

To,

Shri Virbhadra Singh,

Chief Minister, Himachal Pradesh

Subject: Regarding issue of titles on forest land under occupations in Himachal Pradesh using the provisions of the Forest Rights Act 2006

Respected Shri Virbhadra Singh Ji,

We, the members of Himachal Van Adhikar Manch, have seen the news reports published in various news papers regarding the State Government's decision to bring about a legislation to protect the farmers who have less than 10 bigha of encroachment on forest land through regularisation of their occupation.

In this regard we would like to raise the following very important concerns:

- 1. Hindrance posed by the Forest Conservation Act 1980 (FCA) and the failure of earlier attempts at similar legislations and FRA 2006:** It is very important to understand the reason why earlier attempts made at regularisation of forest land "occupations" by communities have failed. Forest conservation laws in the form of the Wildlife Protection Act 1972, and the Forest Conservation Act (FCA) 1980, were in place, thereby severely restricting access and ownership of forest dwelling communities to the forests/ forest lands in and around which they were living. As per the FCA, diversion of any forest land for non-forestry activities cannot be done without the permission of the Union Ministry of Environment, Forests and Climate Change. It was because of the FCA that 'regularisation' of any occupation of forest land became impossible through State policies (like Nautor) or any State Legislation which was always over-ridden by the provisions of the FCA.

In May 2002 the Union Ministry of Environment and Forests passed blanket orders directing all state forest departments to carry out evictions of illegal encroachments on forest lands based on Supreme Court orders in the Godhavarman case. At such a time, neither PESA nor any of the existing Government Resolutions (GRs) or circulars were strong enough to ensure the rights of the forest dwelling communities. It was in response to these mass evictions and the inability of State governments to provide relief to the forest dwelling communities across the country (including Himachal Pradesh) that a new Act, titled the "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act" was passed by the Indian Parliament led by the United Progressive Alliance in 2006. The key provision and objective of this Act is to recognise the claims, both individual and common, of local communities on the forest lands that they depend on for their

livelihoods. This Act was historical because it provided the much needed relief to those who had years of “occupations” on forest land for their day to day survival. It also provided an opportunity to recognise communities' rights and responsibility towards conservation and protection of forests. **Above all, it over rides all previous legislation (chapter III, FRA).**

The call by the Himachal Government in 2002 to 'regularise' forest occupation was untenable given this legal context. It is extremely unfortunate, that the High Court of Shimla, in its order related to eviction of encroachments on Forest Land (HC CWP no:1028/2002 Punam Gupta and Haridesh Singh vs State and others) has used the affidavits filed by the families (in 2002) who had occupation of forest land, to carry out the current eviction drive. The inability of the State Government to protect these interests of the people, has led to a loss of public trust vis a vis the matter of forest land regularisation.

In this context Forest Right Act, 2006 is the one and only option and opportunity for the government to protect the interests of those dependent on forest land for their livelihoods. Under the provisions of the FRA 2006, the government can recognise valid and legally tenable individual claims on forest land.

2. Implementation of FRA 2006 by other states:

States	No. of Titles and Forest land distributed upto	
Andhra Pradesh	83,874	1,98,633.00
Assam	35,407	77,609.17
Chhattisgarh	3,47,789	7,41,318.22
Gujarat	73,163	1,16,119.00
Himachal Pradesh	238	0.35
Jharkhand	46,772	97,830.69
Kerala	24,599	33,018.12
Madhya Pradesh	2,05,843	21,10,991.87
Maharashtra	1,06,063	2,31,421.21
Odisha	3,83,366	5,83,886.50
Rajasthan	35,759	54,356.89
Telangana	99,486	8,18,090.52

Tripura	1,24,541	4,34,119.30
Uttar Pradesh	17,712	1,39,625.46
West Bengal	43,444	20,404.60

(Status report on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 for the period ending 31st July, 2016)

In the country many state governments have implemented this Act and issued both individual and community titles under FRA 2006. As per the information collected till 31st July, 2016, 41,82,806 claims (40,72,241 individual and 1,10,565 community claims) have been filed and 16,84,627 titles (16,40,160 individual and 44,467 community claims) have been distributed. In Chhattisgarh more than 3,47,789 individual titles have been issued for an area 7,41,318.22 acres of forest land. In case of Maharashtra around 1,06,063 individuals titles have been issued for an area of 13,92,644.78 acres, Madhya Pradesh, 2,05,843 individual titles for 21,10,991.87 acres. Even in a developed state like Kerala where forest area is 11309.74 sq kms less than Himachal there also 24,599 individual titles have been issued for 33,018.12 acres of forest land. 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 regularisation policy of Himachal Government are possible beneficiary under this Act, there is a huge scope for the implementation of the Act. It is unfortunate that Himachal has lagged behind in the implementation of this Act so far.

3. **Why Forest Settlement is not a substitute for FRA 2006 & An opportunity for 'inclusive development':** It is very critical that the Himachal Government recognise that the Forest Settlement process in Himachal was an important exercise to provide communities access to use forests but was inadequate to ensure their rights. These were 'privileges and concessions' that could be taken away anytime and further these did not have any space for regularisation of individual use. The Union Ministry of Tribal Affairs has issued a clear clarification (Annexure 1) 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.

The Forest Rights Act 2006 provides ownership to the community over minor forest produce such as fodder, fuel wood, medicinal plant and small timbers etc, Recognising these rights will instil the feeling of ownership over forests in communities, which will lead to protection and conservation of forest resources and not the opposite. The misconception has been spread across Himachal that FRA

2006 will hinder the forest diversion for development activities. This is a false assumption. The Act provides individual and community ownership titles over the usage of forest land. These rights will have to be acquired through due process which involves the community. **We believe that by implementation of the Act the people will also be part of the development of the state and development will be more inclusive and democratic in nature, a principle that your party has always stood by.**

4. Removal of obstacles to FRA implementation in Himachal & Need for clear instructions of the Government to implement the FRA 2006:

In order to avoid any obstacles in developmental activities at the village level your office issued clear instructions for implementation of section 3(2) of the FRA 2006, regarding forest diversion for development activities, which has eased the process of diversion of forest land for such activities. **Now, there is a need for a similar kind of instruction to implement the section 3 (1) of the Act so that communities can get both community and individual titles. Through this the problem of the farmers who have encroachment on less than 10 bigha of forest land will also be resolved.**

We appeal to you to intervene and ensure the speedy implementation of the Forest Rights Act 2006 in order to preserve and strengthen the faith people of this state have in your government.

With thanks and sincere regards,

Yours faithfully,

Akshay Jasrotia, Coordinator

Van Adhikar Manch.

CC: Hon'ble Forest Minister, HP Govt.

Chief Secretary, HP Govt.

Forest Secretary, HP Govt.