

## MoEF/MoTA Committee on Forest Rights Act

### Implementation of Forest Rights Act in Himachal Pradesh Report of field visit, 28-31<sup>st</sup> July 2010

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**Note: This report is written for the purposes of the Committee's ongoing work; any views contained in this are not necessarily those of the entire Committee and are not to be taken as final views or recommendations by the Committee**

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The team visited following villages and districts

#### 28<sup>th</sup> July 2010

Public Consultation

1. Village Rishikesh, GP Dandi, Tehsil Jandutta, District Bilaspur
2. Village Dadibadi, Tehsil Jandutta
3. Jhanduta Thakur Dawara, Tehsil Jhanta, District Bilaspur
4. Public consultation with various civil society groups and social movements at Municipal Committee Hall Bilaspur, district Bilaspur

#### 29<sup>th</sup> July 2010

1. TattaPani, Tehsil Karsog, District Mandi
2. village Kotalu GP. Nanj, Tehsil Karsog Mandi
3. Tapri, District Kinnaur

#### 30<sup>th</sup> July 2010

1. Meeting at DC office Kinnaur with officials and civil society group
2. Large public gathering at Bachat Bhavan, Kinnaur, MLA Mr. Tejwant Singh, officials from TD, FD and RD were present.

**31<sup>st</sup> July 2010**

1. Public Consultation at Bachat Bhavan at Shimla : environmental groups, Himalayan Niti Abhiyan, acamedicians and other eminent citizens of Shimla
2. Meeting with Chief Secretary Ms. Rajwant Sandhu and other top officials at secretariat
3. Press conference at Secretariat

### **General Observations**

1. The status of implementation of the Act in the state is rather extremely poor. Till now as per the GOHP note not even a single title has been handed over to any claimants.
2. The geographical scope of the Act within the jurisdiction of the state of HP is interpreted wrongly. Accordingly, it was observed that the Act has not been implemented in whole of the state even after it has been enforced on 1<sup>st</sup> Jan 2008. There is general perception on the part of the government, that given the specific geographical condition of HP the Act cannot be applied to the whole of the State. The GOHP is implementing this act only in the tribal areas viz. Kinnaur, Lahul & Spiti and Pangi & Bharmour. These areas are also covered under PESA (Panchayat extension in Schedule Areas) Act 1996.
3. The Government of HP is also taking a plea for not implementing the Act due to a case filed in High Court by Ms Prehla Negi against implementation of the act contemplating wide scale encroachment if the Act is implemented. (The details given at the end of the report). However the case has been disposed off by HC directing the petitioner to approach the appropriate authority. The Tribal Department has also given a strong order saying in favor of implementation of FRA. A brief background to the case and the petitioner will not be out of place here. The petitioner is wife of a serving DFO, now serving in Rampur and had filed a claim of 50bigha of land in FRC, village Skiba, Panchayat Rispa, Tehsil Moorang, distt Kinnaur under FRA. The claim was rejected by FRC, this led the petitioner to approach HC to file a case against FRA implementation. **We have asked FRC to give the copy of rejection of this claim so that it can be attached with the report.**
4. The implementation of the Act, even in the tribal districts is rather in poor state. . Not only the Act has been variedly interpreted there is no proper training and awareness regarding the act in these districts.
5. The FRC's have not been formed properly, in many villages they are merely on papers and people are not aware what is the power of FRC and what task needs to be performed under this Act.
6. The FRC have been formed at Gram Panchayat level rather than village\_level as per the Act. There are around five to fifteen villages in one panchayat which are in long distances in hill areas. In such composition the gram sabha and FRC constituted are being dominated by the elected panchayat members. We found out in Kinnaur from FRC members that meetings have been convened even without completing the quorum. This confusion about forming FRC at Gram panchayat level comes from the rules of FRA, in

this regard there is no clarification either from the Central government and State government. The formation of FRC's has been arbitrarily done at the Panchayat level.

7. In many FRC's the *village Pradhan* or the elected member is the post holder of these FRC's.
8. No proper meeting of SDLC and DLC has been conducted.
9. The **State Level Monitoring Committee** has appointed sitting MLA's as members from ST. The MLA's are members of a political party who may not have an impartial view regarding the Act. The members should be non-partial and from forest dwelling community.
10. **Community rights** are completely overlooked. There is no understanding of these community rights at the State level. Though people have collected the old record known as **Wajib-ul-urz**, which is a document of record of rights existed before British period in Urdu. This record of rights mentions about all the rights such as timber for house construction, grazing rights, timber for making agricultural implements, grass for thatched roof, fodder, fuel wood, looping trees for cattle, Chirgoza and Kail dry leaves for bedding of cattles, wood for ceremonies, dry wood for dead etc . These rights are known as "**Bartandari Rights**" in HP. The issue of community rights came up very strongly in all the places and submission regarding these old records was made to committee members. In 1927 (according to Indian Forest Act) settlement **24 rights** were recorded. But over the years these rights have been transformed into concession. Submissions were made that all these rights should be granted under community rights.

The GoHP states that the record of rights has already been compiled since 1921, and rights have already been settled under the Forest Act 1927. The state authorities say that the HP Land Revenue Act is also applicable. Chapter IV of HP Land Revenue Act envisages that if there is any change in the record of rights, there is a detailed procedure for making new entries, variations, alterations, additions' in the record of rights. Thus there is a complete code, statutory enactment and rules and regulations pertaining to these rights especially in three tribal districts. The record of rights i.e individual and community which were earlier recorded in Wazib-ul-arj were finally reduced in the shape of Forest Settlement Report. The wajib-ul-arj document is available in Urdu (these documents were also submitted to committee). It is important that these documents need to be translated to find out the real status of rights before British annexed forest and rights of the people

10. In the case of FRA implementation GOHP is also giving lot of emphasis on the **individual rights rather than community rights**. Given the specific geographical condition of this state which has hilly terrain and 80% of its population dependent on forest for some or the other livelihood and domestic needs, the emphasis on community rights would have led to effective implementation of the Act. Since this act talks about mitigating the historical injustices the implementation process needs to go slow and should start from identifying and inviting claims of community rights and development rights than individual rights in the first phase. After the community rights being granted the process of individual rights could be started which will also check the illegal encroachments as envisaged by the state authorities.

## 11. Customary rights (TD rights)

The new Timber distribution rights (TD) policy made by the GOHP on April'2010 has been widely criticised by the forest dwelling communities. They have refused to accept the new TD rules that have been formed under the colonial act, Indian Forest Act (1927) that is against the spirit and usufruct rights of the people. There were submissions from all the districts where Central Panel visited that the TD rights should now be under PESA or FRA.

### **12. Eviction notices issued by Forest Department:**

In district Bilaspur, Tehsil Jhandotta around 2667 eviction notices have been issued to people by FD. These families were displaced due to Bhakhra dam construction from 1948 to 1963. The families have settled themselves in the nearby hills of the river basin. The oustees were given some land but in last five decades the families have increased and have settled in the forest areas nearby. The eviction notices have also been issued in Swarghat range, Nainadevi range, Ghumarvi range. The committee received list of 23 families who received eviction notice in Tehsil Jhandotta. They also submitted the copy of the eviction order and reply for the same. These families are saying that they had their community rights when the village was submerged due to construction of dam which should now be given back to them. The families are also demanding individual rights under FRA.

### **13. Encroachment issue**

There is a big debate on the issue of encroachment at the government level. The HC petition raising concern that this act might lead to more encroachment and illegal persons might also file the false claims has made the government to go slow in implementing this Act. In 2002 the then government issued a notice saying all the encroachments will be regularized and invited affidavits from such persons. These affidavits were invited from Sch V and non Sch V areas. However due to objection by FD on basis of Forest Conservation Act, 1980, govt did not pursue this matter further. The issue was politicized.

These families are mostly marginalized and landless who now needs to be covered in the second phase of land reform programme of the state besides giving them benefit under FRA. These lands are known as 'Nautor Land.' Officials maintain that these Nautor lands are different subject and cannot be covered under FRA. Whereas depositions made from all the districts to the Committee, maintained that all the lands which are not private lands have been declared as forest land, where people have settled in these forest lands due to various projects and policies of the government after independence. Dhumal government also brushed the issue of regularization under the carpet and the process was halted. Instead FIR was filed on those who submitted affidavits for regularization of encroachment. This issue is becoming a big cause of unrest in Bilaspur and Kinnaur districts especially among the Bakhra oustees. Hundreds of submissions were made by Bhakra oustees to the Central Panel individually demanding their rights to be settled.

### **14. The issue of OTFD in Bilaspur and Bakhra dam oustees**

Various concerns were raised by Bhakra dam oustees Distt. Bilaspur in relation to forest rights in front of Central Committee. These are very complicated issue that doesn't entirely come in the purview of FRA, instead State government needs to address this political issue at a larger level. The issue of community rights and individual rights inside the forest land are

the areas where FRA is applicable. The demand of land and community rights is an old one with Bhakra dam oustees. The construction of dam began in 1948 and completed in 1963. This dam submerged around 371 villages, displacing more than 36,000 people. It submerged 44,153 acres of land of which 23,863 acres were privately owned. During that period many displaced families settled in the forest areas of the upper region of the river basin. Many of these families were given meager lands for their survival, but majority of the displaced families were given barren and waste land as compensation. The displaced families settled in the forest area which was government land was declared as forest land in 1952. In last six decades the families of these oustees have expanded but GOHP has no land settlement policy to settle these families and grant them land. Since these families were termed as 'encroachers' by FD and state government, all their rights in the forest areas were also extinguished.

Due to growing unrest among the people GOHP, in 2002, announced that the land encroached by the poor people inside the forest areas will be regularized. Accordingly the GOHP invited affidavits from these populations but HC rejected this regularization process by applying FCA 1980. However, when BJP government again came into power in 2008, instead of regularization of the encroachments, the government used the information received from affidavits to serve eviction notices through FD in September 2009. In many cases FIR was also lodged on the encroachers.

In this area after the enactment of FRA, the forest dwelling communities are demanding that -

1. They should now be rehabilitated under this Act and FRA should be implemented in District Bilaspur as well.
2. The residents have also demanded that all their traditional rights in the forest areas as listed in wajib-ul-arz should be granted back to them through starting the process of implementation of FRA in the region.
3. Along with this all the development activities should be started according to 3(2) of the Act.
  
14. The issue of four panchayats Sloha, Makri, Nakrana and Bhakra were raised by the panchayat representative who are now inside the protected area of **Naina Devi National Park** which came into existence after 1980. Prior to the initial notification to constitute the NP these four panchayats, (who were Bhakhra dam villages oustees) were residing inside these forests. After the notification of National Park the residents of these panchayats too have been issued eviction notices. Their demand is that they should now be settled according to FRA. They are being harassed by FD which is also depriving them of development of that area. No process of FRA has been started as yet .
15. The **75 year limit for OTFD** was termed as **unconstitutional** by the residents of non tribal districts. The State of HP only came into existence in 1971, the State itself will not be able to produce the documents of 75yrs. Such cut off dates in newly formed States is not workable rather unconstitutional. It was recommended that cutoff should be reduced to one generation

## 16. Kinnaur (Schedule V area)

1. The total number of claims in Distt. Kinnaur till 30<sup>th</sup> June 2010  
Breakup of number of individual and community claims filed at Gram sabha level

| Forest Dwelling Scheduled Tribes                          | Numbers |
|---|---------|
| (A) Individual  |         |
| 1. Total no. of claims filed at GS level                  | 2507    |
| 2. claims recommended by GS to SDLC                       | 1254    |
| 3. claims rejected by GS                                  | -       |
| 4. No. of claims pending at GS                            | 1253    |
| (B) Community   |         |
| 1. No. of claims filed at GS                              | 48      |
| 2. claims recommended by GS to SDLC                       | 48      |
| 3. claims rejected by GS                                  | -       |
| 4. claims pending with GS                                 | -       |
| <b>OTHER TRADITIONAL FOREST DWELLERS</b>                  |         |
| No individual and community rights have been filed as yet |         |
|   |         |

Source : Tribal Department, Kinnaur

2. There is confusion regarding the interpretation of sec 2(c) of the Act “who primarily reside in forest and forest land”, there was contradiction between two clarificatory letters issued by TD and FD (GoHP). The clarification issued by MoTA, on this issue has been ignored. Even after the clarification from MoTA, the officials are misinterpreting this provision and issuing directions that only who are residing inside the forest area will be considered as “forest dwellers”. Villagers who are tribal, who are residing in revenue village and depend on forest for their bonafide needs are not considered under the category of “forest dwellers” and their claims have either been rejected or kept pending.
3. The identification in the form of ‘forest dwellers’ is necessary for those who are enjoying traditional rights from the forest. In this region also acquisition of land is taking place by big companies for various hydro projects such as Jaypee Company Ltd before the process of implementation of FRA is completed.
4. There are various guidelines issued by FD regarding who are eligible under this Act. Extra paper work such as putting riders of income tax payee, traders, businessman, have been included.
5. All the rejected or pending claims are decided by the officials and not FRC. FRC’s are not informed about these rejections or pending status. The claims rejected are still lying at SDLC. The implementation process of the Act is totally controlled by the officials.
6. There is no publication and distribution of copies of the Act and rules. When asked FRC’s president and members said they got one copy per FRC, but many said that copy of the act was not distributed.
7. The forms are being sold for Rs 2/- by the State govt violating the Rules of FRA clause no 6. However the State govt admitted its mistake and clarified that they will make these form freely available to the FRC’s.

## **17. Diversion of Forest Land**

### **(a) Case of DPF (Demarcated Protected Forest ) and Majhathal Sanctuary**

Consultations conducted in Tattapani, district Mandi, Shimla and Kinnaur with the representatives from various civil society groups, village elected members and residents registered serious concern over state govt policies of diverting the forest land for non forest purposes especially to the industries such as to M/s Lafarge India Private Limited. The GOHP has signed MoU during March 2007 with Lafarge to install Integrated Cement Plant (Cement 3.0 MTPA & Clinker 2.0MTPA) at village DPF (demarcated protected forest) and Captive Limestone Mine 3.0 MTPA, 800 ha, in village Alsindi, Tehsil Kargog, Distt Mandi. Out of this area around 750ha is a DPF and 50ha is private land. A 6km rope way will also be installed for transporting limestone. Limestone reserves are estimated to be about 200 million tones. All these limestone reserves are situated within 10km radius of the sanctuary. It was stated by people that despite the repeated protest registered by them in public hearing conducted by HP Pollution Board in Shimla dated 4<sup>th</sup> Dec 2008, MoEF, GOI has issued environment clearance vide letter no F.NO.J-11011/241/2007-IA (I) GOI dated 8<sup>th</sup> June 2009 in favour of M/S Lafarge India Cement Company. In this regard two appellants have challenged the environment clearance in the Hon'ble National Environment Appellate Authority, bhika Ji Kama Palace, New Delhi, within the prescribed limit, which was listed for final hearing on 13<sup>th</sup> July 2010 and Judgement/orders have been reserved by the Hon'ble NEAA, NewDelhi.

The other important factor stated by residents of this area was that the drilling operation was carried out by this company without NOC by State govt and MoEF from June 2007 to April 2009. There was lot of protest by the villagers for illegal drilling work carried out by Lafarge Company. The Company has made around 32 holes for experimentation and exploration of lime stone in this endangered area. They got order only on May 2009 to 2011. But villagers have not allowed the company to do the drilling work which is within 10km of the sanctuary area. In its clarification DFO, Distt Mandi said that such area was not in sanctuary and we had orders from above to conduct such drilling operations.

Villagers in their submissions said that the DPF has a dense forest wealth, medicinal plants, wild animals, wild life sanctuary, religious places and agricultural/horticultural lands owned by the local inhabitants. It is a thickly populated area where a Cement plant is not viable. Secondly, the forest lands of DPF Alsindi, Alyad, Prherdhar, Jankhuni and DPF Bagshar has now been denotified from DPF for mining sites, DPF Telehan, revenue village Telehan has been identified in the revised DPR for mining site and DPF Ghanger measuring 108ha and 2 ha private land has been identified for proposed plant area. There is a serious objection raised by residents to denotify these DPF for mining purposes and installation of Cement Plant very near to wild life sanctuary.

The disastrous impact of this Cement plant on environment and people has been submitted by Thalli Panchayat residents where 1382 bigha plant in DPF Ghanger is proposed to be installed:

- Soil erosion, the mud emanating from factory will silt the downstream areas that will lead to landless ness and people will become homeless.
- It is estimated that in 5 proposed sites of Cement Industry around 15 lakh trees will be clear felled which will violate the HC order of prohibition of felling of trees in HP.

- All drinking water streams will dry up and will drastically affect the agriculture and horticulture in the area of around 50km.
- All traditional rights enjoyed by the residents in the forest area will be extinguished and if the forest is vanished there will be no rights.
- Various diseases will occur due to silicosis and the industrial waste.
- Rivers will get polluted.
- The sanctuary and the DPF have endangered wild life and birds which will become extinct.

It was repeatedly mentioned by the residents that the contention behind non implementation of NFRA to promote the interest of the corporate sector by inviting them to promote industrialization in this fragile region. There is fear that FRA might create obstacles in acquisition of private and government lands.

### **(b) Case of diversion of Forest Land in Distt Kinnaur**

Serious cases regarding diversion of forest land to companies were brought in front of Central Panel in Distt Kinnaur, besides poor implementation of the act in this particular district. Kinnaur is situated in a very sensitive zone of Upper Himalayan region at the height of 7000 to 12000ft. It has total area of 6401 sq km that is also located at the seismic zone. The monsoons never reach above Wangtuk that is why this area is known as 'cold dessert.' Being such a sensitive area there are number of MoU's signed by the GoHP with various companies for development of hydro projects. First of all these hydroprojects are coming up in forest lands, secondly these hydro projects will completely destroy the ecosystem of the fragile Himalayan region and thirdly the livelihoods and environment will be completely degraded if such hydro projects are implemented in complete scale.

There are already four hydro electric projects viz. Nagthapa-Jhakri (1500MW), Sanjay project (120MW), Baspa-2(300Mw), Rukti(1.5Mw) in running condition, the projects already under construction are Karchum-Wangtu(1000Mw), Kashang-1 (66Mw),Shorang (100Mw), Tidong(100Mw). The projects about to start are Chango-Thangthang ( 140Mw), Thangthang-Khab(261Mw), Khab-Shyaso(1020Mw), Jangi-Topan(480Mw), Thopan-Pwari(480Mw), Shongthong-Karcham(402Mw), Tidong-2(60Mw). The other in pipeline are Shiyaso-Siplo(500Mw), Kshang-2(48Mw), Kshang-3(130Mw), Basapa-1(128), Ropa(60Mw).

In the construction of these hydro-electric projects there are serious concerns regarding FRA and other wider issues of environmental concerns. In order to complete these mega hydro-electric power projects various dams are coming up on river Satluj and Baspa that will lead to submergence of vast tracts of flora and fauna in the region, affecting people's rights over the forest to a large extent.

- These dams will completely change the climate of the hill region, the volume of water will increase hydrostatic pressure that might create frequent earth quakes.
- In order to pursue these hydro-electric projects various underground tunnels are being constructed to divert the river through these tunnels. For construction of these tunnels blasting is done that has made wild animals that are very sensitive to such sound. Out of fear they run helter skelter and fall from hill ridges or get drowned in river satluj. Many have died due to fear of these high intensity sounds.

- Majority of these projects are being constructed by Jaypee Group Limited, the construction of Karcham-Wangtu project will damage more than 12000 endangered variety of deodar trees. The company has illegally acquired around 400bigha of forest land, the construction of the tunnels are being done by violating all environmental standards.
- These illegal construction has resulted into damages to agriculture especially the food crops and apple, chirgoza crops in the region. There is water scarcity and the natural streams are drying up fast.
- The area is under the sch V yet the rules under PESA have not been formulated and the GOHP is allowing all the multinational corporations to violate the norms and violation of this particular Act.
- In Tidong-1 243 Mw hydro-electric power project Jaypee Cement Company has violated all environmental standards and destroyed thousands of endangered species of deodar and chirgoza trees.
- Representation made to the Central Panel expressed serious concern over the disastrous climatic impact on the fragile ecosystem of Himalayan region. It will result into more global warming and destruction of life and livelihoods of inhabitants of this entire region.

**NOTE : AFTER THE COMMITTEE VISIT, STATE GOVT SUBMITTED ITS REPORT TO HON'BLE HIGH COURT PETITION TO REVIEW THE VIABILITY OF THESE HYDRO ELECTRIC POWER PLANTS.**

Avay Shukla committee report submitted to the High Court of Himachal Pradesh. The committee had been set up by the HC taking suo moto notice to the forest wealth due to the construction of hydro projects in the state. The committee has recommended :

a. 'That the state govt. carry out basin level EIAs for all the river basins of the state, and till these are finalised, no more hydel projects should be allotted or, wherever allotted, their clearances should be withheld.'

b. ' ....some minimum riparian distance must be maintained between the tail race of the project and the intake of the next in order to enable the river to recharge itself and to continue to sustain life along its length. Until some expert body gives its advise this distance should be kept at 5 Kms. Projects that have not yet received clearances and which do not conform to this requirement should be put on hold until such time that this entire issue is fully examined and a proper policy framed.'

Interestingly, Avay Shukla is also one of the respondents in the case being the Additional Chief Secretary (Forests) of the state.

**THE REPORT HAS RECOMMENDED THAT MOST OF THESE HYDRO POWER PLANTS SHOULD BE CANCELLED AS MANY OF THEM HAVE NOT TAKEN FOREST CLEARANCE. ALSO SUCH PROJECTS WILL DRASTICALLY AFFECT THE SENSITIVE ECO-SYSTEM, LIVELIHOOD AND DESTROY THE ENTIRE REGION. THE REPORT BY STATE GOVT TO HC IS ATTACHED.**

### **( c ) Case of Renuka Dam**

- Proposed Renuka dam is expected to divert 900 hectare of forest land in Nahan-Ponta – Renuka-Rajgarh and Shimla forest divisions.
- The proposed project has around 65% of dense forest area.
- The private lands have more than 13 lakhs of trees that will be felled but NHPPC in its report has denied the existence of these trees.
- The project will acquire around 455 hectare of “shamlat forest.”In this forest also the counting of trees are not being done and fictitious report is being provided by the officials and state government.
- The Renuka sanctuary around 49 hectare is also being proposed to be diverted for this project. A case against this diversion is pending in HC, Shimla
- In this proposed project provisions of FCA, FRA and T. Godavarman order is being violated.

(Representation by the inhabitants of the project affected is attached with this report. Find the pdf file)

### **18. JFM, PFM, TD**

The JFM(Joint Forest Management), PFM ( Protected Forest Management), forest cooperatives operative in distt Kangra and TD rights should be brought under the purview of FRA. This was the strong recommendation made by the leading activists, organizations, civil society groups and village people.

### **19. Nomadic Tribes and critical role of FRA**

The nomadic tribes are scattered both in Sch V and non Sch V areas. The tribes being Vangujjars, Gaddi and Kinnaurs, all these tribes rear domestic animals and migrate to high altitude during summer seasons. They hold permits for grazing in various high altitude pastures even before British invaded this area. Due to squeezing forest areas, amounting pressures on these pastures, climatic changes, pressure of multiple projects in the area has affected their traditional migratory routes. Various pastures such as pasture of Chamoli distt was closed to the Vangujjar community after firing took place few years ago.

Regarding the implementation of FRA for the nomadic tribal population, the GOHP has not issued any clear instruction for these tribes to get benefit under this Act. Though State government has stated that they have done effective implementation of this Act in tribal districts of the State, But it was found by the Committee that in Distt Kinnaur, not even a single claim was invited from nomadic tribes. The authorities are not clear where nomadic tribes should file their claims as they are migrating in every six months. The tribes say that in their specific cases they have to file claims in both the areas of summer and winter. But this demand is not accepted by the authorities.

The nomadic tribe van gujjars residing in other districts such as Sirmour, Chamba have stated various atrocities and harassment on part of FD in these years. The act is not implemented in non Sch V areas hence the tribe in these districts are deprived of their rights amounting to historical injustice again. The FD is taking advantage of this situation and is trying to evict the Vangujjars from their traditional areas of forest pastures. Many cases of such atrocities were listed by the nomadic community members in their depositions.

## **20. The issues of Forest Governance, role of FD and conservation issues**

1. The residents of Distt. Bilaspur were very emotional on this issue. The forest fires are still being extinguished by the local people in lieu the locals use to enjoy certain rights from the forest areas. But all rights including TD rights have been stopped since 2006 in Jhanduta Tehsil and other districts as well.
2. The hill people economy is completely based on the forest hence the forest resources should be under the control of gramsabha.
3. People have strong feeling for conservation of forest resources. They articulated in their depositions that “ जंगल को हमेशा हमी लोगों ने आग से बचाया है, जंगल और गांव में हमी लोग रहते हैं। पहले हम लोग जंगलों को आग से बचाते थे अब जंगलों को कम्पनीयों से बचाना होगा।  
(Jungle ko hamesha humi logo ne aag se bachaya hai, jungle aur gaon mein hum log hi to rehte hai. Pehle hum log junglo ko aag se bachate the aab junglo ko company se bachana hoga)
4. FD has failed miserably in protecting the forest, the forest protection should be now under the gram sabhas and gram sabhas should be made part of the management of the forest. The people should decide which trees are environmentally viable.
5. villagers in Kinnaur has also filed community claims for river satluj, the inhabitants treat river Satluj as Holy Ganges.
6. FD blamed villagers and Vangujjars for destruction of forest whereas villagers say that it is the state policies and FD in connivance with the local mafias and contractors responsible for destruction of forest.
7. It came out clearly in the depositions that no clearance to big projects should be given without the consent of gramsabha.

### **Important quotes from local villagers**

सीता राम, ग्राम प्रधान, गीयाबोंग, जिला किन्नौर

‘ हमें इस पूरी व्यस्था पर कोई भरोसा नहीं है वनाधिकार कानून लागू नहीं हो सकता और अगर नौतोड़ की भूमि को नियमितिकरण नहीं किया गया तो कहीं यह इलाका भी छत्तीसगढ़ न बन जाये’ (hume is puri vyavastha par koi bharosa nahi hai, vanadhikar kanoon lagoo nahi ho sakta aur agar notor bhoomi ka niyamtikaran nahi kiya gaya to kahi yeh ilaka bhi chattisgarh na baan jaye)

### **Petition filed at HC Shimla against implementation of FRA**

One reason listed by the GOHP for delay in implementation the state is because of filing of petition by one Ms. Prehlad Negi of District Kinnaur urging the Hon’ble Court to put a stay in implementation as this act as it will lead to further encroachment. Ms Negi is a wife of a serving

DFO, who is now posted in Rampur, HP. In the civil writ petition no 3251 of 2009 the prayer made by Ms Negi is:

1. A writ in the nature of certiorari quashing the notification dated 30/06/2008, whereby, the provisions of Schedule Tribes and other Forest Dwellers ( Recognition of Forest Rights ) Act, 2006 and rules of the same act, have been put into operation in the State of HP as being illegal. Arbitrary, unconstitutional, cryptic and having implemented in contravention of the already existing laws.
2. To issue a writ in the nature of mandamus directing the GOHP and nodal agency Tribal Department to implement the provisions of 3(2) of the Act with immediate effect in the interest of justice.
3. The prayer was made to further stay the operation of impugned notification during the pendency of the present petition.
4. Further quashing the notification dated 7/07/2008 issued by Department of the Tribal Development in continuation of the notification dated 30/06/2008 for the implementation of FRA.

The Hon'ble Court in its order dated 10/09/2009 on CWP no. 3251 of 2009 said that "the petitioners have not made any representation to the statutory authorities before approaching this Court. It is always advisable for a person to make a representation to the statutory authority against the impugned order for the redressal of his grievance before approaching the Court in its writ jurisdiction." With these directions Hon'ble court disposed of the writ petition.

The Tribal Department of GOHP in its order dated 21/04/2010 issued strong directions after petitioner made representation to GOHP on 12/10/2010. It stated that :

"Since the Act has been enacted by the Parliament and is applicable to whole of the Indian Territory and as such the legality of the Act is questionable only before the competent court of law. The apprehensions of petitioner that encroachers will take advantage of the law are premature in the sense that not a single case has been decided by way of regularization of possession on forest land in all the tribal areas as yet."

Further the order stated:

1. These notifications have been issued under the provisions of the FRA, with a view to implement the provisions of this Act. These notifications have been issued in pursuance to the procedure laid down in this legislation and rules. There is no other way than to issue these notifications to comply with the provisions of the Act.
2. There are different committees prescribed under this Act viz. Gramsabha, Forest Rights Committees, Sub-divisional level Committees and District level Committees to look after the genuity of claims on eligible persons under the Act.
3. This is not re-recording of rights and only those left out 'if any' and those found eligible as per provision of this Act will get the benefits of this Act.
4. If any wrong applicant will take the benefit under this Act, there is appropriate mechanism available in the Revenue Deptt to rectify the same. It will be premature to predict that the implementation of the Act will lead to encroachments. It needs to be appreciated by every

one that mere claim does not entitle the claimants for land allotment. There are different levels of Committees for scrutinizing such claims where all relevant depts like Revenue, Forest, Tribal Development are represented.

The representation of Ms Prehla Negi with regard to non implementation of FRA and withdrawal of notification was rejected.

### **Recommendation**

There are various issues such as regularization of bhakra oustees, Nautor lands which are the issues of larger land reform programme or the issues of second phase of land reform programme that needs to be addressed by the State govt. There is one aspect of these settlement linked to FRA that can be looked into by the State government as all the government lands are now forest land. In the issue of Nautor lands the FRA could be considered in those cases below 20 bighas, where the poor families are settled in forest land.

- The second question is that whether Indian Forest Act 1927 is a “land reform act”? The state government in all its documents have reiterated constantly that the rights in the forest have been settled in 1927 and the other lands were settled according to HP Land Revenue Settlement Act 1952. This issue now needs to be seen through FRA, as FRA was creation of this faulty settlement in forest areas done during British regime according to IFA 1927.
- The new TD (Timber Right) policy brought by HP on 2<sup>nd</sup> April 2010 is against the spirit of FRA. The rules are still governed by IFA 1927. The TD rights should be now made a part of FRA as a part of the customary rights that have been enjoyed by people granted in wajib-ul-arj.
- IFA 1927 should not be confused with Land reform as this act was passed by the British to annex Indian forests. The rights of locals were restricted and reduced to privileges and later on completely extinguished. After independence more and more acquisition of gram sabha land, village forest, nistar jungles and common property resources were acquired under IFA 1927 that was contrary to land reform policies adopted by Indian Constitution. In fact FD became biggest land lord in the independent India. This is confirmed by the data of FD itself in HP

- I. Implement the Act in the rest of the state. FRA has been implemented only in the schedule V areas of the state whereas 70% of the state’s population is eligible for benefits under the Act by the virtue being traditionally dependent upon forest resources for their survival and livelihood needs. With immediate effect, the state government should issue the necessary orders for the

implementation of the Act in the whole of the state so as not to deprive the state's forest dependent population of their legitimate forest rights.

- II. Effective mechanism be placed so that no diversion of forest land for industry is accomplished till FRA is fully implemented.

Till the time the Act is satisfactorily implemented across the state, the government should put a moratorium in all applications for diversion of forest areas under the provisions of the Forest Conservation Act. This would also be in line with the July 2009 advisory of the MoEF.

Stop proceedings on High Court's and any other court or authority orders regarding eviction of occupiers of forest land till FRA has been fully implemented in the state. These orders have been issued under the provisions of the IFA, FCA etc. whereas these Acts have been superseded by FRA.

- III. The GoHP should promptly take a decision on the claims that have been received in the tribal areas. The criteria that have been issued by the SLMC regarding the eligibility of the beneficiaries should be withdrawn since it is in direct contravention of the provisions of the Act. Application of these criteria is also delaying the process of recognition of forest rights in the Tribal areas, thus expanding the divide between the people and the government.

- IV. Impartial representation of ST should be done in SLMC.

- V. Ensure filing of community claims by all villages, tribal and non-tribal: The community forest rights of the people of the state have been well documented in documents like *wajib-ul-arj* and forest working plans. For this purpose, the government should ensure that each village files its community claims as per the revenue records and any new use of forest resources. In case any village fails to stake claim to its community forest rights due to any reason, the government should recognize the rights enlisted in the revenue records as the community rights under FRA.

- VI. Focus on claims of migratory graziers. Special focus has to be laid on the filing of claims by groups of migratory graziers. For this an inventory (with contact numbers etc. available for their home village) of such graziers should be created based upon the data available with the Forest Department and claims filing process undertaken with each one of them during their period of resting at a place.

- VII. Develop mechanisms for management of community forests recognized under the provisions of FRA with participation of experts and civil society organizations. Relevant experience from Kangra Forest Cooperative Societies, Cho Reclamation Societies, Van Panchayats of Uttarakhand and implementation of HP Participatory Forest Management Rules should be utilized to develop state specific approaches.

- VIII. Rehabilitation of pending cases of project oustees from Bhakhra and other old projects on the basis of .

Dhogri community who traditionally used to make charcoal and other such people who have had to settle in forests as forest labourers due to no other option should be treated as a special case under FRA.

- IX. Form a working group/steering committee for the implementation of the Act at the state and the district level. The purpose of this independent group would be to strategise, plan, monitor, review and fine tune the process of implementation of the Act in the state and advise the government on relevant matters. Since the Act does not contain anything to the contrary, this group could be formed either by introducing within State Level Monitoring Committee (SLMC) some members from NGOs/Civil Society Organisations or could be constituted afresh and including people (besides the government officials) with relevant experience like community mobilization, grassroots planning, forest management, trainings in rural areas etc. The steering committee should finalise, in a time bound manner, a strategy for implementation of the Act based upon the learning from the implementation in the tribal areas.
- X. Approach for implementation of FRA at village level : Going by current learnings, the following steps could help in a more effective implementation of the Act while minimizing the risks :
- a. Implementation should be long term process – it took more about one and a half year for Gram Panchayats get trained, file claims and have them passed in the tribal areas with mixed results. Villagers in other areas of the state would need similar time to interpret, understand and take action in order to take full benefit of the Act. Meanwhile, there should no pressure on the villagers or the field officials to finish the process in a rushed manner (as, at times, was the case during the ‘first phase of implementation’).
  - b. For initial 6 months, claims for community rights alone should be received. This would minimize the possibility of fresh encroachments over the government land. The community lands thus claimed under community rights should be effectively demarcated so that no further encroachments on it occur.
  - c. Do not recognize individual claims over lands that are of critical and indispensable nature like pathways, burial/cremation grounds, temples etc.
  - d. For filing of claims by villagers the Gram Sabha could be the level at which the Forest Rights Committee (FRC) is set up, for the process of filing of claims and verification of claims, processes should be undertaken at the revenue village (*muhal*) level or Panchayat ward level (Up-gram Sabha) depending upon area specific suitability. The claims recommended by the lower Sabha should be sent to the Gram Sabhas for its approval and sending off to the SDLCs.

- e. Training and orientation of the FRC members as well as beneficiary villagers should happen in a language they understand, in a manner and time that is suitable for them and at a place that is accessible to them. Orientation should happen at least at the level of the Panchayat Ward/*muhai* through village meetings. Trainings can be centralized at the panchayat level but shall have to be more hands on in nature than classroom type. NGOs/CBOs with relevant experience should be roped in for the orientation/trainings at various levels. Process based indicators should be developed for evaluating the trainings.
- f. Over the next 3 years, the Forest Management Committees of all the villages that file for community rights should be enabled and empowered to effectively formulate plans (and their implementation) for management of their forest resources according to their livelihoods and ecosystem services needs. This should also include the amalgamation of JFMCs constituted by the Forest Department with the forest management committees constituted under the FRA.
- g. Constant monitoring, review, fine tuning of the implementation process would be required by the steering committee according to feedback received from the field.

## **Impacts during and after the Committee's Visit**

1. AFTER THE COMMITTEE VISIT, STATE GOVT SUBMITTED ITS REPORT TO HON'BLE HIGH COURT PETITION TO REVIEW THE VIABILITY OF THE HYDRO ELECTRIC POWER PLANTS. THE REPORT HAS RECOMMENDED THAT MOST OF THESE HYDRO POWER PLANTS SHOULD BE CANCELLED AS MANY OF THEM HAVE NOT TAKEN FOREST CLEARANCE. ALSO SUCH PROJECTS WILL DRASTICALLY AFFECT THE SENSITIVE ECO-SYSTEM, LIVELIHOOD AND DESTROY THE ENTIRE REGION. THE REPORT BY STATE GOVT TO HC IS ATTACHED
2. National Environment Appellate Authority Quashes environment clearance of Lafarge India's Himachal Project on 13<sup>th</sup> September 2010
3. Everywhere people were very eager to know the correct interpretation of the Act and the committee members at various places had to explain the provisions of the Act in very simple language to both people and officials.

4. Many officials were highly appreciative of the information they received from the members, the jt Sect Tribal Affairs Mr. Ashwini expressed his interest in studying this Act more deeply and requested the members to involve him in study related to FRA.
5. In all the Consultations the officials were present and there was direct interface with people and the officials. Many issues and applications came that needed immediate attention. The committee members mediated to get the issues resolved immediately. To which officials responded very positively. However this kind of task was not in the purview of the Committee's task but the ground situation was such that at the spot some of these decisions were taken by committee members so that the process of the implementation was accelerated.

### **List of attachments**

1. Avay Shukla report
2. Renuka Dam application
3. letters written to FAC
4. List of eviction notice and its reply by people
5. Press note on Lafarge

### **Representations received by NRFA joint committee in Himachal Pradesh during HP visit w.e.f. 28<sup>th</sup> to 31<sup>st</sup> July 2010.**

1. Kulbhushan Upmanyu Chairman and Guman Singh coordinator representing Himalaya Niti Abhiyan Village Khundan PO Banjar Kullu HP 175123. Attechments: i. representation English ii. Hindi iii. Status report on FRA implementation in Tribal area of HP by Rahul Saxsena attached GOs of HP Government on FRA.
2. Nand Lal sharma President representing Bhakhara Visthapit Sudhar Samiti Vill. Karvin PO. Matla Tehsil Jhanduta Bilaspur HP Atteched 419 signature of Bhakhara displaced persons with this representation. Attached documents: i. Gos and representations ii. Representation to Hon'ble president of India iii. Fact sheet of Bhakhara displacement vi. R&R scheme for Grant of Land by HP Government-1971 for Bhakhara Oustees v. Demand Charter vi. Copy of an agreement of 1948 between Raja Anad Chand and Sarup Singh Chief engineer of East Panjab Govrenment vii. Detail of evecton notices severed by forest department to Oustees of Bhakhara Dam in Oct.2009 from forest land.
3. Individusal representation given by Bhakhara Oustees claiming cultivation on forest land for their livelihood needs:
  - 1.. Hiru Ram 2. Madan Lal 3. Tota Ram 4. Jeet Ram 5. Atma Ram 6. Kame Ram 7. Rup Ram 8. Ramesh Chand 9. Shayam Lal 10. Baldev Singh 11. Gian Dei 12. Sita Ram 13. Sharavan Ram 14. Balia Ram 15. Madan Lal 16. Banta Ram 17. Shiva Nand 18. Mansa

Ram 19. Nand Lal 20. Bhagat Ram 21. Rattan Lal 22. Vijai Ram 23. Ram Singh 24. Prakash Chand 25. Ramjee Dass 26. Hari Ram 27. Mohinder Singh 28. Durga Ram 29. Achhari Devi 30. Niku Ram 31. Bhag Singh 32. Devi Singh 33. Subhash chand 34. Nand Lal 35. Hambiru Ram 36. Penu Ram 37. Pihota Ram 38. Ravi dutt 39. Kamlesh 40. Shayam Lal 41. Mangal 42. Keshav Lal 43. Munshi Ram 44. Sheela Devi 45. Kunju Ram 46. Hans Raj 47. Shayam Lal 48. Mansa Ram 49. Niki Devi 50. Kanhaya Lal. 51. niku Ram 52. Mohinder Pal 53. Kishori Lal 54. Ranjeet 55. Banarsi dass. 56. Vimla Devi 57. Sita ram 58. Jodha ram 59. Nasib Dei 60. Ram Asra 61. Gorkhia Ram 62. mast ram 63. Chotu Ram 64. Deshraj 65. atma ram 66. Karm singh 67. Dhayan Singh 68. Sarup Singh 69. Barfi devi 70. Karm Chand 71. Dalel Singh 72. Ramjan Mohamd 73. Mangal singh 74. Banku Ram 75. rattani Devi 76. Paras Ram 77. Prem Singh 78. Nika Ram 79. Raj Kumar 80. Budhi Singh 81. Pirthi Singh 82. Dhani Ram 83. Bishan Dutt 84. Chaman Lal 85. Rakesh Kumar 86. Dinsh Kumar 87. Shankar Dass 88. Mathra Dass 89. Thakur Dass 90. Sada Ram 91. Jagdish Chand 92. Hukam Singh 93. Dalelu Ram 94. Rup Lal 95. Nain Singh 96. Raj Kumar 97. dev raj 98. Suresh kumar 99. Raj kumar 100. RamPrakesh 101. Shri Ram 102. Shatis kumar 103. Shyam Singh 104. Ram Pal 105. Jindu Ram 106. Sohan Singh 107. Sohan Singh 108. Hoshiyar Singh 109. Jai Chand 110. Basu Dev 111. Sohan Singh 112. Nand Lal 113. Dev Raj 114. Man Singh 115. Sohan Singh 116. Sher Singh 117. Karm Singh 118. Joginder Singh 119. Hem Raj 120. Prabh Dyal 121. Mangal Singh 122. Ram Lal 123. Mast Ram 124. Rattan Singh 125. Amrit Lal 126. Saunu Ram 127. Jagdish chand 128.

4. K K Kaushal Ex MLA and coordinator Himachal Kisan Manch
5. Keshav Chander Sharma CPI
6. Ganga Singh chairman and Hira Mani Bhardawaj Gen secy. Jai Shri Deo Badeyogi Ji Sanyukat Sangharsh Avam Paryavaran Samiti Karsog Mandi HP with representation and GO.
7. Ajay Upadhya Samast Bilaspur Sheharvasi copy of representation and Bajub ul arj
8. Mira Sharma chairperson prayavarn Awam Gram Vikas Samiti Karsog Mandi
9. Prem Lal Sharma president Samaj Uthan Committee Thali Karsog Mandi
10. Nek Ram Vill & PO Nanj Karsog Mandi with Bajib ul arj
11. Man Singh Pradhan Van Adhikar Kanoon Samiti Chail Chauk PO Chail Chauk Tehsil Chachiot Mandi HP attachments : press clipping, forest encroachment case.
12. Noor Mohamad HP President Gujjar Kaliyan Sabha Village Samala Tehsil Rohdu Distt. Shimla HP attachments; representations, forest user Permits, Resolutions and press clippings.
13. Representation against Renuka Dam by Renuka Dam Sangharsh Sami, People's action for people in need (PAPN) PO Andheri Distt. Sirmour - 173023 and Panchayati Raj Repersantatives with resolutions of Gram Panchayat Maina Ghadel PO Rajana Sangdah Distt. Sirmour HP. GP Redli, GP Bagad, GP Jamu koti, GP Ganog, GP Gawahi, GP Rajana, GP Tandula,

- GP Ganog, GP R Attechments : Representation, resolutions and forest usr receipts.
14. Memorendum by Kisan Sabha Tehsil Committee Baijnath Village Nagan PO. Khadanal Tehsil Baijnath Distt. Kangra HP by Akshya jasrotia President and Bichitar singh Secy. .Attachments; Bajubul arj, gadget, CEC order,court case file and press clippings.
  15. Garibi Jagriti Sangarsh sang avam Samaj Sudhark Sang V & PO Batseri tehsil sangla distt. Kinnaur HP attachments: Reperentations.
  16. Kehar Singh Village & Rispa Tehsil Murang Distt. Kinannur HP.
  17. Gram Panchayat Kilwa Block Kalpa distt. Kinnaur HP Attachments: bajib ul arj, FRA committee and resolution.
  18. Roshan Lal Negi and others village & PO Jangi Tehsil Murang Distt. Kinnaur
  19. Sushil Shana Vice Presidet GP PooH Distt. Kinnaur HP
  20. Garibi jagriti Awam Samaj Sudhar Sangh Rakcham Tehsil Kinnaur HP
  21. Aharya roshan lal Negi member Steel Upbhogta Parishad GoI Vill.PO Jangi Tehsil murang Kinnaur HP
  22. Renuka Dam Sangharsh Samiti Sirmour HP
  23. Bhagat Singh KinnarRarng kashetra Paryavaran Surksha awam lok Adhikar samiti Vill. & PO Rarng Tehsil Murang Kinnaur HP
  24. Pradhan Sabha Kalash Nagar Pawari Tehsil Kalpa Kinaur HP
  25. R S negi Convener Him Lok Jagriti Manch Kinnaur Nisang Niwas Near DIC ReKong Peo Distt. Kinnaur HP representation
  26. Vinay Negi President Distt. Joint Action Committee Recong Peo kinnaur HP attachments : Representations
  27. Gram Panchayat Lippa
  28. Kangra Forest Co-operatives Union Vill. & PO Tripal tehsil & distt. Kangra HP
  29. Sunder Nagar Sangharsh Samiti against Cement Plant at Khatrwari
  30. Government Orders and records given by officials.
  31. Him Lok Jagriti Manch, Kinnaur, HP
  32. Paryavaran Avem Gram Vikas Samiti, Karsog, HP
  33. Sunni-Bhajji Vikas Sansthan,Tehsil Sunni, Distt Mandi
  34. samaj Uthan Committee, Thalli, Distt Mandi
  35. Jan Jagran Vikas Samiti, Distt Kullu

### **List of People present in the Public Consultation**

28<sup>th</sup> July 2010

1. Rishikesh -300,
2. Jeorpatan/Daribhari-700,
3. Jhanduta 1000,

4. Bilaspur committee Hall-400 on.

29<sup>th</sup> July 2010

5. Tata Pani forest rest house- 100,
6. Tapari PWD rest House- 300,
7. Kotlu/Nanj forest rest house- 25,

30th July

8. Recog Peo officers Meeting DC Office- 50,
9. Recong Peo Hearing Bachat Bhawan-5000,

31st July

10. Hearing Bachat Bhawan Shimla -70,
11. meeting with chief Secretary attended by 20 officials

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**Report prepared by Roma, Arupjyoti Saikia, Jarjum Ete and Vasavi Kiro**