



CAMPAIGN FOR SURVIVAL & DIGNITY (CSD) ODISHA

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To,

Dated-25 October 2021

Sri Sandeep Sharma, IFS
Assistant Inspector General of Forests,
Ministry of Environment, Forests and Climate Change (MOEFCC),
Indira Paryavaran Bhawan, Aliganj, Jorbagh Road,
New Delhi - 110003

Subject: Comments on Public Consultation Paper on proposed Amendment to the Forest (Conservation) Act, 1980

Greetings from Campaign for Survival and Dignity, Odisha Chapter!

We would like introduce ourselves that the Campaign for Survival and Dignity (CSD), is a national level platform of adivasis and forest dwellers' organizations from 18 States, have been closely involved in the struggle for enactment of the Scheduled Tribes (ST) and Other Traditional Forest Dwellers (OTFDs) (Recognition of Forest Rights) Act, 2006 and continuously engaged for its effective implementation in the country. Its members were part of the Drafting of FRA Bills. As part of a national Campaign, Odisha Chapter of CSD, have been reaching out to the forest dwellers across the State and campaigning for its better implementation in the ground by actively supporting the process at state level to local level in the true spirit of the Act. Among others CSD Odisha has been prioritising its focus on the Conservation Governance of "Community Forest Resources" towards addressing the increasing environmental crisis ecological concerns by protecting forests biodiversity which has been at the same time fulfilling and ensuring the livelihood needs of the forest dwellers. We have also been closely interacting with Ministries and Government departments, providing policy inputs and knowledge supports to local administration on matters related to Conservation Governance and policy issues.

With these background, the CSD Odisha, conducted public consultations and brainstorming on the Public Consultation Paper on proposed Amendment to the Forest (Conservation) Act, 1980 involving various groups, researchers, academics, civil society members, village communities and facilitators working in the field of Forests Conservation, environment and climate change, land rights, natural resources and management of commons, tribal area governance, etc. We have prepared a paper based on the outcome of the consultation "Comments and Recommendations on Proposed Amendment in FCA, 1980".

That the proposed amendments to Forest (Conservation) Act, 1980 (FCA) vide 'Consultation Paper on Proposed amendments in the Forest (Conservation) Act, 1980' (F. No. FC- 11/61/2021-FC dated 02 October 2021) must be dropped by the Ministry of Environment, Forests & Climate Change (MoEFCC). Instead, the Environment Ministry must begin exhibiting compliance with laws, particularly the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) and concede the authority of Gram Sabha in the decision-making on forest protection, conservation and forest diversion. This is explained below with reference to the 14 propositions that MoEFCC has made for taking up for amendment.

Point 1 refers to the ambiguity created by the widening of the definition of forest due to the Judgment of the Supreme Court on 12,12,1996 in the Writ Petition (Civil) No. 202/1995 in the matter of T.N. Godavarman Thirumulpad versus Union of India and Others. With this, FCA became applicable to lands outside the notified 'forests'. This has resulted in resentment and resistance particularly from private individuals and organisations as such lands are restricted from non-forestry activities. Therefore it is necessary to 'define the scope of the application of the FCA in an objective manner'.

Objection: The overall intent of the proposal is to drastically limit the scope of application of FCA and FRA by excluding vast forest lands outside notified forests, a range of non-forest activities and certain forest lands within notified forests as well in a very ambiguous and arbitrary manner. This is to free these lands from forest clearance for change of land use to non-forestry activities by state agencies and the private sector. This then adds to the already existing exemptions from both FCA and FRA, and many more from FRA and Gram Sabha consent in contravention of extant laws. Further,

- (i) The legal reality is that FRA already defined 'forest land' to mean land of any description falling within any forest area including unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks. FRA already recognises and vests rights of Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) on all these forest categories and empowered the Gram Sabhas to determine their rights and to govern and manage the forests as Community Forest Resources (CFRs). FRA recognises existing activities to meet livelihood, social and cultural needs, and empowers Gram Sabhas for protection and conservation of wildlife and biodiversity. Moreover, these forest rights are already exempt from the application of FCA anyway. By drastically restricting the scope of FCA under the guise of freeing forest land and certain activities from the application of FCA and therefore the purview of FRA and Gram Sabha, MoEFCC hopes to take away the regulatory powers of the Gram Sabhas under FRA on the one hand and on the other to liberalise the use of forest lands within notified forests for non-forestry activities. In addition, forest lands outside notified forests are freed from FCA in order to liberate them from the vile clutches of FCA that causes people to keep forest lands free of any vegetation according to MoEFCC, when in fact this will primarily aid the rapid land use change to non-forestry activities free from the Gram Sabha oversight under FRA with regard to protection and conservation of ecology. The primary gainers are intended to be the private sector.
- (ii) In addition, a large part of such lands fall within the Scheduled Area and therefore under the purview of the Gram Sabhas under the Provisions of the Panchayat (Extension to scheduled Areas) Act 1996 with regard to land and natural resources.
- (iii) The subject of forests is now divided into forests other than forest rights and forest rights, and is allocated to MoEFCC and Ministry of Tribal Affairs (MoTA) respectively by the amendment to the Allocation of Business Rules 1960 .

Point 2 proposes to exempt lands acquired by agencies such as Railway, NHAI, PWD etc prior to 1980 which remained unused and had grown trees or forest thereby coming under the purview of FCA now, in order to allow such agencies to use the land for non-forestry purpose as project expansion or other purpose, without having to comply with the provision for getting clearance under FCA.

Objection: Land acquisitions by state agencies have often led to displacement with loss of land and livelihoods by the poor and marginalised communities. A large part of such acquired land remain unused by the land holding agencies for years. Recognising this gross injustice, the FRA requires under Section 4(8) that those who had their lands acquired by government agencies and displaced without land compensation where such lands have not been used for the purpose for which it was acquired within five years of the said acquisition, such lands are to be restored to the STs and OTFDs. The proposed amendment would negate the return of the unused land to the original right holder thus negating the provisions in laws that now require addressing this injustice. Instead, it would allow such agencies to continue to hold on to the unused land at will. Instead such lands are to be reverted back to the communities. Further,

- (i) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR) requires land acquired but remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner vide Section 101.

Point 3 refers to the category of deemed forest which attracts the provisions of FCA and the need for finding land outside the govt forests to i) meet the target of one-third of land to be under forest cover as per the National Forest Policy 1952, ii) meet the target of creating carbon sink of additional 2.5 to 3.0 billion tons of CO₂ equivalent by 2030, iii) to promote plantation of woodlot to reduce the flow from foreign exchange for import of wood and wood derivatives to the tune of approximately Rs 45 thousand crore. It proposes exemption of all such plantations in private and non-forest land from FCA.

Objection: Large scale monoculture and commercial plantation projects are implemented on lands used by farmers and Adivasi communities, and on common lands. This affects their rights and livelihoods and destroy the biodiversity as well. The central government and the MoEFCC are pushing the states to identify and use all types of land (forest land in revenue records, non-forest land, common lands and private lands) to carry out extensive plantation under the Compensatory Afforestation projects and under the climate change actions for creating additional carbon sink. These plantation projects have been widely opposed by the Adivasis and forest dwelling communities as they affect their rights and livelihoods and destroys biodiversity by replacing multifunctional forests and vegetations with ecologically destructive monocultures. Further,

- (i) These plantations have led to land grabbing and land alienation by agencies and are a den of corruption.

- (ii) The central government programmes such as oil palm and biofuel plantations have raised similar concerns. The central government has also been promoting the private sector companies to implement large scale plantation projects. Exempting these from the purview of FCA allows government agencies and private sector to establish massive commercial and monoculture plantations making use of the government incentives / funding, to harvest them at will later and change the land use freely to non-forestry without Gram Sabha consent. This will lead to violation of rights of communities, destruction of forest and biodiversity and land grabbing.

Point 4 points to those lands which have been entered in both revenue and forest records creating misinterpretations and litigations. The amendment proposes to exclude such lands recorded as forest after 12.12.1996 in pursuant to the Supreme Court order from the purview of the FCA to encourage forestry activities (including agroforestry and other tree planting systems).

Objection: An estimated 40 million hectares of forest land are recorded in village revenue records of 1,77,000 villages in India. These revenue forests include nistar forest used by communities, community protected forests etc. FRA recognises rights of communities over all such forests and this includes 'rights in or over disputed lands' (Sec.3(1)(f)). These lands, wholly or partly, were recorded by the state forest department as forests in pursuant to the said Supreme Court order. FRA brings all such forests into the governance and control of Gram Sabhas. Therefore the proposal to exempt these lands in revenue records marked as forests by the forest department after 1996 from the purview of FCA is to allow change in land use at will and to take it out of the purview of the Gram Sabha which is a violation of FRA, the legal rights of STs and OTFDs and the authority of Gram Sabhas. This would generate widespread conflict pitting various state agencies against the Gram Sabhas and FRA right holders across the country.

Point 2, 5, 7, 9,, 11, and 14 propose exemptions from FCA for use of forest land in case of i) land acquired by agencies such as Railway, NHAI, PWD etc prior to 1980 which remained unused and had grown trees or forest, ii) strip plantations, amenities, habitations developed alongside roads and railway lines, iii) development of infrastructure along the international border areas for strategic and security projects of national importance, iv) non-forestry activities which are ancillary to conservation of forests and wildlife such as establishment of zoos, safaris, Forest Training etc, v) use of technologies such as Extended Reach Drilling (ERD) for exploration or extraction of oil and natural gas beneath the forest land, and iv) surveys and investigation activities in forest land.

Objection: All these proposed exemptions directly violate FRA. These are in continuation to the several other such exemptions that MoEFCC has illegally granted for making forest diversions easy for government and private agencies. MoEFCC illegally exempted compliance with FRA in forest diversions, for instance, in the case of i) linear projects, ii) mineral prospecting, iii) forest diversion in areas without "tribal populations", iv) grant of mining leases, v) creation of land banks, vi) while granting of "in principle" Stage I clearance, and vii) temporary use of forest . Further, while the earlier exemptions were in effect in violation of both FCA and FRA, the proposed exemptions under FCA would still be in violation of FRA.

- (i) FRA establishes the rights and governance of communities and gram sabhas over all forest areas and requires the authorities to ensure compliance of FRA and the consent of Gram Sabhas before diverting forest land. The Supreme Court, in the Niyamgiri case, has also reiterated the legal requirement for ensuring compliance of FRA and consent of Gram Sabhas before diversion of forest land.
- (ii) The MoTA has clarified to all State governments that the FRA applies to all forest land diversions 'without any exemptions' and that Gram Sabha consent is mandatory.
- (iii) The exemptions proposed are in violation of the Supreme Court judgments.

Point 6 proposes to keep certain pristine forests intact for a specific period.

Objection: This is a half-hearted attempt to give the proposed amendment a conservation cloak while implicitly justifying destruction of forests through non-forestry activities in both notified forests and outside as well. In the past the proposal for creating 'go and no go areas' in the case of mining projects have been thwarted. Further,

- (i) Creation of this so-called pristine forests is in no way different from the Protected Areas as National Parks, Wildlife Sanctuaries, Tiger Reserves etc under the Wildlife (Protection) Act 1972 (WLPA) all of which too are kept pristine until diverted under FCA. All that it attempts is to introduce another category of forests where rights can be prohibited;
- (ii) FRA negates the colonial rights regulating and prohibiting regime in forests and Protected Areas fully notwithstanding anything contained in the forest laws including WLPA and FCA. In fact, where FRA rights fall within these Protected Areas, the power to protect, conserve and manage forests, wildlife and biodiversity stands vested in the Gram Sabhas. The exemption proposed is a vile attempt to take back exclusive control of a part of the forests.

Point 8 proposes to delete the Sub-Section 2(iii) of the Act dealing with mining leases and bring it under the rigour of the procedure for forest diversion under sub-section 2 (ii).

Objection: There are huge illegalities and irregularities in forest diversions for projects approved under both sections 2 (ii) and 2 (iii) of FCA. Most proposals for forest diversions under section (ii) are found to be in violation of compliance provisions under FCA for FRA. In most of the cases, the Gram Sabha consent is not taken after completing FRA implementation, nor consent taken as per the legal provisions; often documents are forged and false certifications by the authorities are used. Similar is the case with forest lease operations and extension of the leases which are carried out with more ease. Deleting Sec.2 (iii) and bringing lease under the purview of Sec.2(ii) into a single procedure without any provision to incorporate FRA compliance into this section is but pretension of stricter regulation of forest diversion. Therefore, incorporation of FRA compliance into Section 2 of FCA is legally necessary for harmonising both FCA with FRA as the latter overrides in law.

Point 10 concerns certain grievances of the private individuals whose lands come within the State specific Private Forests Act and therefore coming within the purview of the meaning of 'forest' as per the 12.12.1996 Supreme Court order. It is proposed to allow such private land owners to use such land for construction of structures for bonafide purposes including forest protection measures and residential unit up to an area of 250 sqmtr as a one time relaxation. This must be seen along with the exemption from FCA extended to forest lands outside notified forests.

Objection: This, in effect, overrides the relevant State law. Since FRA applies to all forest lands, the governance jurisdiction of the Gram Sabha extends also over such private lands which fall within the territorial limits of the Gram Sabha. As of now, these state laws have not been amended to comply with FRA. The regulatory authority under these State laws continue to disregard FRA and function in violation of FRA. The proposed amendment without recognising the jurisdiction of Gram Sabhas where applicable and the provision for Gram Sabha consent for land use change including construction is yet again an attempt to thwart and subvert the legal authority of the Gram Sabhas.. While dismantling the present authoritarian FCA regulatory regime totally, it has to be replaced by a judicious democratic conservation regime over forest lands outside notified forests which already exist in the form of FRA. Gram Sabha approval for change of land use including for construction should be fundamental in order for the Gram Sabha to ensure that such activities do not pose a threat to conservation and protection of forests, wildlife and biodiversity.

Point 12 bars double imposition of compensatory levies where such levies are presumed to make good the ecosystem services after the land is used for non-forestry purposes.

Objection: Fundamentally imposing compensatory levies under the argument that these will make good the loss of ecosystem services has no basis in science. Further, the bar on double imposition of levies only makes it that much less expensive for the user agency. Absence of anything on increase of levy amount in addition contributes to favouring the user agency, whether public or private and ease of doing business.

Point 13 proposes simple imprisonment and penal compensation for violations in addition to what exists already under FCA.

Objection: Any violation of the provisions of FRA is an offence under Sec. 8 of FRA for which the Gram Sabha is to issue a notice under Sec.8 of FRA to the Chief Secretary to initiate action against the violator. Such violations are also violations under SC and ST (Prevention of Atrocities) Act 1989 through an amendment in 2016. The violations of the provisions under FCA with regard to FRA compliance for forest diversion are also violations that falls within the ambit of the said Acts. The proposed amendment does not update the law by incorporating provisions to recognise such violations of FCA provisions with regard to FRA compliance as offences under FCA and recognising the authority of Gram Sabha as the statutory authority to initiate action in such instances under FCA is telling.

The public notice for comments to the so-called proposed amendment to FCA 1980 without the actual amendment strangely enough comes after the MoEFCC disowned its earlier attempt to amend IFA 1927 and subsequently floating a tender calling private law firms to bid for drafting a law to replace IFA 1927 itself. Instead of amending FCA to update the law to make it harmonious with FRA, the haste with which these amendments are proposed to override FRA and deregulate forest diversion even while an IFA 1927 replacement is already in the pipe line indicate haste. Why this haste to deregulate notified forests and exempt all forest lands outside notified forests from the application of FCA? Is this to pre-empt the IFA 1927 to limit its applicability and therefore divert maximum lands for non-forestry purposes thus taking it out of the purview of the proposed IFA 1927 replacement? No doubt this well recorded and recognised anachronistic and colonial law IFA 1927 should have been repealed long back with a forest governance law befitting a democratic nation. Such a new forest governance regime following and befitting the new legislative regimes that have already been effected by 73rd Constitution Amendment (now Part IX read with 11th Schedule of Constitution) 1992, PESA Act 1996, FRA 2006 and LARR Act 2013 should have been the way forward.

Overall, the proposal for FCA amendments,

- Intends to limit the application of both FCA and FRA by taking out large forest areas out of the purview of FCA to ensure diversion of forests for use by public and private sector and advance the agenda for 'ease of business'.

- Violates the FRA, PESA and constitutional provisions for the STs and other traditional forest dwellers.
- Violates the policy for pre-legislative consultation by not following the timeframe required for consultation and by releasing the proposal in only English and that too providing 14 items intended for amendment which are vague, unclear and in places self-contradictory, without spelling out the actual proposed amendment.
- The MoEFCC has not consulted MoTA which is entrusted with all matters related to forest rights as usual.
- Attempts to redefine forests to promote private plantations that can lead to massive deforestation and environmental degradation.
- The FCA 1980, enacted long before 73rd Amendment, PESA Act, FRA and LARR, is already overdue for updating to bring it in line with the new democratic regime which is required by law.
- Finally, all that this proposed amendment indicate is the persistence of MoEFCC under control and pressure from the colonial forest bureaucracy to retain the colonial authoritarian hold over forest resources, now to serve interest of businesses rather than the common good of the people.
- In view of the above, the proposed amendments must be dropped by the MoEFCC. Instead, the ministry must begin exhibiting compliance with laws, particularly Forest Rights Act and concede the authority of Gram Sabha in the decision making on forest protection, conservation and forest diversion.

Yours Sincerely

Ejopinath Nayak 25.10.2021
(Convenor)

Campaign for Survival and Dignity, Odisha Chapter

Copy to:

Sri Bhupender Yadav, Hon'ble Minister, MOEFCC, Govt of India for favourable attention.

Sri Arjun Munda, Hon'ble Minister, Ministry of Tribal Affairs, Govt of India for positive attention.

Sri Giriraj Singh, Hon'ble Minister, Ministry of Rural Development and Panchayati Raj, Govt of India for positive attention.