

PLACING FRA ON THE POLITICAL AGENDA

A note for political parties and the electorate/voters of the Himachal Pradesh

November 2022

Prepared by
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Himachal Pradesh
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Placing FRA on the political agenda: A note for parties and the electorate/voters

75 years post independence and 51 years after declaration of statehood for Himachal Pradesh, the people of Himachal Pradesh will vote for the 14th Legislative Assembly elections on 12th of November, 2022. **Key Challenges in the state on the electoral agenda**

1. **Lack of access to basic welfare:** With a 90% rural population residing mostly in mountainous terrain, it is necessary to have a road to connect villages with basic welfare facilities. According to the 2022 statistics of Himachal Pradesh Public Works Department, 21% of the villages Village Connectivity Public Works Department, Government of Himachal Pradesh, India in the state are not connected by road¹.
2. **Unemployment:** According to the current statistics, Himachal Pradesh is the state with the fourth highest unemployment rate in the entire country. According to the Labor and Employment Department of Himachal Pradesh, the number of registered unemployed youth in the state is 8,77,507 (data as on March 31, 2022), leaving more than 12% of the people in the state without employment².
3. **Weakening livelihood base:** With limited opportunities for expansion of large-scale manufacturing, land-based livelihoods are central to the mountain state's economy. Agriculture, horticulture & livestock rearing currently contributes to 9.6% of the GSDP and more importantly 60 to 70% of the workforce of the state is engaged in agriculture and allied livelihoods³. Though the contribution of agriculture & allied livelihoods has declined over the years there is a substantial chunk of the rural population that depends on farms and forests for their livelihood needs.
4. **Environmental Crisis:** The most recent challenge that has emerged in the last two decades is environmental degradation, the climate crisis and related disasters. More than 1,550 people have lost their lives and government property worth ₹6,537.39 crore was destroyed in the monsoons in the last five years in Himachal Pradesh⁴.

Introducing the Forest Rights Act 2006

The Forest Rights Act is a law passed in the Indian Parliament in 2006 after popular demand from across the country. This act serves three important needs of populations that reside in and around forest areas

1. **Strengthening and supporting Livelihoods by**
 - a) legal recognition of right to forest land under occupation for agriculture and habitation (prior to cut off date of 13th December 2005)
 - b) legal recognition of rights to forest land for community uses - fuelwood, fodder, medicinal plants, timber etc
2. **Support local welfare development** by decentralizing and easing the process of forest diversion process for transfer of forest land for village road construction, panchayat bhawans, schools, health centers, anganwadis etc
3. **Support community based forest conservation** by giving the community the responsibility and rights for management and protection of forest resources

In a predominantly rural State like Himachal Pradesh where 2/3rd of its geographical area is categorized as forest land it should not be difficult to estimate the dependence of local populations on forests for their survival and livelihood purposes.

Where does the Forest Rights Act 2006 come into the political picture?

People's Issues and Hurdles	Rights & Benefits under FRA
<p>Issue: Access to basic services for village welfare and development - village roads, schools, aangan wadis, health centers, panchayat bhavans etc</p> <p>Hurdle: Non-availability of land for constructing local welfare infrastructure since maximum area classified 'forest' with strict central laws</p> <p>Tedious cumbersome centralised process of forest land transfer under Forest Conservation Act</p> <p>Years of delay causing lapses in funds for services</p>	<p>Section 3(2) of FRA decentralises forest land transfer process for 13 types of village development activities</p> <p>Rights to village Gram Sabha to provide consent to diversion of less than 1 hectare of forest land (involving felling of not more than 75 trees)</p> <p>More than 1959 cases (RTI data) have been approved under this provision - maximum for village link roads and schools since 2012 to 2019.</p> <p>Political candidates in Nachan - Seraj, Kinnaur and Theog put this section to use and reaped political benefits</p>
<p>Issue: Lack of tenure/ ownership over land under occupation for habitation & agriculture</p> <p>Hurdle: 70% of the farmers are marginal with small land holdings, thousands of near landless families, mostly Scheduled Castes</p> <p>Non-availability of land after strict forest laws made allocation of land for cultivation/habitation impossible</p> <p>Unfinished land reforms due to forest laws. Landless people & farmers who got or were to get land under nautor rules were not able to get titles. Lakhs of cases of 'najayaz kabza' in revenue records</p> <p>Threat of eviction and endless court battles: There are 11243 cases of illegal encroachment registered in different courts in Himachal (See district wise break up Annexure - 1)</p> <p>State's regularisation policies and promises failed due to 'central forest laws'</p>	<p>Section 3(1) of FRA allows recognition of individual rights over forest land for agriculture and habitation for 'bonafide livelihood' needs (not just for subsistence purposes but also for earning an income).</p> <p>Section 4(5) of the FRA 2006 debars eviction of forest dwelling scheduled tribes or other OTFDs until the settlement of their forest rights has been carried out.</p> <p>Demand for Individual Forest Rights (IFR) picked up in the tribal areas of the state - Kinnaur & Lahaul Spiti. However, non-tribals are eligible to file claims under the category of 'Other Traditional Forest Dwellers'.</p> <p>So far only 3000 IFR claims have been filed across the state of which 129 titles have been distributed - in Chamba and Lahaul Spiti⁵</p> <p>Most recently over 300 such IFR cases were approved in Kinnaur due to a sustained people's campaign over the last 5 years .</p>

<p>Issue: Loss of access to common forest land impacting livelihoods & environment</p> <p>Hurdle: Forest Settlement process in Himachal provided communities' access to use forests but these are 'privileges and concessions' they could be taken away anytime</p> <p>Forest Conservation process allowed the 'diversion' of forests for large development projects by displacing these rights</p> <p>In National Park and Wildlife Sanctuary areas community use for fuelwood, fodder, grass, severely restricted</p> <p>Himachal has more than 1.5 lakhs pastoral families of Gaddis and Gujjars and medicinal plant collectors who are directly dependent on forest land for livelihood whose access to forest land is precarious</p> <p>The forest wealth of Himachal Pradesh is known for its diversity, so minor forest produce can be beneficial for employment generation</p> <p>There is an urgent need for forest protection measures in view of the Climate crisis – Community forest management and conservation approach is needed</p>	<p>Section 3(1) of the FRA includes 13 types of community forest rights (CFR) from forest land including grazing, fodder, fuelwood, medicinal plants, cultural and spiritual uses</p> <p>Section 3(1)(i) of the Forest Rights Act 2006 provides Community Forest Resource Rights (CFRR) under which the rights to protect, manage and conserve forest resources are recognized.</p> <p>The Forest Rights Act also gives the right to the forest dependents to collect and sell the products obtained from the forests</p> <p>By 2016 a total of 17503 Forest Rights Committees have been formed in every revenue village in the state to carry out the process claim filing at the gram sabha level⁵</p> <p>Of the 17503 virtually each one has rightholders (<i>bartandaars</i>) and these villages are eligible to claim CFRs under this law</p> <p>Till date only 275 CFR claims have been filed from Himachal of which only 35 have been given titles ⁶</p>
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Examining the Scope/Potential for FRA in Himachal Vidhan Sabha 2022 elections

15 years after the implementation of the Forest Rights Act in the country, Himachal Pradesh stands at the bottom of the list in implementation. Whereas, in states like Orissa, Madhya Pradesh, Maharashtra, Gujarat and Karnataka lakhs of claims have been recognised under this Act. The table below shows the status of FRA claims in the state ⁶.

No. of FRA claims filed upto 30.06.2022			No. of FRA Titles Distributed upto 30.06.2022		
IFR	CFR	Total	IFR	CFR	Total
2746	275	3021	129	35	164

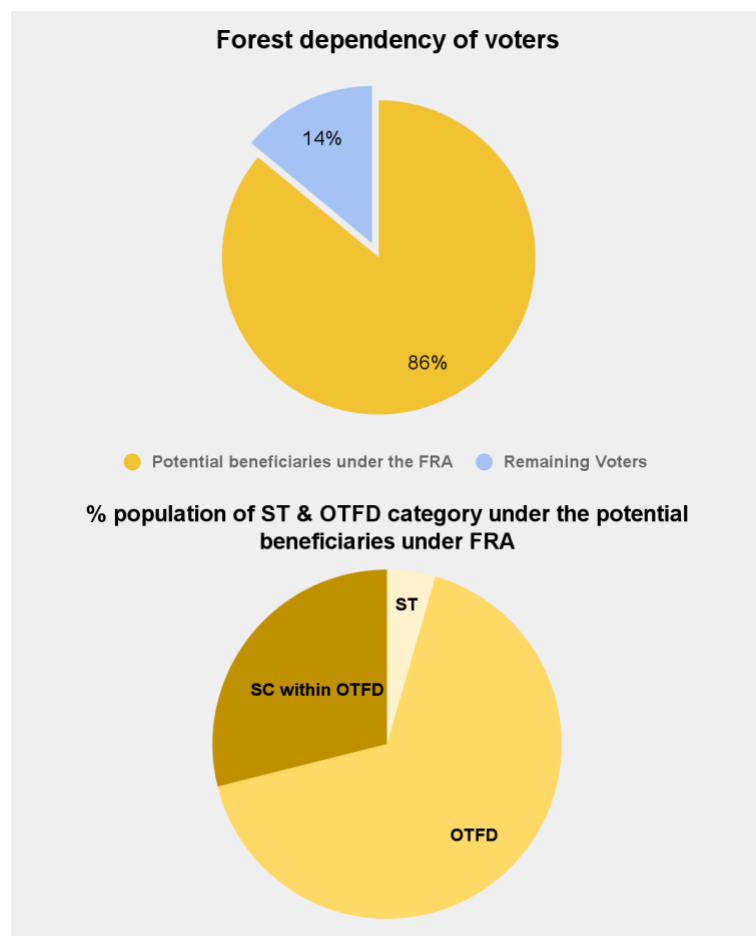
Successive state governments in Himachal have shown no political will in recognising community and individual forest rights claims. FRA implementation in Himachal remains limited to the implementation of section 3(2) of the Act which is for development activities.

While in December 2018 the promise to implement the act in mission mode was made in the Vidhan Sabha by the incumbent government, there has been little progress since then.

The issues presented in the above sections are going to prove to be a challenge for the democratic government to be formed in the upcoming elections. It is important for any political candidate to understand that promises around strengthening livelihoods or village infrastructure in Himachal will hit a roadblock in the absence of an understanding of forest land related laws, especially the FRA. In the state assembly elections of Chhattisgarh, Jharkhand, Maharashtra, Madhya Pradesh and Uttarakhand, forest rights became a major issue and FRA was even included in the manifestos of political parties.

Below we provide a glance of the potential of Forest Rights Act, 2006 for Himachal Pradesh in the context of the upcoming Vidhan Sabha elections.

This document is an effort to sensitize political parties, candidates and the electorate on the significance of recognition of forest rights, as a political and economic issue in the state.



An estimate arrived at with the help of the census of India (year 2011) and data from the 2017 ECI data⁸ to establish the forest dependency of the voters¹ shows that out of the total population of about 70 lacs, atleast 86% are potential beneficiaries under the FRA 2006. Of these potential beneficiaries approximately 5.43% are in the category of Scheduled Tribes and 80.64% would fall under the category of OTFDs under FRA. Within the OTFD category more than a third of the population would be *Dalit* (Scheduled Castes) (refer to online google sheet in reference 9, for more details).

Of the 55.9 lac electors (listed voters in 2022) in the state atleast, 70% electors are potential claimants under FRA.

The individual, community and development rights of these voters reside on 26309.31 Sq Kms of forest land i.e approximately 71% (minimum potential) area officially classified as 'forest' in Himachal

¹To conduct this analysis 2011 village census data and 2017 electoral data is used and it does not include urban census data which constitute around 10% of the current total population. The current data is mostly showing forest area within revenue villages, but there might be a good amount of forest outside that falls under CFR (GIS technology can be used to assess this information). Therefore, a low population and forest area is estimated which in 2022, could be more by at least 10%.

Pradesh. This includes all forest land of any description (including Undemarcated Protected Forests, Demarcated Protected Forests, Reserved Forests, shamlaat, charagah, wasteland, sanctuaries, national parks etc).

As per our estimate total of 17096 villages (around 95% of the villages in the State) and their Gram Sabhas are eligible² and remain to be recognized for CFR under the act. However, since 17503 Forest Rights Committees have been constituted, we can safely assume that most of these will have resident right holders.

While community rights are critical for day to day livelihoods these have become issues in regions dominated by pastoral populations, where there is some displacement of forest access and rights due to large infrastructure projects and where people are aware of the provisions of the law which give gram sabhas powers.

So far the demand for IFR and development rights has dominated in the state. For the tribal areas as well the most marginal land holders amongst the OTFDs, it is the individual rights that are perceived as important. It is a bit difficult to analyze IFR potential for different districts and constituencies due to discrepancies present in the data (on forest land under private occupation) available.

RTI data collected on encroachments on the forest land registered as “*nazayaz kabza*” in the revenue records of revenue settlement is presented below. **The figures here are small if compared to the total number of claimants who applied under the state government 2002 land regularization policy which is more than 1.5 lakhs and the landless families whose nautor allotments lie in limbo.** The number of voters who can be benefited through recognition of CFR Rights by the virtue of residing in these villages is at least 39 lakhs, which constitute 77.92% of the total registered voters in 2017 elections (50.5 lakhs)

RTI Information: Potential Beneficiaries under Individual Forest Rights					
District	No of illegal encroachments (RTI data)	Estimated Population ³	Estimated Voters	Data received for tehsils	Total Tehsils (including up tehsils)
Sirmaur	796	3980	2587	8	13
Chamba	5930	29650	19273	6	11
Kangra	5817	29085	18905	4	30
Kinnaur	3693	18465	12002	5	6
Mandi	12120	60600	39390	13	27
Total	28356	64580	41977	36	87

There are 11242 cases of illegal encroachment registered in different courts in Himachal (**Annexure 1**). In Kinnaur district the settlement was carried out in the 80s at that time 3693

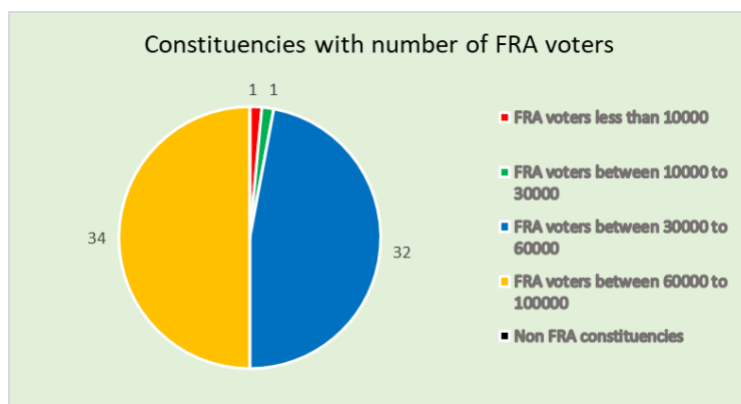
² **Eligibility condition:** Population data from all the unpopulated villages has been excluded from the analysis while counting the total number of villages per constituency. The forest area considered is the one which is under the boundary of the revenue village and that too only 70% of the total. Villages with zero forest area are considered eligible for CFR on the forest land of the adjacent village.

³ Estimated population is calculated using RTI data multiplied by 5 (for average family size) and Estimated voters are 65% of the estimated population.

“nazayaz kabza” were registered, which is 22.50%⁴ of the total households. In Spiti the settlement was carried out in 1989 at that time more than 1200 “nazayaz kabza” were registered which is almost 50% of the total household. In other districts the numbers are low because either the revenue settlement is incomplete like in the case of Sirmaur district or the settlement is very old like in Chamba and Mandi district the settlement was initiated in the fifties. From this it can be deduced that a substantial number of electoral voters are eligible for IFR claims in Himachal.

If we look at the constituency wise distribution, we find that voters who are potential FRA claimants exist in almost all and in large numbers (between 60000 to 1 lac) in 34 of the 68 constituencies

(refer to figure). These constituencies are spread across the districts from Chamba, Kangra, Kullu, Mandi, Hamirpur, Una, Bilaspur, Solan upto Sirmaur.



Importance of Village Welfare Development rights

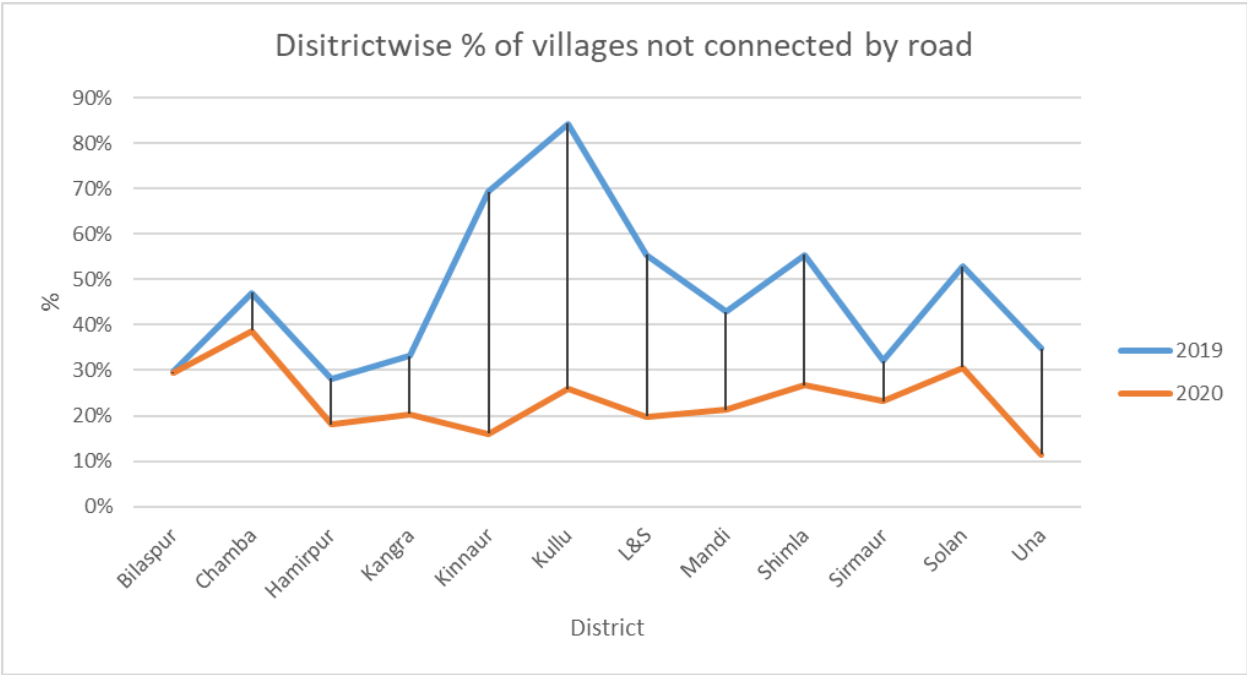
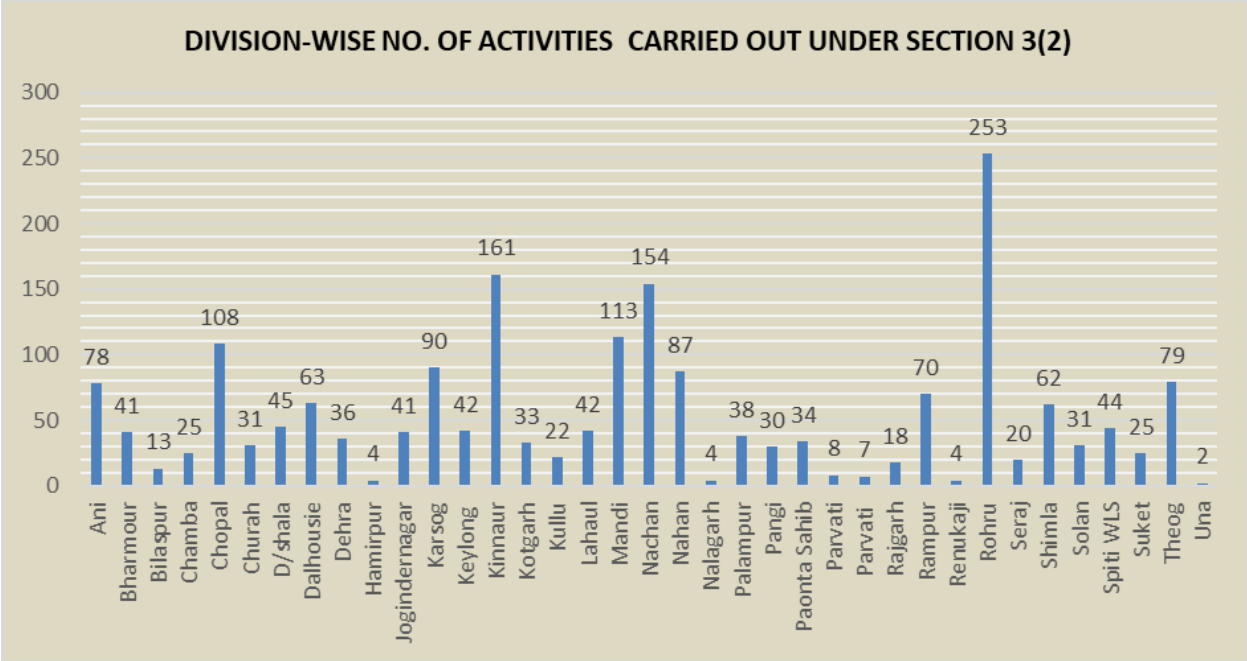
Section 3(2) of the FRA 2006 recognises rights of the Gram Sabhas to provide consent to diversion of less than 1 hectare of forest land for small village development activities. This is a

provision that has been well implemented in the state - because of popular demand. The number of activities carried out under it upto 2019 is in itself a statement on the importance and need of its implementation which is surely something any political party can benefit from. The table and chart below is based on the RTI data received from 41 Forest Divisions (out of a total 45) including 5 wildlife centuries. A detailed report on the importance of Section 3(2) is shared in the link below (7).

Activity wise Forest land diverted under section 3(2) upto 2019

Development Activities	Count of Activity	Forest Area diverted activity wise (ha.)
Animal Husbandry	17	1.02
Community Centres	148	17.11
Electricity Lines	20	5.66
Fair Price Shops	6	0.20
Health Centres	71	11.29
Non-conventional Energy	1	0.11
Road	1423	779.49
School	163	39.94
Sewage	3	0.40
Training Centres	26	13.18
Water Supply Schemes	81	19.17
Total	1959	887.56

⁴ 16439 household in Kinnaur district in 1991 census



In 2019 there were 41% villages in Himachal which were not connected by the road and this reduced to 21% of total villages in 2022¹⁰ .

Recommendations for political parties and candidates

1. **Implementation of the Forest Rights Act, 2006 in the State in mission mode:** Looking at the high dependency on the forests of the people and the communities of the State, It is high time that they must be recognized for their rights under FRA.
2. **Conduct training workshops to create awareness and bust myths related to FRA:** An exhaustive and inclusive campaign to create awareness and bust myths regarding FRA must be organized. These trainings must be organized for the official and non official members of District Level Committees (DLC) and Sub-Divisional Level Committees (SDLC) and also for the line officials of Revenue and Forest departments. From the people's side, Forest Rights Committees (FRC) along with the elective representatives must be trained and special cells must be opened in every sub division to help FRCs throughout the claim filing process.
3. **Clear instructions to all the members of DLC and SDLC to expedite the issuing of title/decision over the claims pending in a time bound manner under FRA:** In districts like Kangra, Lahaul and Spiti, Kinnaur, Sirmaur and Chamba, FRCs have submitted both individual and community claims under the FRA, 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.
4. **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).
5. **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.

6. **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.
7. **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.
8. **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.
9. **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.

10. 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 UI 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.

11. 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.

Endorse by:

Chamba Van Adhikar Manch, Chamba

Gujjar Kalayan Sabha, Chamba

Himlok Jagrati Manch, Kinnaur

Jila Van Adhikar Sangharsh Samiti, Kinnaur

Jispa Bandh Sangharsh Samiti, Lahaul Spiti

Lahaul Spiti Ekta Manch, Lahaul Spiti

Spiti Civil Society, Lahaul Spiti

Sirmaur Van Adhikar Manch, Sirmaur

Save Lahaul Spiti, Lahaul Spiti

Himdhara Environment Research and Action Collective, Himachal Pradesh

[Email: info@himdhara.org]

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Annexure 1: District wise data on 11242 cases of illegal encroachment for Himachal

District	Total cases (less than 10 bigha)	Forest Area encroached (in Bigha)
Bilaspur	468	944.64
Chamba	2090	3290.8
Hamirpur	40	9.98
Kangra	925	1328.08
Kinnaur	24	200.03
Kullu	3255	8100.06
Lahaul & Spiti	7	0.107
Mandi	883	1703.08
Shimla	3087	10389.78
Sirmour	392	548.57
Solan	65	32.47
Una	6	5.22
Total	11242	26552.81

Source: <http://hpforest.gov.in/encroachments>