

To,

01/05/18

Shri Jai Ram Thakur,

Chief Minister, Himachal Pradesh.

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

Sir,

First and foremost, we as members of the Himachal Van Adhikar Manch, would like to congratulate you for becoming the Chief Minister of the state. Through this memorandum we would like to bring to your attention a matter that is most 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 and 90% of the population are dependent on this land for their livelihoods in one way or another. This dependence is in the form of usage of forests for fuelwood, fodder, medicinal plants, wild fruits etc. Apart from this there are lakhs of pastoralists who migrate through these lands with their livestock. All these communities whether they belong to Scheduled Tribes or other forest dependent communities – they need your support in protecting and promoting their livelihoods today. This is essential for the survival of the Himachali people.

Sir, as you are aware in 2006 in order to protect the interests of forest dependent people in the entire country, a legislation titled, "***The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act***" was passed by the Indian Parliament. The key provision and objective of this Act is to recognise the claims, both individual and common, of local communities on the forest lands that they depend on for their livelihoods. This Act was historical because it provided the much-needed relief to those who had years of "occupations" on forest land for their day to day livelihood. It also provided an opportunity to recognise communities' rights and responsibility towards conservation and protection of forests.

In the initial phase the government of Himachal had implemented the Act only in the Schedule – V (Tribal regions) areas of the State. As a result of this there was a serious delay in the process of

implementation in the 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 in all the districts 76 Sub Divisional Level Committees (SDLC) and 19 District Level Committees (DLCs) have been constituted in both in Rural and Urban areas. 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 53 individuals and 7 community titles have been issued under the Act in Himachal, while in the rest of the country around 17.31 lakhs individual titles and 62.92 thousands community titles have been issued over more than 137.50 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 30.06.2017

No.	States	No. of Titles Distributed upto 30.06.2017		Extent of Forest land for which titles distributed (in acres)		
		Individual	Community	Individual	Community	Total
1	Andhra Pradesh	85678	1413	2,02,420	4,40,952	6,43,372
2	Chhattisgarh	3,73,718	12714	8,06,331	13,92,270	21,98,601
3	Gujarat	81143	3516	1,26,938	11,46,231	12,73,169
4	Himachal Pradesh	53	7	0	4670	4670
5	Jharkhand	54458	1723	98265	45504	1,43,769
6	Karnataka	12421	628	16437	26465	42902
7	Kerala	24599	NA	33018	NA	33018
8	Madhya Pradesh	2,11,420	27422	7,93,136	13,02,164	20,95,300

9	Maharashtra	1,06,898	5748	5,77,026	44,35,945	50,12,971
10	Odisha	4,06,475	5891	6,09,438	2,86,503	8,95,941
11	Rajasthan	36184	75	55128	488	55615
12	Telangana	93494	721	3,00,092	4,54,055	7,54,147
13	Tripura	1,25,020	55	4,35,727	91	4,35,818
14	Uttar Pradesh	17712	843	18854	1,20,802	1,39,657
15	West Bengal	44444	686	21014	572	21586
TOTAL		17,31,163	62922	40,93,825	96,56,716	137,50,540.32

Whereas Himachal being a mountain region where 2/3rd of area is termed as “forest land” and the local community is dependent on forest land for livelihood, it should have been in the fore front in terms of issuing titles. The key reasons for the non implementation of the act are:

1. **Lack of Political Will** : The Act, from the beginning has been implemented only partially because of misgivings and lack of understanding about the act amongst the highest officials in the bureaucracy as well as the amongst political representatives
2. **Lack of training and awareness** about the legislation and its provisions amongst the responsible government officials. This is especially at the ground level where the local block level, revenue officials are un trained and unaware about the act
3. **Lack of Public trust and faith:** The state government in 2002 had made a call for regularization of occupations on forest land after which the 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.

The above three factors have been the main hindrance for the implementation of the Act and we believe that these need immediate response from the state government. In this regard 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 at SDLCs and DLCs 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. Out of these some claims have been submitted in year 2014 to SDLCs but 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 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 Forest Right Act, 2006, 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 a letter from MoTA 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 section 3(2) of the Act will be determined by filing of claims under the section 3(1) of the Act. In order to protect the development rights guaranteed under section 3(2) it is important to recognize section 3(1) and ensure full implementation of the Act – not partial.

3. **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 programmes for both the official and non official member from the line departments and the members of Forest Right Committees (FRCs) involved in the implementation of the Act. There is also an urgent need to issue clarifications regarding the definition of village gram sabha under FRA, forest dwellers and bonafide livelihood needs etc. Still, the Forest Department is insisting for NoC from Panchyat Gram Sabha instead of village Gram Sabha formed under FRA 2006 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 the 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, 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, 2006 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 (Annexure IV). As the, Forest department has no authority to issue guidelines for implementation of the FRA 2006, as the nodal agency is 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”*. Further, the NOCs taken from the Gram Sabha in Chamba and Mandi in absence of compliance with FRA under the above said format should be considered null and void.

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 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. 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 rightholders 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. Hindrance posed by the Forest Conservation Act 1980 and the failure of earlier attempts at similar land regularization legislations and FRA 2006:** It is important to understand the reason why earlier attempts made at regularisation of forest land “occupied” by communities have failed. Forest conservation laws in the form of the Wildlife Protection Act 1972, and the Forest Conservation Act (FCA) 1980, were put in place, severely restricting access and ownership of forest dwelling communities to the forests/ 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**. It was because of the FCA that 'regularisation' of any occupation of forest land became impossible through State laws like Land Regularization, 2002 or any State Legislation which was always over-ridden by the provisions of the FCA, 1980.

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 Supreme Court orders in the Godhavarman case. At such a time, neither PESA nor any of the existing Government Resolutions (GRs) or circulars were strong

enough to ensure the rights of the forest dwelling communities. It was in response to these mass evictions and the inability of State governments to provide relief to the forest dwelling communities across the country (including Himachal Pradesh) that a new Act, titled the “The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act” was passed by the Indian Parliament. This Act was historical because it provided the much needed relief to those who had years of “occupations” on forest land for their day to day livelihood.

The call by the Himachal Government in 2002 to 'regularise' forest occupation was untenable given this legal context. It is extremely unfortunate, that the High Court of Shimla, in its order related to eviction of encroachments on Forest Land has used the affidavits filed by the families (in 2002) who had occupation of forest land, to carry out the current eviction drive. The failure of the State Government to protect the interests of the people, has led to a loss of public trust vis a vis the matter of forest land regularization. In this context Forest Right Act, 2006 is the one and only option and opportunity for the government to protect the interests of those dependent on forest land for their livelihoods. Under the provisions of the FRA 2006, the government can recognize valid and legally tenable individual claims on forest land.

The section 3(1)(G) of the Forest Rights Act has provided for conversion of already sanctioned titles and pattas which make space for recognition of natutor claims distributed in the 70s that remained unrealized due to 1980 Forest Conservation Act. 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 publicise 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 prioritise the proper implementation of this legislation in the interest of the forest dependent communities of HP.

Thanking you,

Yours Sincerely

Himachal Van Adhikar Manch

1. Manoj Kumar, Chamba
2. Sitaram Chauhan, Sirmaur
3. Gulab Singh, Sirmaur
4. Rajkumar Bhatt and Pavana Kumari, Ghumantu Pashupalak Mahasabha
5. Prakash Bandhari and Manshi Asher, Himdhara Collective, Palampur
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. Subodh, Van Adhikar Samiti, Lari, Spiti
10. Hari Ram Dogra, Jan Kalyan Sewa Sanstha, Sirmaur
11. Uma Mahajan, Shimla
12. 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

Secretary, Ministry of Tribal Affairs, Government of India

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

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