

Memorandum

To
Shri Virbhadra Singh Ji,
Hon'ble Chief Minister,
Himachal Pradesh.

Date: 13. June 2016.

Subject: Memorandum from Himachal Van Adhikar Manch regarding the fair, just and speedy implementation of the FRA 2006, in the State of Himachal.

Respected Sir,

As you know there have been substantial delays as well as procedural contraventions in the implementation of a critical legislation like the FRA 2006 in the state of HP. In this memorandum we, as members of an autonomous state level forum, "Himachal Van Adhikar Manch", formed to advocate for the proper implementation of FRAm2006, would like to put forth the following demands:

- 1. To Ensure Formation of FRCs as mentioned in Rule 2A of FRA, 2006 and in letter of Commissioner Tribal Development Department dated 26th August, 2013:** The Government has initiated the process of constitution and reconstitution of FRCs for filing of fresh claims in compliance with the procedure under the FRA Rule and as per the affidavit filed by the Himachal state government in the Supreme Court of India. In this regard we appeal that considering that many of the FRCs which were formed earlier were in contravention to the requirements of the Act; the Government should take immediate steps to form new FRCs as per FRA Rules and instructions issued. (Annexure -I & II)
- 2. Issuance of titles under FRA, 2006:** The FRCs which have been formed according to FRA Rule 2A and 3(1) have submitted their claims through gram Sabha to SDLCs. These SDLCs and DLCs should be pushed to start examining the

pending claims and issuing titles, as the verification process is completed under the provision of the Act.

- 3. Training and information dissemination:** It is the responsibility of the State Government to provide all necessary information and resource materials related to the Act and its procedural aspects to all FRCs and gram sabha members. We demand that the state government conducts the required trainings for the dissemination of all relevant information and resource material at the earliest. It has been observed that vulnerable sections of Himachal which are dependent on minor forest produce like patta making and collection of medicinal plants etc for their livelihood: viz., migratory communities like Gaddis, Gujjars and non tribal pastoral communities and also marginalised Dalit communities to name but a few are not able to file their claims under this Act due to lack of information and non availability of forms. We appeal that training programmes should include the concerns of these communities to make the implementation of FRA, 2006 inclusive.
- 4. Training of SDLC and DLC members:** Given that the members of SDLC and DLCs have newly elected representative, intensive training should be conducted for the members of SDLC and DLCs as per the modules prepared by the UNDP in Nov 2012 for the Ministry of Tribal Affairs. In each training the number of participants/members should not be more than 30 in order to ensure quality participation and outcome.
- 5. Withdrawal of guidelines Issued by the Forest department related to eligibility of claimants to file claims under FRA 2006:-** After the detailed perusal of the minutes of all the state level monitoring committee meetings held between 2008 and 2015, we observed that the spirit of the act has been misconceived many time and following are the discrepancies upon which clarification and rectification should be issued: (Annexure III).

- 6. Publication of FAQs prepared for Himachal Pradesh by UNDP:** An interaction between HP official and non official personnel involved in the FRA implementation process and the UNDP officials was previously held in the State. On the basis of this, the FAQs were then prepared by the UNDP in November 2015, specifically for the state of HP. These have not been published yet. We demand that those FAQs prepared by the UNDP be duly published and disseminated by the state government.
- 7. Formation of an FRA Cell -** For the immediate and constant dissemination of information, clarification and processing of all claims (be they individual, community, community forest resources, developmental), redressal of grievance by community members and any official related to the implementation of the Act, FRA cells should be formed at all the sub-divisional and district levels of the State. Financial assistance may be granted for the Cell's activities.
- 8. Withdrawal of the eligibility criteria regarding the filing of claims under FRA 2006:** The eligibility criteria which was issued by the Forest department and also discussed and accepted by the SLMC in its second meeting held on 11.11.2009 is invalid as per the act. In its 5th meeting, the SLMC, (point 6 of attached minutes) recommended that the same be taken up by the Cabinet for intervention, but this issue has not thereafter been discussed by the Cabinet. We request that the matter be put fort to the Cabinet and directions for withdrawal be issued as early as possible. The forest dept had also set a 7 point criteria (outlined duly in Pt 6 of minutes attached), also in contravention of the FRA.
- 9. To file claims of pastoral communities,** the SLMC has decided that only claims of permit holders of Himachali Gujjar, Gaddi and Kinnaura tribes will be accepted under the FRA 2006 thereby excluding the whole range of shepherd and artisan and Dalit communities which do not belong to these groups but are equally and totally dependent upon their forest resources. The Act clearly mentions criteria for eligibility in section 3, and these cannot be altered or diluted and such directions are in contravention of the act.

10. **Withdrawal of letter dated 19th June 2014 by the Principal Secretary (Forests)** – In contravention to the advisories issued by the MOTA and MoEF 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 issued templates for recommendations/ consent to all FRCs, SDLCs and DLCs dated 19 June 2014 which should be immediately withdrawn. (Annexure IV). Also, the Forest department has no authority to issue guidelines for implementation of the Act as the nodal agency is the Tribal Development Department.

11.

Processing of developmental claims/rights under section 3 (2) of the Act: As per Addl. Chief Secretary (Forests) letter dated 17th February 2016, the DFOs should be informed about the provisions under this section and be instructed to grant approval to the claims made by the user agencies after consent of the gram sabhas under section 3(2) of the FRA, 2006. (Annexure V). The State has issued clear instruction to DFOs with regard to development activities on forest land under sub section 2 of section 3 of FRA, 2006 . These instructions are not being accepted nor being implemented by the concerned DFOs. It is desired that those contravening this instruction be duly penalised and ordered to launch the implementation process on a war footing.

12.

The issue of Traditional Other Forest Dwellers: The majority of HP's population is non-tribal but equally dependent on forest lands for bona fide livelihood needs. Instead of asking every individual claimant to prove 75 years of residence in the area, the state govt should issue a directive that all bona fide residents of HP should be considered as OTFDs, with the final approval of their eligibility resting with the gram sabha. This applies to all claims.

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

Thanking you,

Yours Sincerely

Akshay

Akshay Jasrotia

Adhoc State Convener Himachal Van Adhikar Manch . And

1. Kuldeep Verma, People's Action for People's Need, Sirmour
2. Sukh Dev Vishwapremi, People's Campaign for Socio-Economic Equality, Palampur
3. Akshay Jasrotia, President-Kisan Sabha Committee, Baijnath
4. Nandlal Sharma, Grameen Bhakra Visthapit Sanghatan, Bilaspur
5. Vidya Negi, President, Mahila Congress Committee, Kullu
6. Sushila Negi, State President, Mahila Congress
7. Prakash Bandhari, Himdhara, Palampur
8. Hassan Bhatia, General Secretary, Akhil Bharti Gujjar Maha Sabha- H.P., Chamba
9. Neeraj Maniktala, Advocate, HighCourt, Shimla
10. Mahima Negi Chauhan, Advocate, Secretary, Legal Cell, Himachal Congress, Shimla
11. Archana Phool, Press Correspondent, Shimla
12. Chetan Sharma, PAHAD, Karsog
13. Kuldeep Singh Tanwar, State President Himachal Kisan Sabha
14. Jianand Sharma, Himachal Gyan Vigyan Samiti, Shimla
15. Uma Mahajan, Shimla
16. Reena Singh, All India Democratic Women's Association, H.P.
17. Meera Sharma, Secretary, Sangam Environment Awareness Society, Shimla
18. Tanveer Kazi, Action Aid
19. Kankana, Tata Institute of Social Sciences, Guwahati
20. Lal Chand Katoch, Jan Jagran Evam Vikas Sanshta. Seri. Kullu.
21. Munish Rana Ji, president, Pangi Welfare Association Chamba.
22. Pawan Purohit, Dharamsala.
23. Prem Sagar, ex member, Kangra Zila Parishad.

Attachments:

Annexure I: Affidavit by CS in SC of India

Page 5 of 6

Annexure II: Letter by Tribal Development Commissioner Himachal.

Annexure III: SLMC Proceedings

Annexure IV: Letter by ACS forest regarding issuing of NOC for FRA compliance

Annexure V: Letter by ACS forest procedure of diverting forest land under section 3(2) of FRA

CC:

- ✓ Secretary, Ministry of Tribal Affairs, Government of India
2. Chairperson, SLMC cum Chief Secretary of H.P., Shimla
3. Commissioner, Tribal Development, Government of H.P., Shimla
4. ACS Forest, Government of H.P., Shimla

