level revenue officials, especially at the ground level.
3. **Lack of Public trust and faith:** After the state government in 2002 made a call for regularization of occupations on forest land, claims filed were used to declare these occupants as illegal encroachers by the High Court of Shimla. This has led to a loss of faith amongst the people to file claims under Forest Rights Act 2006.

To not implement the Act, the main reason given is that big encroachers with larger land holding will gain from the FRA and to check the veracity of this statement we have done a study in Kinnaur district which reflected that 96.5% of these claims were for less than 10 bighas of land, only 6 claims out of 1351 claims were for more than 20 bighas. Further, studying 417 claims of these 1351 showed that 36% of these had existing private land holdings of less than 5 bighas, followed by 31% with landholdings between 5-10 bighas. Close to 26% of the claimants fell in the category of Scheduled Castes, where as they formed only 17.53% of the total population. *(Summary of the study attached as Annexure-1)*

Believing that these need immediate responses from the state government, we would like to bring forth the key interventions required by the government to accelerate the implementation of the FRA, 2006 in the state-

- 1. Clear instruction 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 in a time bound manner under FRA 2006** – In districts like Kangra, Lahaul and Spiti, Kinnaur and Chamba, FRCs have submitted both individual and community claims under the FRA, 2006, some as early as the year 2014. Still, no final decision has been taken on these claims. In this regard, we would request you to write a letter to all DCs and SDMs to take a final call on pending claims at SDLC level and at DLC level in time bound manner. Even the High Court of Shimla on 30/08/16 has ordered for expediting the cases under Section 6 of the FRA 2006.
- 2. Understand the threat to section 3(2) of the FRA due to non-implementation of section 3(1):** In Himachal, under Section 3 (2) of the Act, which ensures “development right” of forest dwelling communities and overrides the Forest Conservation Act, 1980, more than 1000 cases of forest diversion have been sanctioned to divert up to 1 hectare of forest land for 13 development activities mentioned in this section. According the MOTA letter (F.No.23011/11/2013-FRA) dated 14/12/2015 both process under section 3 (1) and 3 (2) should have run parallel, but this has not happened. Due to this, the development activities carried out under section-3 (2) can be challenged as the eligibility under this section will only be determined by filing of claims under the section 3(1) of the Act. Full implementation of the Act can only be ensured when section 3(1) is recognized to protect the development rights guaranteed under section 3(2).
- 3. Training of SDLC and DLC members and to issue clarifications regarding the basic objections raised by the members of DLCs and SDLCs-** Intensive trainings should be conducted for both elected representatives and government officials who constitute as members of SDLCs and DLCs, along with separate trainings for official and non-official members from the line departments and members of FRCs. There is also an urgent need to issue clarifications regarding the definition of terms under FRA, for instance, ‘village

gram sabha', 'forest dwellers,' and 'bonafide livelihood needs'. The Forest Department is insisting for NoC from *Panchayat* Gram Sabha instead of *Village* Gram Sabha formed under the Act at the revenue or habitation village level for diverting forest land for development activities under section-3 (2) of the Act. This is against the Act and can be challenged in any court, so we request you to issue clear and necessary guidelines in this regard.

4. To file claims of pastoral communities- The claims of pastoral communities will fall inside and outside the district boundary. And according to Rule 12B (2), ***“The District Level Committee shall facilitate the filing of claims by pastoralists, transhumant and nomadic communities as described in clause (d) of sub section (i) of section 3 before the concerned Gram Sabhas”*** of the FRA 2006 and amended Rules 2012. It means, the DLC should ensure filing of claims under sections 3 (1) of the Act.

5. Withdrawal of letter dated 19th June 2014 by the Principal Secretary (Forests) – In contravention to the FRA and advisories issued by the MOTA and MoEF&CC in 2009 with regard to forest land diversion in compliance with the provisions of FRA, the Principal Secretary (Forests) to the Government of Himachal Pradesh had issued templates for recommendations/consent to all FRCs, SDLCs and DLCs dated 19th June 2014 which should be immediately withdrawn since Forest department has no authority to issue guidelines for implementation of the FRA 2006, with the nodal agency being the Tribal Development Department.

The NoCs asked from Gram Sabhas on these templates in Chamba and Mandi district should be called back as under rule 11 (4) ***“the Forest Right Committees shall also prepare the claims on behalf of Gram Sabhas for “community Forest rights in form-B and right over community forest resources under clause (i) of sub- section (1) of Section (1) of Section 3 in Form C”***. It means the responsibility of filing community claims is of FRCs.

6. 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 the implementation of the Act on 1st December 2008, the “encroachments” on forest land should be dealt with as “occupations” on forest land. As FRA, 2006 overrides all other legislation, 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. Moreover, according to section 4 (5) of the Act the occupation on forest land cannot be evicted or removed till process of confirmation/verification of rights under the Act is not complete. It is the responsibility of the government to ensure that the right holders are not unduly evicted.

In this regard the State Level Monitoring Committee had directed the officials of the state government to file an affidavit in the High Court to apprise them of the FRA implementation being under way in the State in May 2013. In the SLMC minutes dated 10/10/13, the matter was followed up and the officials stated that the HC had been apprised and the SLMC directed expediting implementation of the Act. The SLMC should follow up on this and also update the HC of the status of FRA implementation in the state.

7. Using Section 3(1)(G) of the Act which provides for conversion of already sanctioned titles and *pattas*, thereby making space for recognition of *nautor* claims that remained unrealized due to 1980 Forest Conservation Act: When forest conservation laws in the form of the Wildlife Protection Act 1972 and the Forest Conservation Act (FCA) 1980 were put in place, they severely restricted access and ownership of forest dwelling communities to the forests and forest lands in and around where they were living. As per the FCA, 1980 diversion of any forest land for non-forestry activities cannot be done **without having permission of the Union Ministry of Environment, Forests and Climate Change**, thereby making 'regularization' of any occupation of forest land impossible through State laws like Land Regularization, 2002 or any State Legislation.

In absence of existing government resolutions to ensure rights of the forest dwelling communities, the Union Ministry of Environment and Forests in May 2002 passed blanket orders directing all state forest departments to carry out evictions of illegal encroachments on forest lands based on Supreme Court orders in the Godhavarman case. But now through Forest Right Act, 2006, the government can recognize valid and legally tenable individual claims on forest land, protecting the interests of those dependent on forest land for their livelihoods.

In this regard, section 3(1)(G) of the Forest Rights Act can be used. Similarly Section 3(1)(J) also recognizes rights under state, district and customary laws in case of scheduled tribes. This provision also can be used to distribute *nautor* titles in tribal regions of the state.

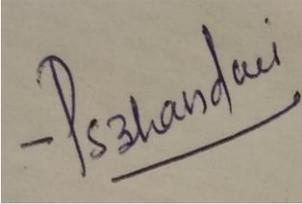
- 8. Widespread Public Awareness Campaign about the Act:** In order for people to file claims under the act, the government should run a public awareness campaign about the Act through local media. Public Service Announcements should be made through radio and print media so that more and more people are aware about the Act and can activate the Forest Rights Committees in their villages. It is also important to publicize that this Act gives communities not just rights of using forest land but also the duty and responsibility of conservation and management.

We hope that the state government will treat these issues as urgent and prioritize the proper implementation of this legislation in the interest of the forest dependent communities of HP.

Thanking you,

Yours Sincerely

Himachal Van Adhikar Manch

A handwritten signature in blue ink on a light-colored background. The signature reads "Prakash Bandhari" and is underlined.

1. Prakash Bandhari and Manshi Asher, Himdhara Collective, Palampur
2. Manoj Kumar, Chamba
3. Sitaram Chauhan, Sirmaur
4. Gulab Singh, Sirmaur
5. Rajkumar Bhatt and Pavana Kumari, Ghumantu Pashupalak Mahasabha
6. R.C. Negi, Him Lok Jagriti Manch, Kinnaur
7. Rajeev Kumar, Van Adhikar Sangharsh Samiti, Kinnaur
8. Balbir Singh, Van Adhikar Sangharsh Samiti, Kinnaur
9. Jiya Lal Negi, Zila Van Adhikaar Samiti, Kinnaur
10. Subodh, Van Adhikar Samiti, Lari, Spiti
11. Jagdish Chand, Van Adhikaar Manch Sissu-khoksar, Spiti
12. Takpa Tenzin, Spiti Civil Society, Spiti
13. Hari Ram Dogra, Jan Kalyan Sewa Sanstha, Sirmaur
14. Uma Mahajan, Shimla
15. Akshay Jasrotia, President-Kisan Sabha Committee, Baijnath
Village Nagan, PO Kharanaal, Tehsil Baijnath, District Kangra, 176115

CC:

RamLal Markande, Minister Tribal development, Shimla

Chief Secretary, Government of HP

Chief Secretary, Ministry of Tribal Affair, Government of India

Chairperson, SLMC cum Chief Secretary of H.P., Shimla

Commissioner, Tribal Development, Government of H.P., Shimla

[Annexure 1: Results of the Study titled, “Who Gains from the Forest Rights Act, 2009?”](#)

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.