



**Himdhara, Environment Research and Action Collective
Himachal Pradesh**

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To,

The Chairperson and All Members,

Sub-Committee on Implementation and monitoring of FRA

Himachal Pradesh

Subject: *Demand to implement the Forest Rights Act, 2006 in a just and speedy manner in Himachal Pradesh.*

Dear Madam/Sir,

As you are aware this is the 15th year since the enactment of the Forest Rights Act, 2006, in the country. Despite having one of the highest percentage of the total geographical area legally termed as 'forest land', Himachal has the worst record in the implementation of this Act. There is hardly any 'forest land' in the state where local communities do not have forest usage and dependence for livelihood needs. Looking at the land use pattern and dependence of local communities, in terms of implementation of the FRA, 2006, Himachal should have been in the category of the states like Orissa, Maharashtra, Chhattisgarh, where lakhs of people have received both individual and community titles over the forest land. But the number of titles issued in Himachal gives the wrong impression that it is a state like Punjab and Haryana where 80% of the total Geographical area is under private ownership and the forest land is only 5% and thus there is no need for the act.

SELECTIVE AND PARTIAL IMPLEMENTATION OF THE ACT

In Himachal, the government has, since 2014, selectively implemented the section 3(2) of the Act, which provides for forest diversion for the much-needed village level development activities at the DFO level. Data shows that in the span of 5 years from 2014 to 2019 almost 2000 development activities have been sanctioned under this section before the Supreme Court intervened to place some restrictions on the same. However, the State government in its affidavit to the court,

emphasised the importance of this law and has managed to still ensure that village level development activities do not get stalled and 3(2) implementation is continued. This was possible due to the strong government will in implementing this section. Unfortunately, such will is totally missing when it comes to sanctioning titles under section 3(1), which provides for settlement of individual and community forest rights, of the Act. More than thousands of claims are languishing at the Sub-divisional Level Committee (SDLC) and Divisional Level Committees (DLC) without any hearing on them or the claims have been returned back with frivolous comments and objections whenever meetings have been conducted. This has been one of the most discouraging factors along with the absence of training and awareness programmes for local communities and for the line officials which have a role in implementing the Act.

HISTORICAL INJUSTICE OF 1952 NOTIFICATION AND FOREST LAWS

There is a strong need for the implementation of this Act and it's a historical opportunity for the state to clean up both revenue and forest settlement records, which are infested with "*nazayaz kabzas*", in a just and fair manner. The root of this problem dates back to the enactment of Forest Conservation ACT, 1980, which ended up blocking all possibilities of fair and just resolution and regularisation of "*najayaz kabzas*" which were indeed legitimate occupations of people facilitated by various state laws like the '*Nautor rules*'.

On one hand the blanket notification issued by the government of Himachal in the year 1952 declared all waste land as forest land and on the other the Himachal Pradesh Village Common Lands and Utilization Act, 1974 further handed over *reserved pool shamlat* lands to the forest department. It is quite evident that both laws were not backed up by any settlement process leaving people of the state in a difficult situation.

Even under Indian Forest Act, 1927 section 29(3) states "*No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved: Provided that, if, in the case of any forest-land or waste land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.*"

The intention and purpose of the 1952 Notification was in the interest of the State but after that there was a need to follow the process of forest settlement under IFA, 1927 providing a fair opportunity to the individuals and communities about their existing rights on forest land which has been declared without recording occupations. This process was not followed in the years to come. Declaring lands as 'forests' without providing a fair chance to forest dependent communities who have been dependent over these ancestral lands for generations has been termed as "historical Injustice" in the preamble of the Forest Rights Act 2006.

After commencement of the Forest conservation laws in the form of the Wildlife Protection Act 1972, and the Forest Conservation Act (FCA) 1980, the power shifted from the State Governments to the Central Government to change the land use of forest lands. 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 on forest land became impossible through State policies or any State Legislation which was always over-ridden by the provisions of the FCA. It is evident in total failure of Himachal Government 2002 policy to 'regularize' forest occupation and 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 eviction drive.

So, in this context forest dependent communities didn't have any legal opportunity, under any state law for fair trial for the occupation of those lands which historically belonged to them and in one go such lands were declared state property without recording the on ground situation and providing people any opportunity to present their concerns and case. On these lands, while community forest uses have been accepted as 'concessions' no survey has been done for individual possessions, which at the time of revenue settlement or in the compartment history files of the forest department became visible as "nazayaz kabzas". In both processes there is no mechanism for genuine claimants to be heard and their tenure issues resolved, a complete violation of fundamental rights.

FRA AN OPPORTUNITY TO SECURE TENURE AND CLEAR DISCREPANCIES IN RECORDS

Due to this situation related to forest land across the country (including Himachal Pradesh), a new Act, titled the "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest

Rights) Act” was passed by the Indian Parliament in 2006.

In Himachal which has a huge population of approximately more than 1.5 lakhs families of Gaddis and Gujjars, medicinal plant collectors who are directly dependent on forest land for livelihood and 1.65 lakh families who have applied under 2002 encroachment regularization policy of Himachal Government and many thousands had been recorded as *najayaz kabza* in revenue records and forest records - there could be many beneficiaries under the FRA. **In a small region like Spiti where there are only 2583 households more than 1200 *najayaz kabzas* were recorded in revenue settlement carried out in the 1980s. It means almost 50% households have recorded *najayaz kabza* and similar cases can be found in other districts also.**

Similar is the case with *nautor* cases which were allotted in late 70s to landless individuals but the final process was not complete due to the Forest Conservation Act, 1980. In Sirmour there are many families who don't even have Himachali certificates because they are living on forest land and have no ownership in revenue records.

Despite the huge scope of the act in the Himachal context, it is unfortunate that Himachal has lagged behind in the implementation of this Act so far. Till now 2000 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 recognitions of Individual and Community Forest rights remains weak. Around 17503 FRCs have been formed and 35 community claims in Bharmour (7) and Chota Bhangal (28); 53 individual claims in Dalhousie (Chamba) and 76 individual claims in Lahaul and Spiti region have been issued titles under the Act.

MYTHS AND MISCONCEPTIONS ABOUT FRA IN HIMACHAL

To not implement the Act the various reasons (myths) were propagated from time to time and attempts were made to somehow surpass the provisions of the Act especially in case of forest diversions for development projects. The major contentions and misunderstandings (myths) for not implementing the FRA, 2006 are-

1. ‘The ‘settlement’ process is complete and that there is no need of FRA in Himachal’ -

In this regard the Union Ministry of Tribal Affairs has issued a clear clarification that the rights recorded under 'Wajib-ul-Arj' and 'Forest Settlement' will have to be also settled and recognised under the provisions of the Forest Rights Act 2006. **(Annexure 1: MoTA Clarification on Wajib-ul-arj)**

2. The Himachalis are not 'forest dwellers' and their needs do not fit under the definition of 'bonafide livelihood' needs-

On this also Ministry of Tribal Affairs issued a clarification on 9 June 2008 [No. 17014/02/2007-PC&V (VOL.VII)] according to which, "*primarily reside*" means Scheduled Tribes and Other Traditional Forest Dwellers **who are not necessarily residing inside the forest but are depending on the forest for their *bonafide livelihood needs*** would be covered under the Sections 2(c) and 2(o) of FRA 2006. The definition of *bonafide livelihood needs* has been substantially changed in 2012 amended rules of FRA where the words "*sustenance*" and "*self-cultivation*" deleted and broadened the scope. **(Annexure 2: Implication of Primarily Reside)**

3. The community rights are okay but not the individual rights as people are residing in revenue villages where settlement process has been carried out from time to time-

Even in Orissa, Maharashtra, Kerala and other states FRCs have formed at revenue village level and individual titles have been issued to the people, who had already had some revenue land in their possession. The revenue settlement is not unique to Himachal. The Act is not only for 4526 forest villages in the country but for all the people who depend on forest but not necessarily residing on forest land.

4. Big farmers with huge land encroachments are the claimants under the Act

To know the veracity of this claim a study was done in Kinnaur district by Himdhara Collective. The study revealed 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. **(Annexure 3: Report by Himdhara Collective)**

From the data of 415 people who have claimed land under FRA, we found that people who have less than 5 bighas of landholding is the biggest group (36%) followed by people having landholding of 5-10 bighas and these are the group who are claiming the highest amount of land i.e 37% and 34% of total claimed land respectively. One more interesting thing coming from this data is that the land claimed by people under FRA, who have less than 5 bigha land holding, is slightly more than the land holding they have. It means the dependence of these people on claimed land slightly more than the legal holding they have.

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 a greater number of claims received from SC community in comparison to its share in total population, debunking another bureaucratic claim that the Act is making the poor poorer.

5. 'Forests will be destroyed and new encroachments will be encouraged if FRA is implemented'

Worldwide research has shown that the best practices of forest conservation exist amongst forest dependent communities. In neighbouring Uttarakhand, there is the example of Van Panchayats, village forests, owned and managed by the communities which are in better health than reserved forests (under forest department). It is only through strengthening the forest based livelihood of communities' dependent on it that conservation can be ensured and the FRA, 2006 is based on this principle which is mentioned in the preamble of the Act. It is clear in the act that this is not land distribution law. This law is only meant to address the past anomalies caused due to unjust forest laws and incomplete processes of declaring forests. Within the FRA there are various checks and balances in the form of various committees formed at different levels, verification process and grievance redressal mechanism at all levels. 13th December 2005 is the cut-off date for the claims to be addressed under the Act.

We would appeal to the Committee to urgently consider following suggestions for the just and speedy implementation of the Act in Himachal-

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 a 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 to the MOTA letter (F.No.23011/11/2013-FRA) dated

14/12/2015 both processes 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.

Withdrawal of 'Nil' or 'Zero Claims' certificates: 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 the 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.

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 the 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. Provision of documents by the SDLC for ‘documentary evidence’ in claim filing process:

As per the provisions of the FRA it is the responsibility of the Sub Divisional Committee to provide

all the documents necessary for filling up the claim forms. However, it is unfortunate that the SDLCs have not been proactive on this front and the FRC members are left to run around looking for documents. In Sirmaur, these documents (Like Wajib Ul Arj and Faisla -e-Janglat are in Urdu and Persian and FRC members are being asked to facilitate the translation of the documents. This has stalled and derailed the claim filing process in many cases.

9. 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.

10. Regular SLMC meetings and reporting to MoTA

The State Level Monitoring Committee should carry out its meetings once in 3 months and monitor the implementation status. However, the HP SLMC has not just been irregular with SLMC meetings but for the last two years not reported to the country level nodal agency - Ministry of Tribal affairs about the status of the claims pending at various levels.

On 6 July 2021 Ministry of Tribal Affairs and Ministry of Environment, Forest and Climate Change issued a joint letter to all states urging to implement FRA in speedy manner. The letter specifically urges the forest department officials on the ground to co-operate in the claim filing process. This needs to be perused and instructions issued accordingly (**Annexure 4: Joint letter issued by MoEFCC and MoTA**).

We hope that the committee will treat these issues as urgent and will recommend the proper implementation of this legislation in the interest of the forest dependent communities of Himachal Pradesh.

Thanking you,

Yours Sincerely

Prakash Bhandari and Manshi Asher

Himdhara Environment Research and Action Collective, Palampur Himachal Pradesh