

MISSING THE FOREST FOR TREES

Implications of the Supreme Court Orders on
Section 3(2) of the FRA 2006 for Himachal Pradesh



HIMDHARA ENVIRONMENT RESEARCH AND ACTION COLLECTIVE

JANUARY 2020

Contents

I.	SECTION 3(2) OF THE FRA AND ITS IMPORTANCE IN HIMACHAL	2
II.	SECTION 3(2) UNDER THE SUPREME COURT SCANNER	4
III.	ABOUT THIS REPORT	6
IV.	COMPARING FOREST DIVERSION UNDER FRA AND FCA: A CASE OF APPLES VS. ORANGES	10
V.	MISUSE OF SECTION 3(2) OR USE FOR DIRE NEED?	13
VI.	UNDERSTANDING THE SPIRIT OF FRA: RECOGNISING LIVELIHOOD RIGHTS, DEMOCRATISING FOREST GOVERNANCE	19
VII.	DISCUSSION AND CONCLUSION: FRA NOT A THREAT TO FORESTS OR GREEN COVER	21
VIII.	REFERENCES	23

The Forest Rights Act 2006 has faced many-an-obstacle in its implementation, especially in the hill state of Himachal Pradesh. The most recent one came in the form of a Supreme Court order, last year, in one of the IAs in the Godavarman case, whereby restrictions were imposed on the diversion of forest land under section 3(2) of the FRA in the state. This order was based on the conclusions drawn by a Supreme Court Monitoring Committee, headed by a retired PCCF, V.P Mohan, that was to make recommendation with regard to silvicultural operations in the state. Raising concerns about the loss of green cover and the rising deforestation the committee made a series of recommendations to the court, as a result of which initially a stay was imposed on all green felling in the state (in matter of forest diversions under FCA 1980 and FRA 2006). This stay later was partially relaxed but still requires all diversion cases to be brought to the Supreme court before clearing.

The objective of this report is to establish the importance and need of section 3(2) of the FRA for a state like Himachal. It assesses the ground reality behind the observations and conclusions drawn by the Supreme Court Monitoring Committee based on which these diversions have been restricted. Data extracted through an application filed under the RTI Act on diversions under section 3(2) of the Forest Rights Act 2006 from 2014 to 2019 (up to January 2019) has been analysed and indicates

that 17237 trees were felled in an area of 887.56 hectares for 1959 activities in 41 of the 45 forest divisions of the state. Roads, followed by schools and community centres dominate the type of activities carried out. Of the total land diverted 91% is for roads and 91% of all the trees have been cut down for road construction. It was found that almost 64% of these diversions showed 'nil' trees felled. The average number of trees felled per hectare is very low (19.52) barring activities like roads and it may be induced that most activities have been carried out in areas with open forest or no trees.

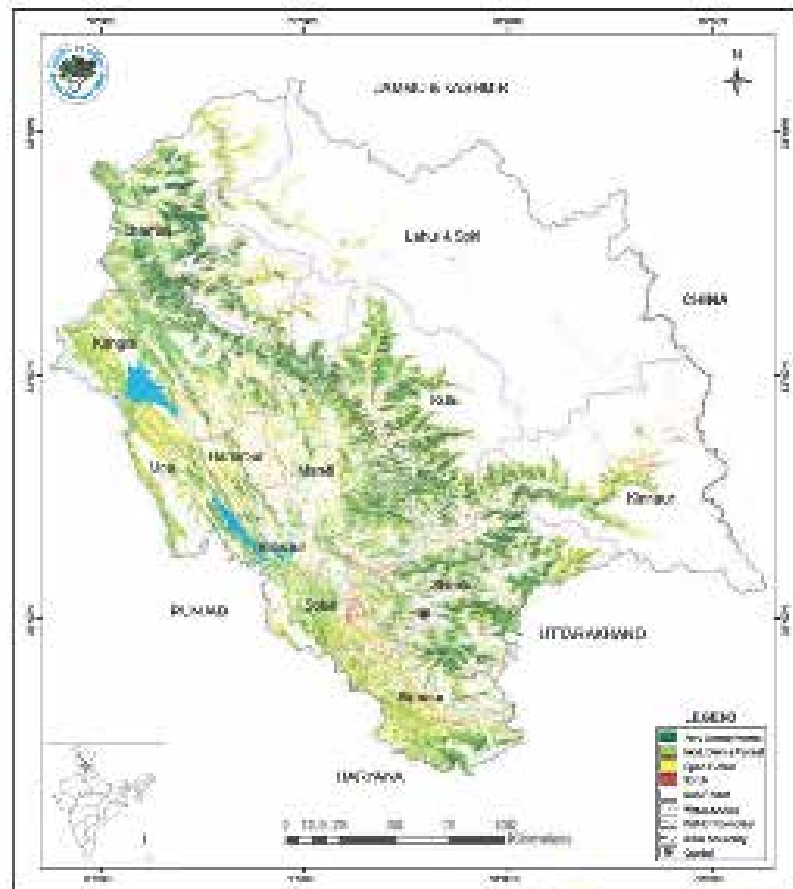
Case studies carried out in Mandi and Kangra district showed the desperate need for amenities like village link roads and schools. In Himachal there remain about 41% villages that have no road connectivity. This in turn affects access to health, education and market centres. It is also evident that large development activities like four lane highways, hydropower projects and transmission lines, have had a much larger ecological footprint in terms of tree loss compared to the minute diversions under FRA. **The report concludes that given the fact that 2/3rd of the geographical area of the state is recorded 'forest area' where strict forest laws have restricted non-forest use, the FRA provides relief for communities to access basic welfare facilities, which should be seen as their fundamental right and therefore should not be hindered.**

I. SECTION 3(2) OF THE FRA AND ITS IMPORTANCE IN HIMACHAL

The Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act (also known as Forest Rights Act or FRA) which was passed by the Parliament of India in 2006, came into force on 1st January 2008. Under this act Scheduled Tribes and Other Traditional Forest Dwelling communities dependent on forest land of any description (Un-demarcated Protected Forests, Demarcated Protected Forests, Reserved Forests, shamlaat, charagah, wasteland, sanctuaries, national parks etc.) for their 'bonafide livelihood' have been vested with individual, community and development rights that can be claimed through its provisions. Under this act 17503 FRCs have been formed in HP at the village level for its implementation. **Section 3(2) of the FRA 2006 recognises rights of the Gram Sabhas to provide consent to diversion of less than 1 hectare of forest land (involving felling of not more than 75 trees) for 13 types of village development activities like schools, aanganwadi centres, health centres, panchayat bhavan and other small village development activities. In the last few years more than 1950 cases of forest diversion under this section have been approved in the State.**

Himachal Pradesh, is a Western Himalayan state of the country with a unique mountain topography.

- 90% of its population is rural and dependent on farm and forest-based livelihoods¹.
- As per the State of the Forests report 2019, 27% of the total geographical area is under forest cover in the state, close to 2/3rd or 67% of it is recorded as forest land².
- Barring 10% of land under private holdings and another 20% under revenue category (also being used for other purposes) the rest of the land in the state is under the control of the Forest Department where all rules, regulations and laws related to forests are applicable.
- In such a state, where revenue department holds minimal land and the panchayats almost none, developing basic amenities like schools, health centers, water schemes, roads etc. in and around the village necessarily required common and public lands which were categorised as 'forest'.
- Up until the FRA came into being, it was the Forest Conservation Act of 1980 which governed the diversion of such forest land

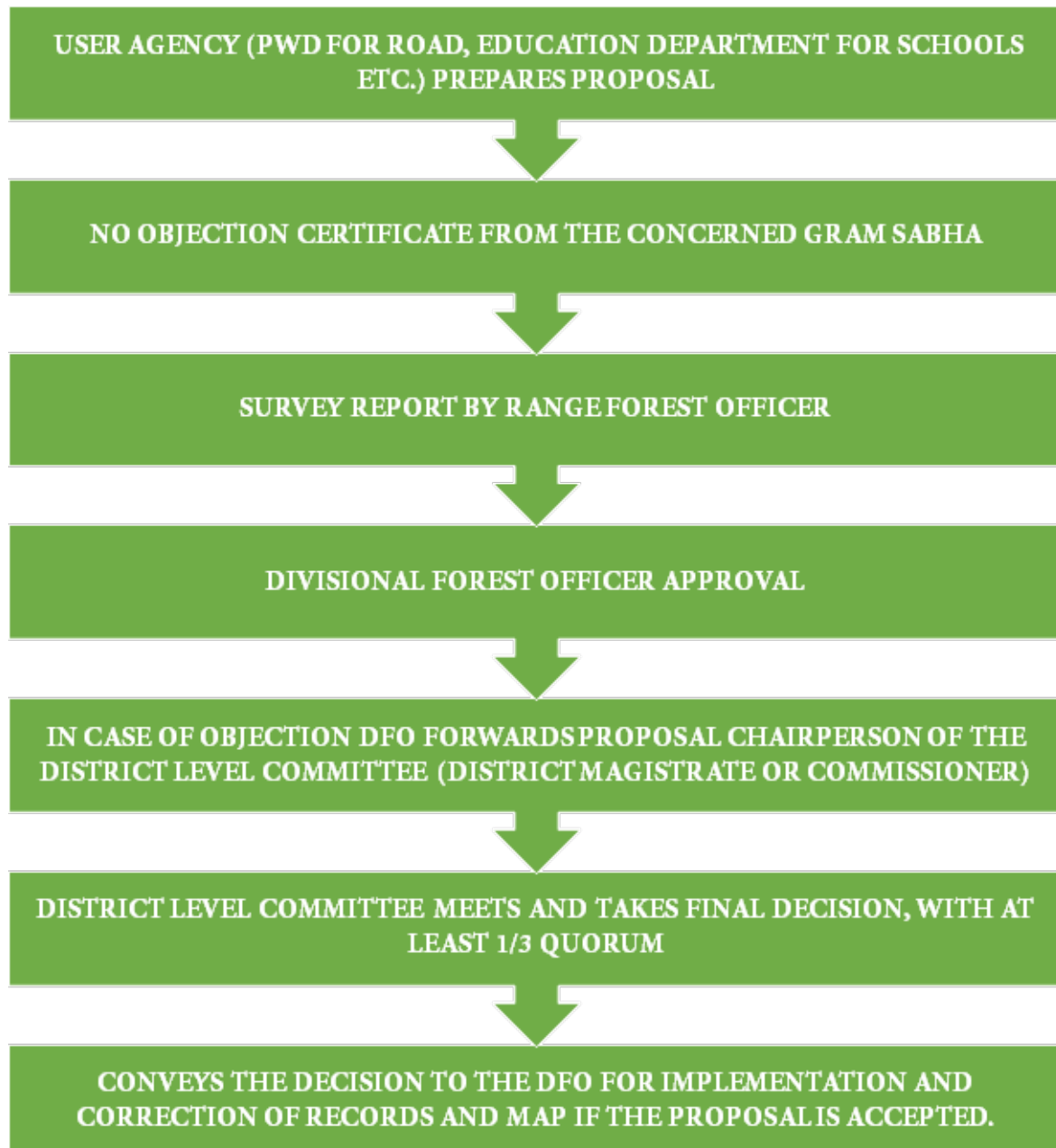


Forest Cover Map of HP, Source ISFR 2019

even for these kind of local development activities. This required not only permission from the Central Government (MoEFCC Regional or Delhi Office) but also warranted that user agencies deposit funds (Net Present Value or NPV of trees) to carry out Compensatory Afforestation (CA). The whole diversion process under FCA was cumbersome, lengthy and costly, and thus a major hurdle in providing the rural areas, especially remote areas, access to basic welfare development facilities.

- The section 3(2) of the FRA provides a relief for both governmental departments and local communities as it overrides the FCA and puts in place a simple and decentralized process for diversion.
- The user agency does not need to deposit any money under the provisions of the NPV or CA and the time period of getting approvals is shorter (few months) as compared to few years under FCA.

PROCESS UNDER FRA³



II. SECTION 3(2) UNDER THE SUPREME COURT SCANNER

Even after a decade after its passing there remains confusion of FRA's purpose, applicability and impact among the bureaucracy, court and communities in Himachal⁴. Though the government has moved at a snails' pace with implementation of Section 3(1) of this law, which recognises the individual and community forest rights on land categorised as 'forest', as far as section 3(2) is concerned, the approach of the government has been different.

In 2014 the State Government decided to implement the Section 3(2) of the FRA, 2006 after receiving a clarification from the Ministry of Tribal Affairs (MoTA)⁵. In this clarification MoTA stated that the process of recognition of claims under section 3(1) of the Act and diversion of forest land for the 13 development activities mentioned in section 3(2) can go on parallelly⁶. Post this clarification since the year 2015-16 more than 1950 cases have been approved under section 3(2) of the Act.

However, the approvals under 3(2) came to a screeching halt on the 11th March 2019 when the Supreme Court of India in an interim order, banned felling of green trees in Himachal Pradesh including diversion of forest land for non-forest purpose till further order⁷. The order was passed by a bench headed by Justice Arun Mishra and Justice Deepak Gupta under an Interlocutory Application no. 3840 OF 2014 in the Godavarman Case of 1995 *WRIT PETITION (CIVIL) NO. 202 OF 1995. It restrained all forest diversion under the Forest Conservation Act as well as under the FRA which grants Divisional Forest Officers power under section 3(2) to allow diversion of up to 1 hectare of land for village development activities.

The order was passed on the basis of a report submitted to the Supreme Court by the Monitoring Committee constituted by it to study experimental silviculture in Himachal headed by a retired Principal Chief Conservator of Forests (PCCF) V

P Mohan. Mohan was assigned the task of closely monitoring experimental silviculture felling in the state after the Supreme Court, in an application (3840 of 2014) filed by the State government, had allowed for partial felling for silvicultural operations in 2017.

The stay on green felling was later partially relaxed for projects that had already received approval and the Supreme Court order of 15/04/2019 said that the Court would henceforth be monitoring the diversion cases under FRA and FCA (except those which have already received approval) and that the state government was to bring these cases to the Supreme Court for a nod until further directions⁸.

V.P Mohan committee's report to the Supreme court

The ban on green felling (except for under provisions of the FCA 1980) in Himachal was imposed nearly two decades ago⁹. The IA 3840 was very specifically to address the need for silvicultural and thinning operations by the Forest department and the V.P Mohan Committee was set up with a clear mandate "to fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms". **However, the committee seems to have stepped outside its mandate and in volume I of its second six monthly report submitted to the Supreme Court, under part three, a series of recommendations on 'The IMPORTANCE OF MAINTAINING GREEN COVER IN HIMACHAL PRADESH' were made.** Highlighting the need to preserve the ecological balance by conserving the forests in the State and preventing deforestation in very dense forest areas the report states, "It needs to be recognized that in a hilly State having fragile geological formations, the agenda of

‘Development’ has to be planned without recklessly destroying green cover of Himachal Pradesh. We need to save our natural resources, at all costs for our next generations”.

While the report presents the ‘magnitude’ of diversions taking place under both FCA 1980 and the FRA 2006, it specifically zeroes in on the ‘rampant degradation of forests’ because of the FRA 2006, terming it as a ‘substitute tool or a backdoor method’ for diversion of forest land for non-forest purposes.

The report uses the example of the Nachan Forest Division to illustrate how 1,194 standing

trees were cut in a single division. In Section 3.4.1 the report compares the regulatory provisions of the FCA, 1980 and the FRA 2006 and goes on to argue that the former has “all provisions to ensure a holistic system of checks and balances at all levels along with deterrents for preventing the indiscriminate de-reservation of forests or forest land for non-forestry purposes”.

In Section 3.4.4 the report attempts to present arguments to establish that the FRA is not applicable in the state given the socio-economic conditions of the communities here.

IMMEDIATE ACTION POINTS RECOMMENDED BY VP MOHAN COMMITTEE

- With immediate effect, all cases of diversions where approvals have been given by DFOS, but felling of trees has not commenced should be deemed as cancelled and no felling be allowed.
- Diversion of any forest allotted to a Protection Working Circle in any Working Plan should be totally banned hereafter, under FRA and FCA.
- We are convinced that DFOs are exercising unbridled powers under pressure to appease local residents and are blatantly facilitating a virtual plunder and destruction of valuable precious forests of Himachal Pradesh. Therefore, till further orders, the power of a DFO under Sec 3(2) of FRA 2006 should be deemed withdrawn.
- Hereafter, all cases of diversion of forest for non-forestry purpose should be processed only under FCA regulations.

It was based on the above that the Supreme Court passed its order. So, what have been the implications of this order in a state where the FRA seemed to be critical for welfare activities? And were the findings as well as conclusions drawn by the Supreme Court Monitoring committee true and reflecting the conditions on the ground?

In order to answer these questions, we need to look closely at the details of forest diversions in the state of Himachal Pradesh. Perceptions of key stake holders, the local communities and the user agencies, is critical to better be able to assess the veracity of the claims and recommendations made by the V.P Mohan Committee.

III. ABOUT THIS REPORT

The objective of this report is

- to establish the importance and need of section 3(2) of the FRA for Himachal
- to assess the ground reality behind the observations and conclusions drawn by the Supreme Court Monitoring Committee based on which these diversions have been restricted.

In this document we present data, extracted through an application filed under the Right to Information Act¹⁰ on the diversions under section 3(2) of the Forest Rights Act 2006 for the years 2014-15, 2015-16, 2016-17, 17-18 and 18-19 (up to January 2019). The information included forest division-wise: the year of the development activity; name of the activity; area diverted and number of trees felled.

A case study of the Nachan Forest Division specifically referred to in the VP Mohan Monitoring Committee report was carried out. As a part of this officials of the forest department, the PWD and members of the Forest Rights Committees were interviewed to get their perspectives with regard to these diversions as well as the implications of the recommendations of the monitoring committee and the decision of the Supreme Court which has led to a complete halt on any diversion under the FRA. A few other examples cited in the report are also based on interactions in the field.

What the data reveals about FRA diversion under 3(2) in Himachal? Key Findings:

- Data on 13 development activities as mentioned in the section 3(2) of FRA, 2006 was requested under the RTI Act 2006 from all the forest divisions (FD) in Himachal.
- Out of 45 FDs of HP data was received from 41 which includes 5 Wild Life Divisions.
- Of the 5 WLDs, in 3, no activities have been carried out under section 3(2).
- In 41 divisions a total 1959 development activities have been carried out which can be divided into following 10 categories
 - » Animal Husbandry (AH)
 - » Community Centers (CC)
 - » Electricity & Communication Lines (EL)
 - » Fair Price Shop (FPS)
 - » Health Centers (HC)
 - » Non-Conventional Energy (NCE)
 - » Road
 - » School
 - » Sewage System (SS)
 - » Training Centers (TC)
 - » Water Supply Schemes (WS)

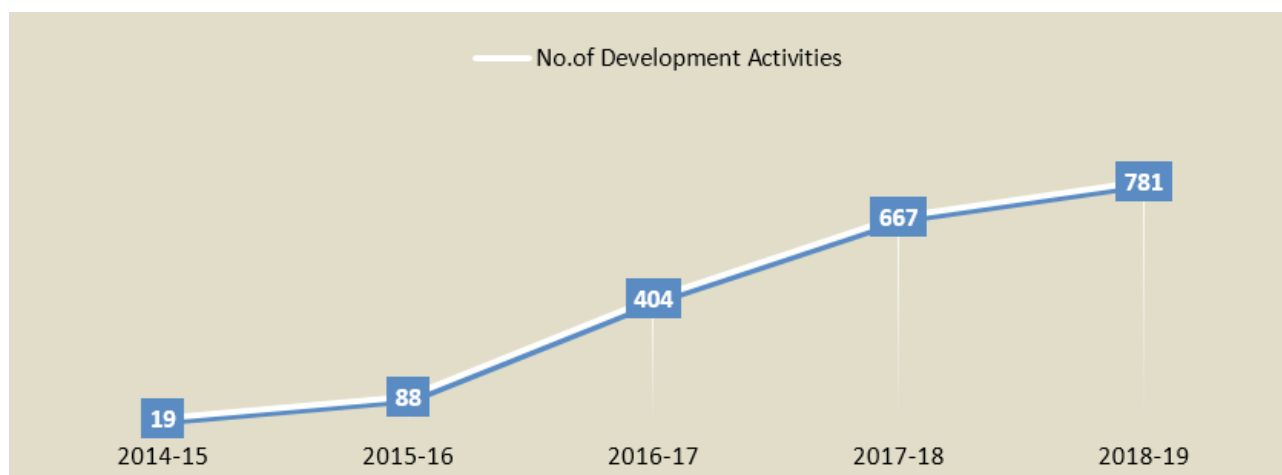
TABLE-1: SUMMARY OF THE DATA RECEIVED

No. of FDs	No. of Dev. Activities	Total Area diverted (ha)	Trees
41	1959	887.56	17327

As the diversion for development activities under section 3(2) started only in 2014, very few activities were taken up in 2014-15 and 2015-16 in limited number of FDs. In 2014-15 only in 3 FDs and in 2015-16 in 7 FDs some development activities were

sanctioned. However, once awareness started to rise, a steady growth is visible (Chart-1) in the number of activities being taken up until the March 2019 order. 95% of work on implementation of section 3(2) has happened only in the last three years.

CHART-1: YEAR-WISE ACTIVITIES CARRIED OUT UNDER SECTION 3(2)



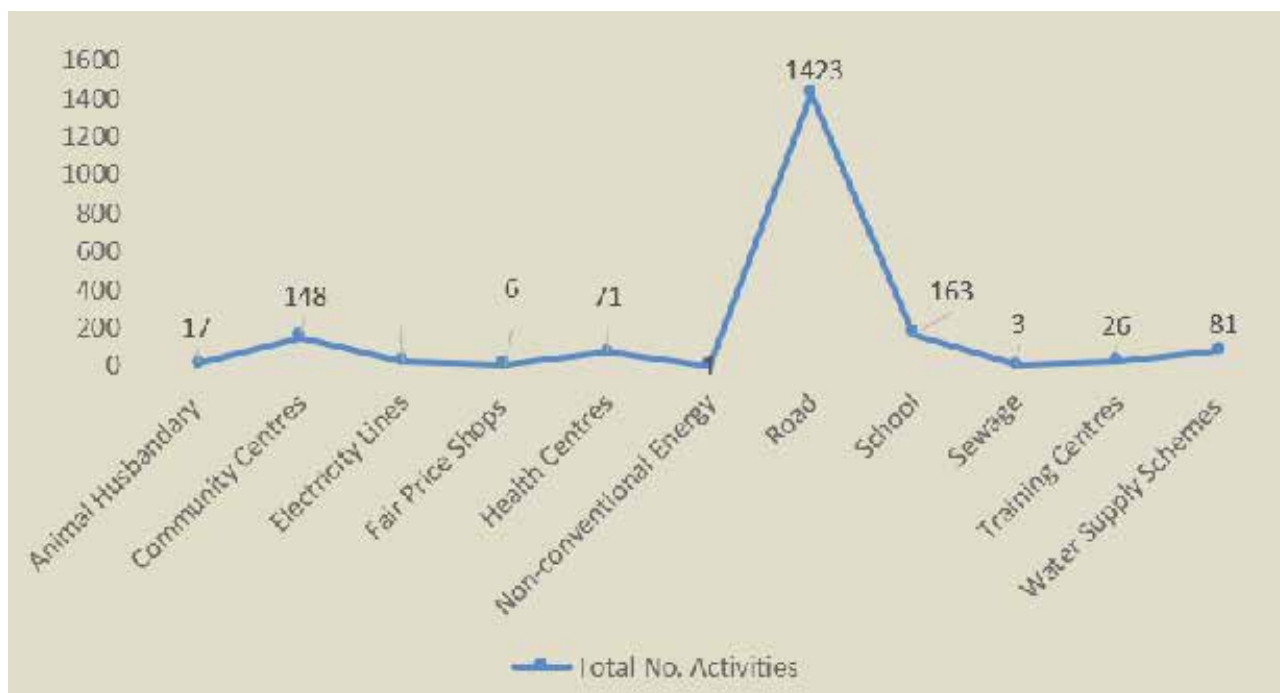
If we examine the activity-wise break up of diversions carried out under section 3(2), roads account for almost 2/3rd of all the activities. The prominence of roads as a popular local activity can be attributed to the fact that even today 41% (7083 villages) of total villages in

Himachal are not connected with roads (Refer to Table-7). In districts like Chamba, Mandi, Kinnaur, Lahaul and Spiti, Shimla and Solan there are substantial number of villages do not have access to road connectivity.

TABLE-2: DEVELOPMENT ACTIVITY-WISE BREAKUP OF DIVERSION CASES

Development Activities	No. of Cases	% of Total
Animal Husbandry	17	0.87%
Community Centres	148	7.55%
Electricity and Communication Lines	20	1.02%
Fair Price Shops	6	0.31%
Health Centres	71	3.62%
Non-conventional Energy	1	0.05%
Road	1423	72.64%
School	163	8.32%
Sewage	3	0.15%
Training Centres	26	1.33%
Water Supply Schemes	81	4.13%
Grand Total	1959	

CHART-2: ACTIVITY-NUMBER OF DIVERSION CASES UNDER 3(2) IN HP

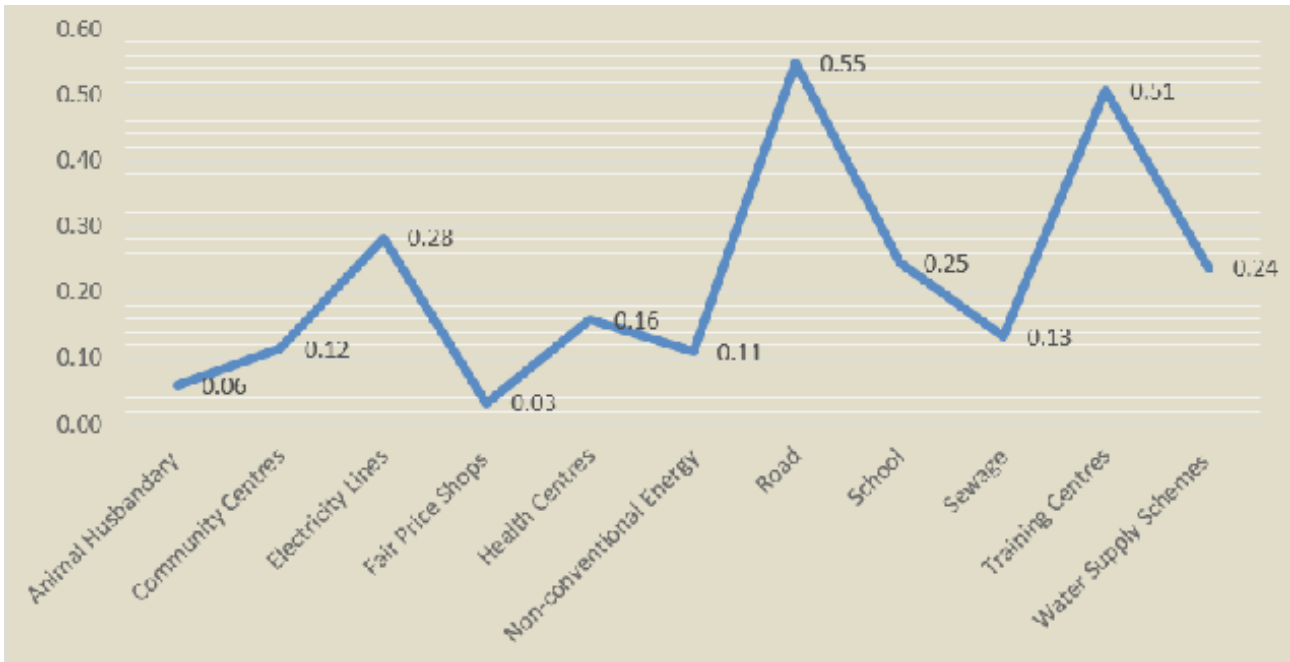


72.64% of the diversion cases were for roads followed by schools and community centers (mostly mahila mandal/ panchayat bhavan). Of the total land diverted 91% is for roads and 91% of all the trees have been cut down for road construction.

TABLE-3: ACTIVITY-WISE FOREST LAND DIVERTED AND TREES FELLED

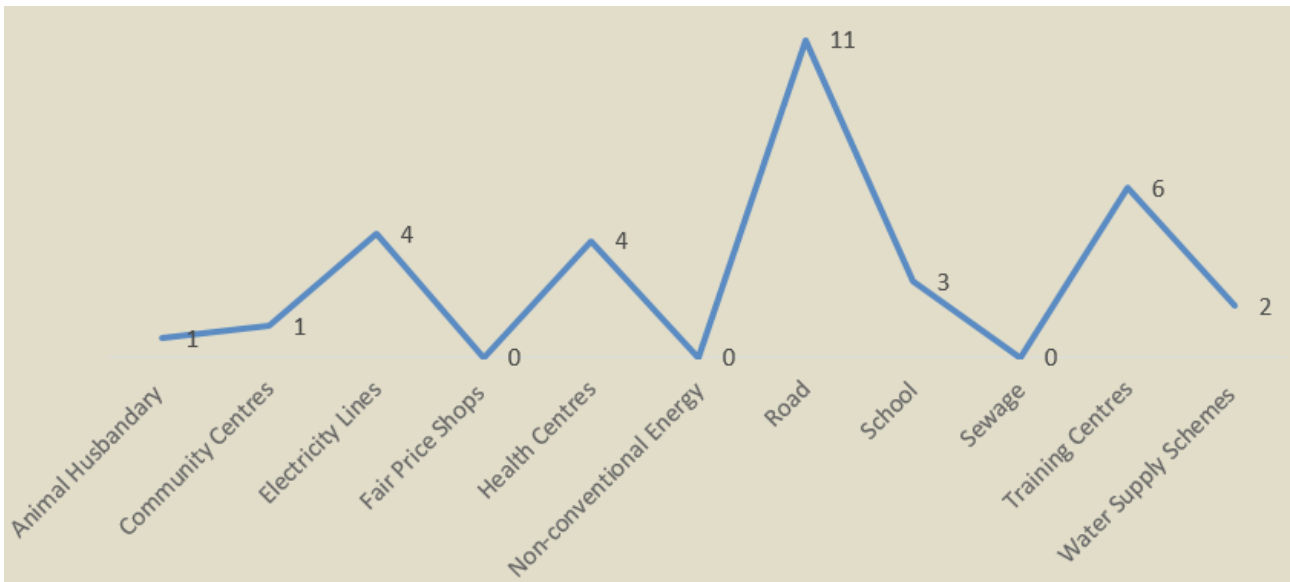
Development Activities	Count of Activity	Forest Area Diverted Activity-wise (ha.)	Trees Felled
Animal Husbandry	17	1.02	12
Community Centres	148	17.11	169
Electricity Lines	20	5.66	88
Fair Price Shops	6	0.20	0
Health Centres	71	11.29	294
Non-conventional Energy	1	0.11	0
Road	1423	779.49	16022
School	163	39.94	439
Sewage	3	0.40	0
Training Centres	26	13.18	156
Water Supply Schemes	81	19.17	147
Total	1959	887.56	17327

CHART-3: AVG. FOREST AREA (HA.) DIVERTED ACTIVITY WISE



The average forest area diverted to carry out an activity amounts to only 0.45 hectares (ha.). In case of roads this figure is slightly more than half a hectare.

CHART-4: AVG. NO. OF TREES FELLED ACTIVITY-WISE



The average number of trees felled per hectare is also very low barring (19.52) some activities and it may be induced that most activities have been carried out in areas with open forest or no trees.

IV. COMPARING FOREST DIVERSION UNDER FRA AND FCA: A CASE OF APPLES VS. ORANGES

The VP Mohan committee raises the issue of forest diversions under FRA along with those under FCA on account of the deforestation and green felling involved in development activities under the two types of diversion. However, if we look at the type and extent of 'development work' under the two categories – there is a massive difference, making the two incomparable.

1. Nature of construction involved very different

Developmental projects by private and public sector enterprises under FCA include Mining, Roads and Highways, Transmission Lines, Hydropower Projects, Railway Lines, Irrigation Projects and Others. On the other hand, the 13 activities involved in FRA are all village development activities involving providing access to basic infrastructure facilities like education, health, rations, village roads and community centres. **The constructions are relatively local, small scale as compared to the FCA diversions which involve huge underground construction component, more movement and turning of the earth and hence more erosion¹¹.**

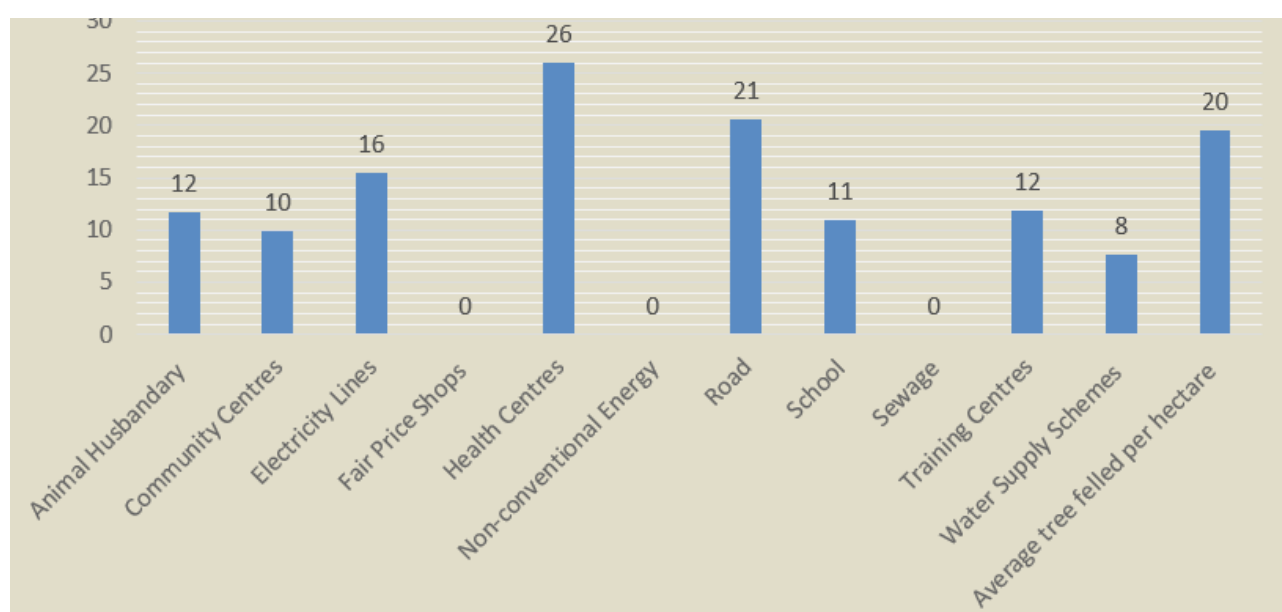
2. Area diverted per case incomparable

If we examine the Forest Department's data on the land diverted for projects through the FCA route, a total of 13157 hectares of land has been diverted for 1,984 cases. Almost 60% of this diversion has been for hydropower projects and transmission lines¹². The number of cases does not hold much relevance as does the size of these projects and the magnitude of construction, which is large scale. According to the VP Mohan Committee report as of now (data of three years from 2015 to 2018) approval for 1,561 cases across Himachal Pradesh for diverting 720 ha of Government forests involving felling of 13,877 trees under FRA. **Interestingly, the report puts on record of the number of trees felled in the last three years only for FRA cases and provides no data on tree felling for FCA cases.**

3. Extent of tree felling and deforestation- Many more trees felled per FCA case

For instance, the Kol Dam project which submerged more than 50,000 trees¹³ or the proposed Renuka Dam project for which more than a lakh trees will be destroyed¹⁴. If we look

CHART-5: AVG. NUMBER OF TREES FELLED /HA.



at the Forest Clearance application of the proposed Central University to be set up in Dehra and Dharamshala a total of 54333 (Dehra -27648 and Dharamshala -26685) are to be felled in an area of 238 hectares¹⁵. **But the most staggering figure is of 83000 trees required to be felled for 8 sections of the four lane highways that are being built in the state by the National Highway Authority of India¹⁶.** (Refer Table 6)

4. Poor post approval monitoring and more deforestation in FCA

The actual number of impacted trees in many of the large projects are higher than those surveyed. While FCA projects are put through much scrutiny at the diversion stage, these remain poorly monitored on compliance and therefore damages to trees is greater than what is surveyed and approved during forest clearance¹⁷. For instance, in the case of the Tidong-I HEP in Kinnaur, the Forest Department's Damage report issued on the project proponent reveals that "an additional 4,851 trees, of which 2,803 are the Chilgoza Pines, have been demarcated by the Forest Department as, likely to be damaged during execution of work in addition to the already sanctioned 1,261 trees in the Forest Clearance"¹⁸.

TABLE-4: STATUS OF TREES ON NHAI PROJECT

Stretch Name	Non-Forest trees including private land	Forest Trees
PIU Shimla		
Parwanoo to Solan	9719	12508
Solan to Kaithalighat	4702	9073
Kathalighat to Dhalli	11513	12010
PIU Mandi		
Kirtapur to Nerchowk	238	35580
Nerchowk to Pandoh		4350
Pandoh bypass to Takoli		1264
Takoli to Kullu		5066
Kullu to Manali		3379
Total	26172	83230

Source: National Highway Authority of India

5. FRA cases have upper limit of 75 trees and 64% of cases so far of 'NIL' trees

As far as FRA diversions are concerned the law establishes a limit of 75 trees. An examination of the percentage of trees felled activity wise in FRA cases is presented below and it indicates that in 64% of the cases there were 'NIL' (zero) trees involved/felled.



A school built in Siyun Panchayat back in 2008. The land was under the category of forest and involved no trees at the time as reported by the FRC. The FRC is now hoping the land will be diverted to the education department but the file is pending

TABLE-5: PERCENTAGE OF ACTIVITIES WITH NIL TREES

Development Activities	Total No.	No. of activities carried without felling of trees	% of activities carried without felling of trees
Animal husbandry	17	13	76%
Community Centres	148	129	87%
Electricity Lines	20	13	65%
Fair Price Shops	6	6	100%
Health Centres	71	52	73%
Nonconventional Energy	1	1	100%
Road	1423	812	57%
School	163	141	87%
Sewage	3	3	100%
Training centres	26	18	69%
Water Supply Schemes	81	73	90%
Grand Total	1959	1261	64%

WHY ~~NIL~~ 64% OF FRA DIVERSIONS HAVE 'NIL' TREES?

NOT ALL LAND RECORDED AS FOREST IS FORESTED: Land involved in the diversion was categorised as 'forest land' but actually had no standing trees on it. **This is highly likely considering that the area under 'forest cover' is about 15,433 sq. kms in Himachal as per the Forest Survey of India's latest report. This is less than half of the recorded forest area which is spread over 37000 sq.kms.** The history of legal categorization of forest land in Himachal involved the bringing of a large area categorised as 'wasteland' under the jurisdiction of the Forest Department vide the 1952 notification on protected forests¹⁹. (Refer to Section VII of this report for a discussion on this)

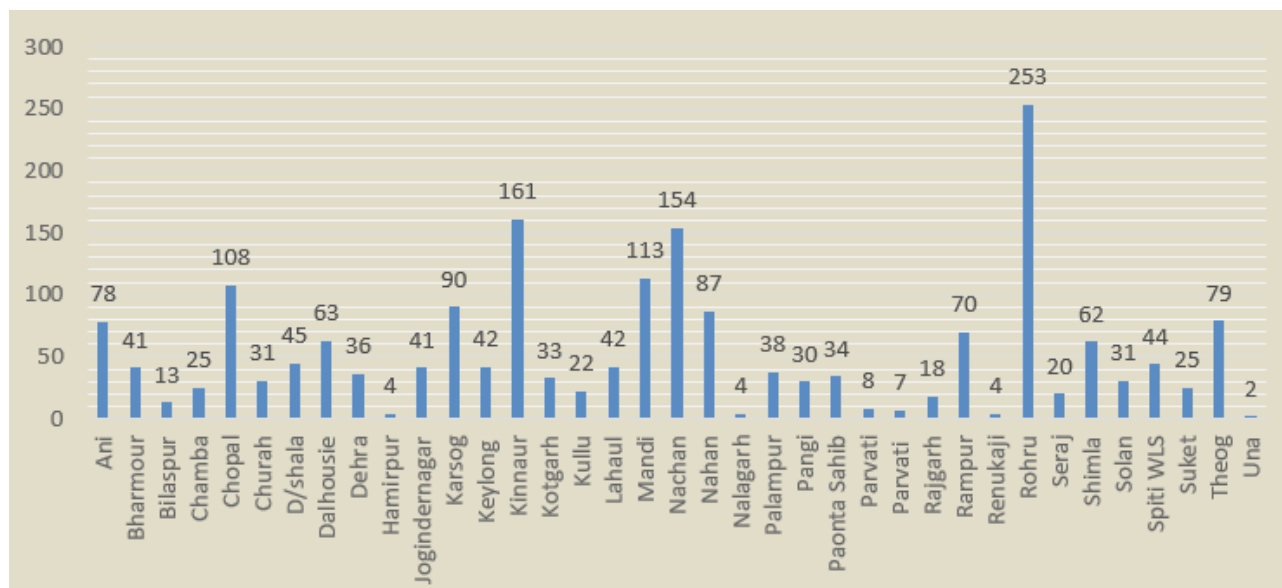
POST-FACTO DIVERSIONS: This is more of a conjecture based on a few instances, where it was seen welfare works on forest land were carried out long back by the user agency without a valid 'legal forest diversion' and these cases are now being moved for post facto approval under section 3(2) the FRA. (This has been seen in case of schools. Refer to next section for case study). There could be a possibility that the trees involved in such cases have not been recorded.

V. MISUSE OF SECTION 3(2) OR USE FOR DIRE NEED?

The question of misuse of powers by the DFO is cited in the VP Mohan Committee report specifically highlighting the case of the Nachan Forest Division which seems to have a very high number of approvals under the provision. When we analysed the data obtained from 41

divisions we also found the diversions to be skewed with Rohru having the highest followed by Kinnaur, Nachan, Mandi and Chopal. On the other hand, in certain divisions very few activities were taken up.

CHART-6: DIVISION-WISE NO. OF ACTIVITIES CARRIED OUT UNDER SECTION 3(2)



This again may be attributed to three factors.

- ‘Need’ for the use of the provision (Road connectivity)
- Local awareness about the existence of the law
- Political influence exercised by public representatives from implementation

A combination of all 3 factors is also seen in regions like Kinnaur and Nachan divisions.. Kinnaur for instance happens to be a region from where more than 2000 claims have been filed under section 3(1) of the act and there have also been public campaigns for the implementation of the law²⁰. The activity for which much of the diversion has happened in both Kinnaur and Nachan, is roads. Roads as a development activity, compared to a school or primary health centre, would of course involve more felling of trees as is also evident in the data obtained for this study (Refer to Chart 4).

However, a detailed case study of the Nachan division presents a case of dire need for these roads in the area.

The case of Nachan Forest Division: Roads to connect remote areas

- **Nachan Forest Division is part of the Mandi Circle spread over an area of 638 sq.kms of which 372.19 sq.kms is categorised as forest and divided into four ranges – Nachan, Seraj, Pandoh and Thachi.**
- The area overlaps with the Seraj and Gohar development blocks of the district Mandi with a combined population of about 1.50 lakhs. **About 29% of the population in Seraj and 35% in the Gohar block belongs to the Scheduled Caste community. The two blocks also seem to have poor**

development indicators in several areas when compared to the other regions of the district and state. For instance, the Scheduled Caste communities in the two blocks as per the 2011 census have the poorest literacy rates and the highest gender gaps in the male-female literacy rate²¹.

- **Data from census also shows that only 23% of the villages in the Seraj block had access to pucca roads.**

A field visit to the villages just 15 kms off the town of Thunaag revealed that people have to walk several kilometers to access education, medical facilities and even to attend the gram sabhas of their own panchayats as the hamlets are located in a dispersed manner. Bhagat Ram belongs to one such village which is located on steep ridge requiring a trek that takes close to 45 minutes to an hour to reach the road head. Sobli



Jainchal Panchayat in Seraj block of Nachan Division where hamlets are remote and road access poor

is a Dalit village of Jainchala Panchayat that has been looking forward to the completion of the last stretch of the link road. Bhagat Ram recalls how his uncle passed away as he was being carried on foot to get the hospital after falling ill suddenly. **The hamlets of the Scheduled Caste community are particularly far flung, on ridges or in valleys far away from the village centres and ration shops. Access to approach and village link roads remains an issue of concern for the local population.**

The RTI data above indicates that of the total forest area diverted in the division in three years, about 90 hectares, 92% was for roads. In order to understand the details of the developmental activity we interviewed a PWD Official. *The Executive Engineer, K.K Kaushal, at the recently formed (2 years ago) Seraj division of the Public Works Department (located at Jhanjheli) stated,*

“The fact is that Seraj is one of the remote areas of Himachal and there are various villages that are not connected by road even today”. This makes it difficult for the predominantly farm based communities to also transport their horticultural produce to the market. When asked what prompted the sudden surge in the number of road diversion cases, he was extremely candid in sharing, “This (PWD) division was created only after Jairam Thakur, who hails from the area and is MLA from Seraj constituency, became the Chief Minister in 2017”. The minister, it is said in his various campaign and post win speeches in the area promised the electorate that he would get the “load off their backs” (*peeth ka bojh utaar ke rahunga*). “True to his promise substantial funds, close to 25 crores, were sanctioned to build more than a hundred roads (over 110 kms) in the division over the last two years. This is a record high, no doubt, given that on an average each division gets an average budget of 2 crores annually at best”. **Mr. Kaushal also informed that that 100% of the roads (built**

**TABLE 6: NACHAN FOREST DIVISION DIVERSION UNDER FRA SECTION 3(2)
FROM 2016 TO 2019**

	Number of Cases	Area Diverted (ha)	Trees felled	Total Cases of Road	Area diverted for Roads	Total cases of Nil Trees	Total Road Cases with NIL Trees
As per RTI Information for 3 years 16-19	154	90.27	1389	119	83.73	111	78
%				77.72%	92.75%	72%	65.55%

using the 3(2) provision) were demand roads (the demand came from the village). “These requests had been pending for years with the panchayats”, he added.

In order to understand the perceived criticality of village link roads a visit was made to Sharan and Murhag Panchayats in the Gohar block where the Sunas to Khunagi Link Road lies half constructed. We selected this ‘road’ for the case study because it happened to be one where the maximum number of trees i.e. 69 were chopped. Of these 20 were of Deodar, 29 of *Kail* or Blue Pine and another 20 of Oak or ban. As per the document most of the trees (49) were under the Class V category (the smallest size/volume). The road was proposed in 2018 and constructed in 2019. **Beneficiaries of this road are farmers, horticulturalists and floriculturists of villages Khunagi (20 families), Dhar and Kandi (130 families). Families of Khunagi village are all SCs. The road is essentially going to provide a means of transporting farm products including flowers (carnations), apples and commercial vegetables or cash crops like potato, cabbage, cauliflower and peas which are grown on the farms. Currently all**

produce is being transported on mules.

Apart from this road which is still currently under construction, there is another road which was constructed under FCA diversion - however, that road is steep, the path is very difficult for carriage of heavy loads by jeeps and would require expansion as well as tarring. According to the members of Khunagi FRC, this will not just be costly but also lead to more destruction of trees and will be a cumbersome process under FCA. With this reasoning people opted for taking out a shorter, easily motorable and a more straightforward jeep road to the road head, which goes to Bagsiyad, from where the produce moves to the main market at



Sunas Khunagi link roads providing motorable access to 2 villages to transport their farm produce

Mandi and then forward to Chandigarh and Delhi.

This is the main source of livelihood in the beneficiary villages which are wholly dependent on agricultural land. The average land holding size is small varying from 2 to 5 bighas in Khunagi and about 5 to 10 bighas in the other villages which are mixed caste villages. People have invested in poly-houses to grow flowers on a ratio of 85:15 in collaboration with the horticulture and agriculture departments

(where the community puts in 15% of the capital investment). The total investment per poly-house (500 sqm) is about 5 lakhs. Apart from this investment there is an annual recurring cost on maintenance of flowers and poly-houses. The floriculture in the area started about 3 years ago and the horticulture and cash crops are about 15 to 20 years old. For the people of Khunagi, this new livelihood has brought hope of escaping the drudgery of daily wage agricultural labour on the farms of the 'upper-caste' community in the nearby villages as well as going as far as Kinnaur and Shimla for labour opportunities.

Members of the gram sabha were aware of the provision of diversion under FRA for the village development activities and about the road construction as well. The file for the project at the DFO office had all necessary paperwork in place including resolutions of the Gram Sabha as mandated under the Act as per the Assistant Conservator of Forests. Pushpraj, Chairperson of FRC Khunagi said, "We have struggled a lot not just for our livelihood but to protect the forest in our area. Many a times we have caught those who are felling trees - we protect this forest because it is ours".

FRC members of Kandi informed, "Since the stay has been implemented in this area



Poly-houses seen in Khunagi from a distance

2 lakh rupees that was sanctioned for a 'Mahila Mandal' Bhavan has been returned back because there is no possibility of land diversion".

When the officials at the Nachan Forest division were asked for their views on the Supreme Court stay, the response was, "The job of the forest department is to follow the law and we have done so in the FRA cases. Only when the roads are village link roads of less than 5 kms have we used the FRA. Else the FCA is the legal option we take". They further added, "There is no doubt that the process under FRA, if compared to FCA is more decentralized and less cumbersome. We have seen over the years several cases pending only because the user agencies did not have enough funds sanctioned to pay the amount calculated for NPVs". Both government officials and locals referred to cases of neonatal and maternal deaths due to women not being able to access health care facilities in a timely way when child birth complications occurred.

"One the one hand the government wants horticulture to develop and farming to be more productive, on the other if it does nothing to provide basic transport facilities then how are people to earn their incomes?"



Pushpraj in his carnation farm

was the other question posed by the people of Khunagi as well as the officials.

Another indicator of the need for road construction was also visible in cases where people testified that **it is common for farmers/residents to donate private lands (falling in the road alignment) without any compensation from the government just by signing a 'gift deed'**. This was confirmed by the Executive Engineer at the PWD office. He informed that post the Supreme Court judgment some 25 to 30 pending cases have been sent back to the panchayats but the demands for roads continue to pour in.

TABLE 7: DISTRICT WISE STATUS OF VILLAGE CONNECTIVITY WITH MOTORABLE ROADS AS ON 31.03.2019

S.No	Name of District	Total No. of Villages	No. of Villages Connected with Road	No. of Villages Unconnected with Road	Percentage of Unconnected Villages
1	Bilaspur	962	738	224	23%
2	Chamba	1113	586	527	47%
3	Hamirpur	1634	1175	459	28%
4	Kangra	3614	2421	1193	33%
5	Kinnaur	233	71	162	70%
6	Kullu	172	150	22	13%
7	Lahaul & Spiti	284	128	156	55%
8	Mandi	2823	1649	1174	42%
9	Shimla	2515	1118	1397	56%
10	Sirmour	966	687	279	29%
11	Solan	2378	1147	1231	52%
12	Una	755	496	259	34%
Total		17449	10366	7083	41%

Source: <http://hppwd.gov.in/village%20connectivity.htm>

Schools in despair due to lack of 'legal diversion': The case of Dhared in Kangra

After roads, it is schools and community centres which have seen a popular demand. In Kangra's Dhared village where all residents belong to the Scheduled Caste community, the lack of adequate infrastructure in the local school, has been an issue since the past three decades. In 1989-90, the panchayat constructed a basic two room building for the School which falls on forest land in revenue village Dodan Khola. A Junior Engineer after inspection declared the old building of school as unsafe back in 2009. Even today it has no boundary or fence neither a paved path leading to it. The walls of the old building cracked, the tin and slate roof partially worn and the verandah ceiling blown away. With one room operating as an anganwaadi, leaves only another room for running school classes while also operating as the teacher's office and storehouse. This relatively safer portion with a cracked ceiling lacks space to operate as a proper school. It

were returned. Ajit Singh, School teacher at Dhared GPS, stated exasperatedly, "I am tired of writing resolutions and moving files, but no money came for repair. The whole matter has been reduced to the legal status of the land".



Dhared school almost in shambles



"We cannot afford to send our children to private schools", added Reena Devi, mother of a student and member of School Monitoring Committee. The case of Dhared School is not stand alone. In the Panchrukhi Education Block which looks over 87

has 26 students enrolled and is the prime source of accessing education for children of Dhared. The School staff shared that though 3.15 lakhs were sanctioned for construction of a new room but due to the school being on 'forest land' without permission, the funds

Primary Schools, 46 are located on forest land. "Unless the land gets transferred to the education department, we cannot do anything", responded the Superintendent at Block office.

VI. UNDERSTANDING THE SPIRIT OF FRA: RECOGNISING LIVELIHOOD RIGHTS, DEMOCRATISING FOREST GOVERNANCE

The spirit of the Forest Rights Act 2006 is its recognition that communities not just have the right to use ‘forest land’ for their bonafide livelihood needs but also to protect and manage their community resources. Infact this has been defined as a duty in the Act. Section 3(1)(i) of the Forest Rights Act 2006 provides Community Forest Resource Rights to forest dwelling communities under which the rights to protect, manage and conserve forest resources are recognized.

The 1988 National Forest Policy and the 2005 Himachal State Forest Policy¹² (referred to in the VP Mohan Committee report) both have emphasised the role of the forest dependent communities in the management of forests. Infact the latter in its introduction states clearly, **“A forest sector policy and strategy for the state would have to be highly sensitive to the mountain environment and which places people at centre recognising the need to achieve a balance between people, environment, conservation and development”**. However, state forest policies recognising the need to give communities a space in forest governance and acknowledging their livelihood needs have failed to **provide a legal basis to the role of the people**, the way the Forest Rights Act 2006 has.

Let us take the case of the Darman Primary School in Nohali Panchayat of Mandi District. The village wanted a primary school built there back in 1983 and the school construction was done 2 years later. The said land was the village grazing land bereft of trees. **The residents pooled the requisite resources (wood, stone, slate, money, labour etc) and built 4 rooms. New rooms were added later and today 19 children from three villages come here to study of which 13 enrolled are girls. After the construction of the school, the local Yuvak Mandal and Mahila Mandal planted saplings outside the boundary wall of the school, which is currently a green patch.**

In 2014 the Education Department took the lead in getting the forest land transferred in its name under the FRA. According to one of the teachers, Kanta Devi, "The Block Elementary Education Officer (via Central Head Teacher) sent us a letter to submit a proposal for the land diversion which is when we took fresh resolutions from FRC, SMC and local Panchayat". Kehar Singh (President, FRC Palohan) said "We were not aware of the provisions of FRA. No one (government official) told us there are other provisions in this act".

If villages like Nohli or Khunagi in Mandi (referred to earlier in report) had known of their community rights to forest land and their duty to protect these lands under FRA, they could have perhaps initiated several other measures as part of community forest management which lie unexplored in a state like Himachal due to non-implementation of the act.

Implications of the Supreme Court orders on over all FRA implementation in the state

While the Supreme Court orders on 3(2) under FRA do not say anything about the other provisions of the Act and do not place any restrictions on them, they have influenced the mindset of both the line officials as well as the local representatives with regard to the future of the act. After 11th March order of the Supreme Court news spread rapidly that FRA diversions were ‘closed’. The later order or ‘regulated’ permissions through the court has been of no help. This matter was raised in the Legislative Assembly for debate on 29th August 2019 and atleast 5 MLA’s put forth grave implications of the Supreme Court order for welfare development in their constituencies. The question of unutilized



Plantation raised by local residents outside Darman School

funds lying with government departments due to the obstacles in forest land diversion and the negative attitude of the forest officials was put forth strongly on the floor of the house¹³.

It is important to mention here that while the court has refrained from passing any orders with regard to the same, the VP Mohan committee in its second report makes recommendations on the cases of illegal 'encroachments' and the overall applicability of the FRA in Himachal. What the courts' monitoring committee has termed as 'illegal occupations' and 'encroachments' may be eligible for individual and community titles under the FRA 2006, which also protects, under section 4(5), dependent communities from forceful evictions until the process of recognition of rights is complete under FRA.

The Forest Rights Act 2006 is clear that it recognises anyone exercising individual and/or community rights over forest land of any description for their bona-fide livelihood needs before the cutoff date of 13th December 2005 as eligible to make a claim under the Act.

Unfortunately, a large percentage of those who may be eligible to apply for titles under the act are not aware of this critical provision as a result of which the number of claims remain low in the state. Himachal despite much pressure from civil society in the state as well as the nodal agency, the Ministry of Tribal Affairs remains slack in the Act's implementation with only 136 titles issued up until May 2019¹⁴.

Meanwhile the VP Mohan Committee tabled its 3rd six-monthly report in the Supreme court and the court in its order of 29th November 2019 in the case accepted these recommendations. One of the recommendations is in reference to demarcation of boundaries and embedding of RCC pillars in the forest areas. **This order will have implications for existing individual/community rights if read along with the earlier orders of the court (in case 202/1995) in the context of Himachal. These orders need to be urgently re-examined and reviewed in the light of the provisions of the Forest Rights Act, 2006, which is a constitutional legislation passed by the parliament of India.**

VII. DISCUSSION AND CONCLUSION: FRA NOT A THREAT TO FORESTS OR GREEN COVER

Hurdles posed by the 1952 notification and proceeding forest laws

The National Forest Policy 1952, enacted shortly after freedom, was meant to preserve forests for national interest. The guideline of at least 2/3rd s of a hill state area being under forests was also spoken of and the Himachal government instantly declared all land that was not under private ownership to be 'protected forest' through an official notification in the same year¹⁵. This notification used Chapter IV of the Indian Forest Act 1927 to bring all wastelands under Forest Department control.

Post this a process of settlement of rights and notification of areas as 'forest' was not completed and yet the 1952 notification has been seen to have overriding effect. (See Annexure 1.B 1952 notification and copy of excerpts from Forest Manual Vol 1 of the Forest Department referring to the incomplete settlement). In 1974, through a new law common lands with Panchayats, used for grazing and other livelihoods were taken over by the State government. While part of this land was set aside for allotments to landless people, over the rest of the land the forest department asserted its control¹⁶. And this way close to 70% of the state's geographical area came to be declared as 'forest land'.

The contested nature of the 1952 notification between the forest and revenue departments intensified after the 1980 Forest Conservation Act, which restricted and centralized the process of approval for the transfer of forest lands for non-forest purposes. In 1998 a notification was passed by the state government to exempt some areas from the impact of the 1980 FCA but these were soon struck down by the MoEF citing the provisions of FCA. In 2004 and 2005 two committees were also set up to examine these contestations¹⁷.

Chamel Singh, a senior ex-bureaucrat, who was chairperson of the one of the committees in an interview stated how the forest laws had made it "impossible for any diversion of land for any small activity intended for social development in the state"¹⁸. While both committees made several recommendations for the removal of certain areas from the purview of IFA and FCA, there seems to be complete ambiguity about the fate of these reports and their recommendations.

With the intervention of the Supreme Court of India through the Godavarman case orders and broadening of the definition of 'forests' and the application of FCA, it seemed as though there was no going back, until the FRA came along. The FRA and its provisions, both under section 3(1) and 3(2) should be read keeping in mind this historical context and the difficulties posed by the FCA for ordinary people of a state like Himachal Pradesh.

Forest diversion and green cover in Himachal: Need to separate FCA and FRA

The Supreme Court monitoring committee used the premise of dwindling green cover as the basis to put a question mark on diversion of forest land under FRA 2006. However, **if we rely on the statistics on forest cover published by the Forest Survey of India in India's State of Forests Reports (ISFR) (which Shri V.P Mohan and the court have) we find that there seems to be a marginal increase in the forest cover in the state in the last 15 years from 26.37% to 27.72%**. The ISFR 2019 reflects that the increase in forest cover is seen in the 'medium dense forest' type though there is no clarity on what kind of forests these includes.

It needs to be noted that the forest cover increase is negligible or not significantly seen

if we compare the reports of 2005 and 2019, whereas there seems to be a sudden increase after 2015. The 2019 ISFR shows an increase of 333 sq.kms (in comparison to 2017 ISFR). **What is even more striking and critical is the forest diversion under FCA data of the same period which shows that close to 6300 hectares of recorded forests were diverted to various development activities between 2005 and 2015²⁹. Whereas after this only about 960 hectares were diverted in the years from January 2015 to February 2019.**

On the other hand, if we look at the FRA diversions in Himachal Pradesh, we find that these have taken place mostly after 2015. **Therefore, in the period corresponding to the diversions under FRA there seems to have been a rise in the forest cover. Even if this increase in ‘forest cover’ is suspect, it would be safe to presume that there is virtually no correlation between FRA and loss of green cover in the state as has been concluded by the Supreme Court committee.** On the other hand there is no doubt that the large scale diversions under FCA that took place before 2015, which involved construction of hydropower projects, transmission lines and highways, may have had some impact on forests which needs to be scrutinized with detailed scientific and ground assessments and not just by relying on the ISFR’s estimates.

Welfare Development as a fundamental right

This report ascertains and highlights that the forest land diverted under section 3(2) in Himachal Pradesh is for basic local amenities (and not for commercial purposes) which are critical for communities who share an existential and historical relationship with the forest lands in their vicinity for their everyday lives. These communities, dwelling in remote and difficult terrains, not only need to be seen as custodian of these forests, but as having a fundamental right to basic welfare services for their survival and growth. A legal categorization of land should

not become this great a hurdle in getting access to these basic amenities to the people. It is for this reason that the FRA was brought about in the country in the first place.

The VP Mohan Committee report by challenging the eligibility of residents of Himachal to be beneficiaries under FRA and by creating doubts in the application of the act in the state has misled the court with its biased perceptions. It relied on insufficient data and an arbitrary analysis to conclude that the FRA is posing a threat to the green cover and forests of the state. A lack of holistic and multi-dimensional understanding of the ground situation and several misconceptions related to the Forest Rights Act itself seem to have led the court to pass orders which have affected the lives of lakhs of people in this mountain state.

The court must reverse its orders to allow the DFOs to do their duties as provided under section 3(2) of the FRA and as per the guidelines of the Ministry of Tribal Affairs without any restrictions. Raising of pillars and demarcation must be done only after all rights, individual and community, of eligible claimants have been duly settled and recorded under FRA 2006.

VIII. REFERNCES & ENDNOTES

1. Census of India 2011, <https://www.census2011.co.in/census/state/himachal+pradesh.html>
2. India State of the Forests Report, 2019, Forest Survey of India, <http://www.fsi.nic.in/forest-report-2019>
3. Annexure to letter No. 23011/11/2013-FRA Accessed from website of the Ministry of Tribal Affairs [https://tribal.nic.in/FRA/declarationsClarifications/24procedureforseekingpriorapprovalfordiversionoflandundersection3\(2\)dated18May2009.pdf](https://tribal.nic.in/FRA/declarationsClarifications/24procedureforseekingpriorapprovalfordiversionoflandundersection3(2)dated18May2009.pdf)
4. Asher, M and Mahar, S, A Silent Betrayal, 11th October 2019, Frontline Magazine, <https://frontline.thehindu.com/social-issues/article29506771.ece>
5. Letter No. 66-79/2014/FRA-FCA, From PCCF to Additional Chief Secretary (Education, Health, PWD, IPH)
6. Letter No. 23011/11/2013-FRA, From Deputy Secretary MoTA to Additional Commissioner Tribal Development, HP
7. Chauhan, P, SC green order has HP in a bind, 24th March 2019 The Tribune, <https://www.tribuneindia.com/news/archive/sc-green-order-has-hp-in-a-bind-747393>
8. India Environment Portal, <http://www.indiaenvironmentportal.org.in/content/463141/order-of-the-supreme-court-of-india-regarding-silviculture-felling-of-trees-in-himachal-pradesh-15042019/>
9. Supreme Court allows green felling in Himachal after 22 years, Indian Express, 28th February 2018, <https://indianexpress.com/article/india/supreme-court-green-felling-himachal-green-cover-5074665/>
10. Response from PIO, PCCF, Shimla Ft48-1114/2005(FCA) to RTI filed by Aditi Vajpayee, 17th April 2019
11. The Hidden Cost of Hydropower, June 2019, Himdhara Environment Research and Action Collective, http://www.himdhara.org/wp-content/uploads/2019/06/The-Hidden-Cost-of-Hydropower_2019.pdf
12. Year Wise details of area diverted under FCA 1980 since 1980, Forest Department, Government of Himachal Pradesh, https://hpforest.nic.in/files/FCA_1.pdf
13. Himachal's Hydropower project to be commissioned by 2013, 4th March 2010 <https://www.sify.com/finance/himachal-s-hydropower-project-to-be-commissioned-by-2013-news-default-ldequlfceegi.html>
14. Centre to Revive Renuka Dam Project, 5th July 2014, <https://www.projectstoday.com/News/Centre-to-revive-Renuka-dam-project>
15. Forest Clearance Proposal, Central University, Himachal Pradesh, extracted from forestsclearance.nic.in
16. RTI Application filed by Manshi Asher on 9th January 2020
17. Juneja, S, Down to Earth, 4th July 2015, Environment ministry failed to monitor forest diversion: CAG <https://www.downtoearth.org.in/news/environment-ministry-failed-to-monitor-forest-diversion-cag-42131>
18. Compliance Reports, Forest Department, File Inspection by Prakash Bhandari, 2015

19. Annexure 1.B 1952 notification, Forest Manual Vol 1 of the Forest Department, 2015
20. Tribals Protest Against Non-implementation of Forest Rights in Kinnaur, 30th December 2018, Times of India, <https://timesofindia.indiatimes.com/city/shimla/tribals-protest-against-non-implementation-of-forest-rights-act-in-kinnaur/articleshow/67305860.cms>
21. District Census Handbook for Mandi, 2011
22. HP State Forest Sector Policy, Forest Department, GoHP, <https://hpforest.nic.in/files/policy.pdf>
23. Unedited Proceedings of the Legislative assembly accessed on December 1st 2019
<https://secure.evidhan.nic.in/SecureFileStructure/AssemblyFiles/13/6/20190829/8.pdf>
24. Status Report of the Ministry of Tribal affairs, GoI, May 2019, www.tribalaffairs.nic.in
25. Asher, M, A Spectre of Eviction Looms over forest dwellers, The Tribune, 5th March 2019,
<https://www.tribuneindia.com/news/archive/spectre-of-eviction-looms-over-forest-dwellers-738091>
26. Forests, Settlement and Forest Rights in HP, Accessed from Shodhganga in April 2019,
https://shodhganga.inflibnet.ac.in/bitstream/10603/128148/18/12_chapter%205.pdf
27. Upadhyaya, S, Implications of 1952 notification – Waste Land or Forest Land – The Implications on Development Projects in Himachal Pradesh (For the Government of Himachal Pradesh Prepared by Environics for NLTA), NDtd
28. Interview dated 2nd October 2019
29. Same as ii and ix



Him Dhara is an autonomous non registered environment research and action collective based in Himachal Pradesh since 2009. We work on issues of environmental justice through research and action campaigns. Our concerns revolve around the land, forests, rivers and communities in mountain regions.

FOR MORE INFORMATION VISIT

www.himdhara.org

Write to us at himdhara@riseup.net