1 Nov 2021

AIPSN Comments/Suggestions to Consultation Paper, 2021 on Proposed Amendments in the Forest (Conservation) Act, 1980 released by MoEF&CC on 2nd Oct 2021

Emailed to fca-amendment@gov.in

As per the Circular F. No. FC-11/61/2021-FC dt 20th Oct the last date for submitting comments/suggestions was given as 1.11.2021. Please find attached the AIPSN Comments/Suggestions to Consultation Paper, 2021 on Proposed Amendments in the Forest (Conservation) Act, 1980 released by MoEF&CC on 2nd Oct 2021. **All the comments received and the responses must be made publicly available with full transparency.**

The All India People's Science Network (AIPSN) is the largest network of organizations working on policies and actions related to science, technology and society in India, comprising over 40 member organizations across the country. We would firstly draw attention to the fact that the response period to the Amendments in the Forest (Conservation) Act, 1980 was initially set at only 15 days from issue of the consultation paper and extended by 15 days only after requests for extension. It is essential that more time be given for public responses to enable wider consultation and more intensive discussions on such integral policy changes. Time period for such consultations should be at least 30 days as called for by the Pre-legislative Consultation Policy.

AIPSN also disapproves of the fact that no actual Text of Amendments are being put forward for Consultations, instead a "Consultation Paper" has been offered. This is not satisfactory, and it is also possibly not legally correct. Actual text of Amendments may have very different language, with quite different implications, that the language used in the Consultation Paper to which responses are now sought.

Nevertheless, we are submitting our comments and suggestions based on consultations with member organizations from different states and field level engagement with local communities, **with the assumption that the Text of a proper set of Amendments will subsequently be re-circulated for comments by the public.**

1. Amidst global action on climate change, India's Nationally Determined Commitments (NDC) under the Paris Agreement on climate change targets creating 'carbon sink' of additional 2.5 to 3.0 billion tons of CO2 equivalent by 2030. Along with the massive investments this would require in afforestation, maintaining and recovering forest cover, and prevention of deforestation, India has also pledged to restoration of among the largest amounts of degraded and deforested land in Asia, as part of the Bonn challenge. Forest policy is central to fulfilling these commitments and the Forest Conservation Act (FCA) 1980 lays the foundation for India's current forest governance framework. The FCA (1980) prioritizes forest conservation and halting deforestation, and was a major shift away from the focus on timber extraction in the British era law, the FCA (1927). The Amendments in 1988 brought in provisions of participatory forest management and the Forest Rights Act (2006) further secured the rights of forest dwellers. **Any further amendments to the FCA (1980) are therefore expected to continue strengthening people's rights while enabling India to meet its forest and green cover targets, protect the rights of tribals and other forest dwellers, and promote sustainability.**

2. In this context, we are dismayed to see that the proposed Amendments to the FCA will neither help India meet its commitment targets nor secure the rights of the forest dwelling communities. Rather, the 'Consultation Paper' weakens regulatory systems and promotes transfer of forest land for non-forestry purposes through various means including effectively changing the definition of 'forest' land. At the same time, the rights of tribal people and other forest dependent communities fail to find a single mention in the Paper! In many cases where confusion or problems in existing FCA regulations are pointed out, only problems faced by private, corporate or institutional landowners are considered, but problems of forest-dwelling communities are never even mentioned, nor are ecological issues considered. And wherever solutions to such problems are offered, they often involve simply removing such situations from coverage under the FCA solutions, rather than providing for more effective regulation through consideration of the special circumstances. The possibility of providing for State-level regulation of such problem cases, which is likely to be more effective and provide a timely response, rather than solutions from distant Union Government authorities, is also never considered. **The proposed amendments will therefore encourage private, corporate or other institutional takeover of lands earlier recognized as forest land for non-forestry purposes at the cost of both the local communities and the environment. Unfortunately, this follows recent trends in MoEFCC notifications and rules diluting environmental regulations such as the Draft EIA Notification 2020.**

To elucidate and clarify the above, **we offer the following detailed responses to different specific provisions in the Consultation Paper for consideration and hope that responses received and discussions leading to issue of Amendments etc be placed transparently in the public domain.** The numbering of Paragraphs below follows the numbering pattern in the Consultation Papers. The suggested Amendments seek to provide exemption of different kinds in various contexts for conversion of forest land to non-forestry purposes to private landowners, corporate entities and government departments or institutions. These are discussed below, with our suggestions recorded in some cases.

B1 describes various scenarios wherein, over the years, different kinds of lands have come to be defined as "forest" by different Local, State or Union authorities as also by what may be termed common law usage and customs, with some of these definitions as "forest" being termed "arbitrary." The Discussion Paper claims that this results in all kinds of anomalies and injuries to interests of different parties, especially private land owners who are deprived of the right to use their private lands for non-forest purposes. The Paper goes on to argue that landowners often leave such land fallow and do not allow any vegetation to grow on it lest it be declared a "forest." The Paper then recommends that the scope of application of the FCA be defined more in a "more objective manner."

There is no evidence provided in the Paper as to the extent of such anomalies and the circumstances under which they arose. In many cases, such lands have been classified as "forests" by State Forest Departments and/or State Governments as a result of customary usage and practice with substantive rationale for the same which cannot be dismissed as "arbitrary." There is also no recognition of the already existing distinction between unclassified forests, un-demarcated forests, deemed forests, protected forests, and reserved forests etc which cover many of the aspects touched upon in B1 and in defining which State Governments and State Forest Departments have a big role. The Paper also does not go into

what the envisaged "objective criteria" may be to define "forests" and who will lay down these criteria. **This is a prime example of why the Paper cannot be responded to as "Amendments" to the FCA since the latter would presumably have spelled out these criteria which could then be specifically responded to. As it stands, the problematic as stated in B1 lends itself to sweeping and equally arbitrary recommendations in the Paper.**

If at all required, it is suggested that a comprehensive exercise be undertaken involving MOEF&CC, State Governments, State Forest Departments, representatives of tribal communities and other forest-dwellers and other stakeholders to evolve criteria to broadly categorize "forest lands" and examine in what manner provisions in the FCA could be applicable to them or whether any specific amendments are required in special categories. **Formal Amendments to FCA may thereafter be formulated and placed appropriately in the public domain for scrutiny and comments. It is specifically recommended that no unilateral re-classification of "forest lands" by the MoEFCC be done on the basis of the vague "anomalies" described in B1.**

B2 deals with lands currently held by different mostly Government agencies like the Railways and Ministry of Road Transport, particularly "Right of Way" (ROW) lands held on either side of the main non-forest projects for which exemption had been granted from FCA provisions. B2 argues that in some cases, the project agency has undertaken plantations under different Government programmes and had obtained classification of these plantations as "protected forests," having in mind perhaps jatropha plantations for biodiesel etc., so as to obtain protection for such plantations. B2 claims that now there is considerable "resentment" among such Agencies about the restrictions accompanying such classification if they wish to use such ROW lands for non-forest purposes. B2 proposes to exempt all such lands acquired before the coming into effect of the FCA in 1980 from provisions of the Act.

It must be underlined here that these Agencies had, in the first place, obtained clearance for using these lands, perhaps much of them in forest areas, for non-forest purposes, and thereafter sought declaration as "forests" after 1980 when they benefited from it, and now want exemption from FCA when they feel they could benefit from non-forest uses of this land. It should further be noted, these lands have not been used for the originally sanctioned Projects. This whole issue is now further complicated by the fact that the Government now proposes to "monetize" many such assets through long-term leases to private parties, and therefore such benefits will accrue to these private and corporate parties, even though the ROW lands are not being used for the original purpose for which they were acquired.

As such, there is no justification for a blanket, unconditional exemption from FCA. Parties which consider themselves to be affected may seek such exemption and the cases may first be considered by the State Governments and their relevant agencies/committees who had given the lands for the projects in the first place, and then by the MoEFCC and its relevant Committees. Since the land is not being used for the original purpose, the concerned former land-owning agency may even rule that land be taken back by them.

B3 (i), (ii) and (iii) deal with potential cases of private landowners allowing their lands to deliberately not only lie fallow, but clear of any vegetation or tree-like growth so as to ensure that they are not classified as "forest" which would then render these lands unusable by the farmer for any other purpose. The Paper then recommends that provisions be made to ensure that these lands do not come under purview of the Act, arguing that this will enable "tree owners" to freely grow trees, thus aiding India's tree cover and carbon sequestration programmes. This seems a rather odd recommendation considering that plantation is already widely practised in India for poplar, eucalyptus, teak and other species with due ability to cut trees for sale. If such lands are completely outside forests of any description and located in land otherwise classified as agricultural land, then there should be no difficulty in making suitable provision to allow the farmer to switch between tree plantation and any other farming activity. **However, if such lands are located within any kind of "forest" as variously defined under the FCA and relevant Supreme Court rulings, then no such relaxation may be considered, as this would lead to rampant deforestation, corruption and false declaration of "non-forest land" even inside forests. It should be noted that similar provisions for "production forests" under PPP in so-called "degraded forest lands" as provided for in the Draft Indian Forest Act 2019 have been met with widespread objections from different quarters including the state governments.**

B4 relates to supposed confusion or conflict regarding status of land as registered in revenue or forest records, and the possibility of doubt or litigation regarding tree plantation or "afforestation" projects in such lands, once again on the grounds of further enabling "agroforestry or other tree plantation systems." It is not understood why this point figures in this Paper relating to possible amendments to the FCA. **As in B3 above, provision may be made to allow aggrieved farmers engaging in plantation activities outside forests i.e. in agricultural land to apply to local relevant authorities to clarify status, with the understanding that tree plantation activities in non-forest agricultural lands be regarded on par with other kinds of cultivation, avoiding any possibility of getting included in the proposed amended FRA 2019 as "production forests."**

B5 suggests exemption for 0.05 ha for each road/rail access passing through strip plantations on either side of road/rail tracks to "amenities/habitations [that] have developed all along such lands." There is much confusion here. For instance, it is not known whether such "amenities/habitations" are legal or are unauthorized, and if the latter why such access should be provided rather than these being removed from the forest lands. Secondly, it is also not clear how many such accesses of 0.05ha each will be required or constructed. **Therefore, this is another case in which blanket exemption cannot be granted, rather case-by-case exemption may be granted based on examination of the specifics of each case. This is another case in point in which more reasoned response cannot be given unless the exact wording of the proposed Amendment is provided.**

B6 calls for declaring certain areas as "pristine" in view of their unique ecological and other values, and suggests that this would require prohibiting non-forest activities which the current FCA may not permit being regulatory rather than prohibitory. The clear implication is that at least some if not all human activities be prohibited in these areas. The proposal harks back to the idea of "Go- No Go" areas in forests once considered by the Ministry. Certain pristine and biodiversity-rich areas may indeed be kept away from industrial or

commercial activities, and this is very much already in the hands of MoEFCC and its duly constituted Expert Committees, provided they are allowed to function on scientific basis without political interference biased in favour of "ease of doing business." Examination of properly and independently prepared EIA would enable protection of such pristine areas which have, however, been repeatedly violated by MoEFCC itself by permitting large-scale activities even in critical wildlife habitats. The recently amended Draft EIA 2020 is further evidence of the intention of the Government to provide exemption to many activities in ecologically sensitive areas. All such attempts are manifestly against the spirit of FCA and deserve to be opposed. Perhaps the real intention of this suggestion is to prohibit any human dwelling or other sustenance activity including for traditional tribal or forest-dweller inhabitants. **No violation of the Forest Rights Act should be permitted through the back door. A properly drafted Amendment would clarify the real purpose of this suggestion, and clearly reasoned response can only be given after that.**

B7 suggests blanket exemption for building infrastructure etc along the international border areas for securing strategic and security interests. Such exemption was also sought in the Draft EIA 2020 but was opposed by many when it was put forward for public response. **AIPSN had suggested even in that case that blanket clearance of undefined "security interests" is untenable and that a case-by-case approach, with duly constituted Expert Committees cognizant of the security concerns, would be preferable rather than a blanket exemption.**

B8 points to the confusion between Sub-sections 2(ii) and 2(iii) of the Act relating to mining and other such leases, and points out that while 2(iii) allows long-term leasing by paying only the NPV, the 2(ii) requires detailed and protracted procedures and payments, thus privileging 2(iii) and enabling project promoters to violate the letter and spirit of the Act in many ways. **This is a serious matter and must be resolved, especially since all kinds of provisions are being made in favour of mining companies and similar industries citing "ease of doing business." Therefore, in this case, it is essential that a properly formulated Amendment is put forward enabling a considered and reasoned response.**

B9 proposes that technologies like Extended Reach Drilling (ERD) which are considered by the Ministry to be environmentally friendly should be exempt from purview of the Act. Forest areas have buffer zones and inflows and outflows of rivers which could be affected by these and other similar new technologies. For instance, implementation of ERD in two projects in Assam has met with opposition. **A case-to-case decision may be taken based on EIA and expert examination of impacts of the new technology rather than a blanket exemption.**

B10 suggests permission being given to "bonafide" structures up to 250 sq.m. for forest protection measures and/or residence within forests as defined under the Act and read with applicable Supreme Court judgements. **Here again, since what is or is not "bonafide" will require some examination, it is better that such exemptions be granted on case-by-case basis and a properly formulated Amendment be placed for response by the public and concerned citizens.**

B11 suggests that activities considered "ancillary" to forestry such as zoos, safaris, Forest Training infrastructures should not be perceived as "non-forestry" activities and therefore could be exempted from the FCA. Under the proposed amendment, many different and

undesirable forms of tourism-related activities in forested areas could gain exemption from FCA if not properly examined. **There is already a concerted effort to promote tourism in wilderness areas. A new 'Guidelines on Ecotourism in Forest and Wildlife Areas 2021' has been drafted. While the FCA (1980) has been placed in the public domain the new eco-tourism guideline has till now been kept away from public scrutiny.**

We recommend that, with the exception of Forestry Training Infrastructure of limited and appropriate size which should be properly defined here, zoos and safaris and related facilities should be examined on case-by-case basis depending on the forest concerned. **No blanket exemption should be granted to such facilities. Again, a properly drafted Amendment would enable a more reasoned response.**

B12 suggests that if a compensatory levy has already been obtained at the time of initial lease, further levy at the time of renewal of lease is "not rational." On the contrary, **since the compensatory levy is specific to the period of lease when first levied, it is only rational that a further proportional levy for the period of extended lease, covering inflation and increased costs, should also apply.**

B13 proposes exemption for survey and investigation activities whose "impact is not perceptible." In the first place, this is a highly subjective and unscientific assumption. There must be a case-by-case examination of what the survey and exemption entails, how much environmental impact it would cause and what would be the economic cost of any damage caused etc. **The Draft EIA 2020 had also suggested exemption of this activity. It may be recalled that exploratory drilling for oil had been granted permission in the fertile 3-crop area in the Thanjavur delta area, but public furore by affected farmers had led to withdrawal of this order. We recommended proper EIA and thorough examination of all such activities preparatory to actual industrial or commercial activities.**

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