



# Environmental Funds in India: An Appraisal

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Advocacy

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## ABOUT CEERA

The Centre for Environmental Law Education, Research and Advocacy (CEERA), established in 1997 is a benefactor of the Ministry of Environment Forest and Climate Change (MoEFCC), Government of Karnataka, the Bar and the Bench in India and abroad. Building an environmental law database, effectively networking among all stakeholders, building up an environmental law community and policy research in the area of environment are CEERA's main objectives. To achieve the aforesaid, CEERA has incessantly and successfully been able to build functional and professional linkages with government agencies and non-governmental organizations in India, the South Asian Region and at International levels. Apart from handling and furthering India's environmental conservation work involving policy analysis, campaigning, community capacity building and strategic level intervention on critical environmental issues, CEERA serves as a rich resource centre for environmental law teaching and research for Industry and Academia.

One of the first in India to be granted a World Bank project, UNDP, GoI projects and various State Governments projects, CEERA has been a steady choice of the Ministry of Environment Forest and Climate Change and other Ministries for research, consultancy and training assignments.

CEERA has been entrusted with some of the most fundamental training of important Forest Officers, Revenue Officers, Officers of the Central Pollution Control Board, various Corporate houses and also of the Government of Karnataka. CEERA is proud to have become a preferred resource centre for carrying out research and training programmes in the most effective and constructive manner.

To know more about our work, kindly visit [www.nlspub.ac.in](http://www.nlspub.ac.in), [www.nlsenlaw.org](http://www.nlsenlaw.org) and [www.nlsabs.com](http://www.nlsabs.com).

# Environmental Funds in India: An Appraisal\*

## A. INTRODUCTION

A number of legislations in the country have made provisions for the establishment of funds to be used either for the protection, preservation or regeneration of the environment or to compensate victims who have suffered as a result of environmental crimes. In addition to legislations, some environment funds have also been established in pursuance of orders of the Judiciary. These environmental funds serve different purposes and have different disbursal and accounting mechanisms. This note explores three environmental funds established in India and their working, namely- the Compensatory Afforestation Fund (CAF), the Environment Relief Fund (ERF) and National and State Biodiversity Fund (NBF and SBF). While there are enough laws, rules and guidelines for ensuring their management, it is highlighted that none of these funds are working efficiently in reality. This note attempts to find out the reason for the poor implementation of the environmental funds and come up with recommendations for their better implementation. This write-up points out that the ineffective working of CAF may be attributed to lack of penal provisions in the legislation, ineffective monitoring mechanism and lack of utilization of the funds for the purposes for which they are meant for. It further examines the working of the ERF to conclude that systematic databases are not maintained to ensure its working. The note shows the poor functioning of some state biodiversity authorities and their questionable actions of not spending money on building databases, identification or maintenance of heritage sites and documentation. Some states have not published annual reports on their website because of which it is difficult to analyze their utilization of the fund.

## 1. COMPENSATORY AFFORESTATION FUND

### 1.1 Under what law was the fund created?

In 2002 through the case of *TN Godavarman v. Union of India*<sup>1</sup>, the Supreme Court observed that various funds made by the states were going unutilized and therefore proposed that a Compensatory Afforestation Fund may be created where all the contribution towards compensatory afforestation and net present value of land has to be deposited. In April 2004, the Ministry of Environment and Forests established CAMPA to overlook and manage the Compensatory Afforestation Fund. Later in 2009, the government ordered the setting up of

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<sup>1</sup>*TN Godavarman v. Union of India*, 2003 (1) SCALE 4

state CAMPAs<sup>2</sup> to help to improve the compensatory afforestation at the state level as well as manage the Green India Fund.

Consequently, the Compensatory Afforestation Fund Act, 2016<sup>3</sup> came into force in September 2018. The Act constituted a National Compensatory Afforestation Fund under the Public Account of India and the State Compensatory Afforestation Fund under the Public Account of each state. The payments made for compensatory afforestation, net present value and others related to the project will be deposited in the fund.<sup>4</sup> While 90% payment was to be received by the State Funds, the National Fund will receive remaining the 10%. The regulation of the funds would be done by the State and National CAMPA.<sup>5</sup>

An Authority to be known as the “State Compensatory Afforestation Fund Management and Planning Authority” (State CAMPA) is directed towards facilitating the activities for preservation of natural forests, management of wildlife, infrastructure development in the sector and other allied works.

## 1.2 What is the purpose of the fund?

User agencies<sup>6</sup>, which often consist of private parties, are not generally expected to undertake afforestation themselves. Therefore, if a user agency wants to divert forest land for non-forest activities, it is required to deposit a certain amount of money towards compensatory afforestation and pay the Net Present Value and some other charges. Since forests are being diverted very frequently (at the rate of about 20,000-25,000 ha per year according to the Ministry of Environment and Forests) a large sum of money is accruing to the government. Till 2016, more than Rs. 40,000 crore has been accumulated from these sources, and the fund is escalating at the rate of about Rs. 6,000 crore per year.<sup>7</sup>

National CAMPA Advisory Council has been established as per orders of the Supreme Court with the following mandates<sup>8</sup>:

- Laying down broad guidelines for State CAMPA.

<sup>2</sup>MoEFCC, *Guidelines on State Compensatory Afforestation Green Management and Planning Authority(State CAMPAs)*,(June 20, 2020, , 11:04 AM)

[http://mahafaforest.gov.in/fckimagefile/2\)GOI\\_guidelines28\\_04\\_2009.pdf](http://mahafaforest.gov.in/fckimagefile/2)GOI_guidelines28_04_2009.pdf).

<sup>3</sup>Compensatory Afforestation Fund Act, 2016.

<sup>4</sup>Compensatory Afforestation Fund Rules, 2018.

<sup>5</sup> All states except Nagaland had set up state CAMPA as of November 2019.

<sup>6</sup> User Agency is defined under Section of the Compensatory Afforestation Fund Act 2016 § 2(p) as “any person, organisation or company or department of the Central Government or State Government making a request for diversion or de-notification of forest land for non-forest purpose or using forest land for non-forest purpose in accordance with the provisions contained in the Forest (Conservation) Act, 1980 and the rules made and guidelines issued, thereunder.”

<sup>7</sup> Amitabh Sinha, *CAMPA: The manager of afforestation funds*, THE INDIAN EXPRESS, May 25, 2016.

<sup>8</sup>Compensatory Afforestation , Fund Management and Planning, E-GREENWATCH,(June 20, 2020, 11:06AM) <http://egreenwatch.nic.in/public/aboutcompa.aspx#:~:text=Objectives%20of%20CAMPA&text=National%20CAMP%20Advisory%20Council%20has,be%20required%20by%20State%20CAMP%20>.

- Facilitating technological scientific, and other assistance that may be required by the State CAMPA.
- Making recommendations to the State CAMPA on the basis of a review of their plans and programmes.
- Providing a mechanism to State CAMPA to resolve issues between states or between the Centre and the states. The Hon'ble Supreme Court approved the guidelines that are prepared by the MoEFCC for using CAMPA funds by an agency to be established in the states and to be known by the name of State CAMPA.

Some of the important points in the guidelines are highlighted here:<sup>9</sup>

1. The State CAMPA will receive the funds that have been in the Adhoc CAMPA that have been collected from user agencies. This amount includes funds received from compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, Net Present Value (NPV) and all other amounts recovered from such agencies under the Forest (Conservation) Act, 1980.
2. The State CAMPA is required to administer the amount received from the Ad hoc CAMPA and use the collected funds for the purpose of undertaking activities like compensatory afforestation, assisted natural regeneration, conservation and protection of forests, infrastructure development, wildlife conservation and protection and other related activities and for matters associated therewith or incidental thereto.
3. State CAMPA is also required to provide an integrated framework for utilizing multiple sources of funding and activities relating to the protection and management of forests and wildlife. The main task of the State CAMPA would be re-enforcing natural forests along with building up institutions engaged in the work of revamping forests. This would lay emphasis on training staff at forest range level and utilize other technological aspects in order to regenerate forests and restoration of wildlife habitats. The Compensatory Afforestation Fund Rules, 2018 provides the way in which the money that is deposited in the State Fund towards NPV is required to be utilized. According to the CAF Rules, a minimum eighty percent of the money has to be utilized for the purpose of managing forest and wildlife. Such management activities would include assisting natural regeneration, artificial regeneration, silvicultural operations in the forest, protection of the plantation and forest, pest and disease control in forest, controlling forest fire, soil and moisture conservation work in the forest, voluntary relocation of villages in the protected areas, rejuvenation of forest cover, biodiversity, wildlife habitat, supply of forest produce, establishment of animal rescue centres and voluntary relocation of villages from protected areas. If separate funds are collected for wildlife management and conservation plans, then that money should be used for that purpose and the money towards NPV will not be used

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<sup>9</sup>MoEFCC, *Guidelines on State Compensatory Afforestation Green Management and Planning Authority (State CAMPAs)*, (June 20, 2020, , 11:04 AM) [http://mahaforest.gov.in/fckimagefile/2\)GOI\\_guidelines28\\_04\\_2009.pdf](http://mahaforest.gov.in/fckimagefile/2)GOI_guidelines28_04_2009.pdf)

for those specific purposes.<sup>10</sup> Maximum twenty percent of the money can be used for the improvement of the infrastructure related to forest and wildlife and capacity building of the personnel who are involved in its utilization.<sup>11</sup> The Fund cannot be used for certain purposes like-payment of salary, travel allowance, medical expenses towards the employees, undertaking foreign visits, payment of legal services not related to the management of the State Authority, purchasing of vehicles for the department, construction of residential buildings and office buildings for above the position of Forest Range Officer, lease, hire or purchase land for afforestation, part-financing other schemes of the government, purchasing office equipment, air conditioner, supporting to open forest boards, corporation and expansion or improvement or zoo.<sup>12</sup>

### 1.3 Authorities established to administer the fund

State CAMPA shall consist of a Governing Body, a Steering Committee and an Executive Committee.<sup>13</sup>

The Governing body of the state CAMPA shall consist of the following members:<sup>14</sup>

- (i) Chief Minister as the Chairperson
- (ii) Minister of Forests (Member)
- (iii) Minister of Finance –(Member)
- (iv) Minister of Planning (Member)
- (v) Chief Secretary (Member)
- (vi) Principal Secretary (Finance) (Member)
- (vii) Principal Secretary (Planning) ( Member)
- (viii) Principal Chief Conservator of Forests (Member)
- (ix) Chief Wildlife Warden ( Member)
- (x) Secretary (Forests) - Member Secretary

The Steering Committee of State CAMPA shall consist of the following:<sup>15</sup>

- (i) Chief Secretary as the Chairperson
- (ii) Principal Chief Conservator of Forests ( Member)
- (iii) Principal Secretary (Forests) (Member)
- (iv) Principal Secretary (Finance) ( Member)
- (v) Principal Secretary (Planning) (Member)
- (vi) Chief Wildlife Warden (Member)
- (vii) Nodal Officer ( Member)
- (viii) A representative of the Ministry of - Member Environment & Forests
- (ix) Two eminent NGO's to be nominated - Member by the State Government for a period of 2 years at a time who shall be eligible for re-nomination

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<sup>10</sup>Compensatory Afforestation Fund, Rules 2018 § 5(2)

<sup>11</sup>Compensatory Afforestation Fund, Rules 2018 § 5(3)

<sup>12</sup>Compensatory Afforestation Fund, Rules 2018 § 5(4)

<sup>13</sup> Compensatory Afforestation Fund, Act 2016 § 11(1)

<sup>14</sup>Compensatory Afforestation Fund, Act 2016 § 10(5).

<sup>15</sup>Compensatory Afforestation Fund Act 2016 § 11(2).



- (x) Chief Conservator of Forests (Plan/Schemes) – Member Secretary

The main functions of the Steering Committee are as follows:<sup>16</sup>

- (i) Lay down and/or approve rules and procedures for the functioning of the body and its Executive Committee, subject to the overarching objectives and core principles of State CAMPA;
- (ii) Monitor the growth of the utilization of funds that are released by the State CAMPA;
- (iii) Approve the Annual Plan of Operation (APO) that is made by the Executive Committee;
- (iv) Approve the annual reports and audited accounts of the State CAMPA;
- (v) Ensure coordination between the departments.;
- (vi) Conduct meeting at least once in six months.

The Executive Committee shall consist of the following:<sup>17</sup>

- (i) Principal Chief Conservator of Forests as the Chairperson
- (ii) Chief Wildlife Warden ( Member )
- (iii) Chief Conservator of Forests (Plan/Schemes) (Member)
- (iv) Financial Controller or Adviser in the O/o the Principal Chief Conservator of Forests ( Member)
- (v) Two eminent NGO's to be nominated by the State Government for a period of 2 years at a time who shall be eligible for re-nomination (Member)
- (vi) Nodal Officer as the Member Secretary

The State level Executive Committee has the following functions:<sup>18</sup>

- (i) Take all steps for giving effect to the State CAMPA, objectives and the principles, according to the rules and procedures that are approved by the Steering Committee and the approved APO;
- (ii) Prepare the APO of the State for various activities and then submit it to the Steering Committee before the end of December for each financial year. It shall also acquire the concurrence of the Steering Committee for the release of funds, while giving break-up of the proposed activities and their estimated costs;
- (iii) Supervise the works that are being implemented in the State out of the funds that are released from the State CAMPA;
- (iv) Take the responsibility to ensure proper auditing of both receipt and expenditure of funds;
- (v) Develop the code for maintenance of the account at the implementing agency level;

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<sup>16</sup>Compensatory Afforestation Fund Act 2016 § 18(1).

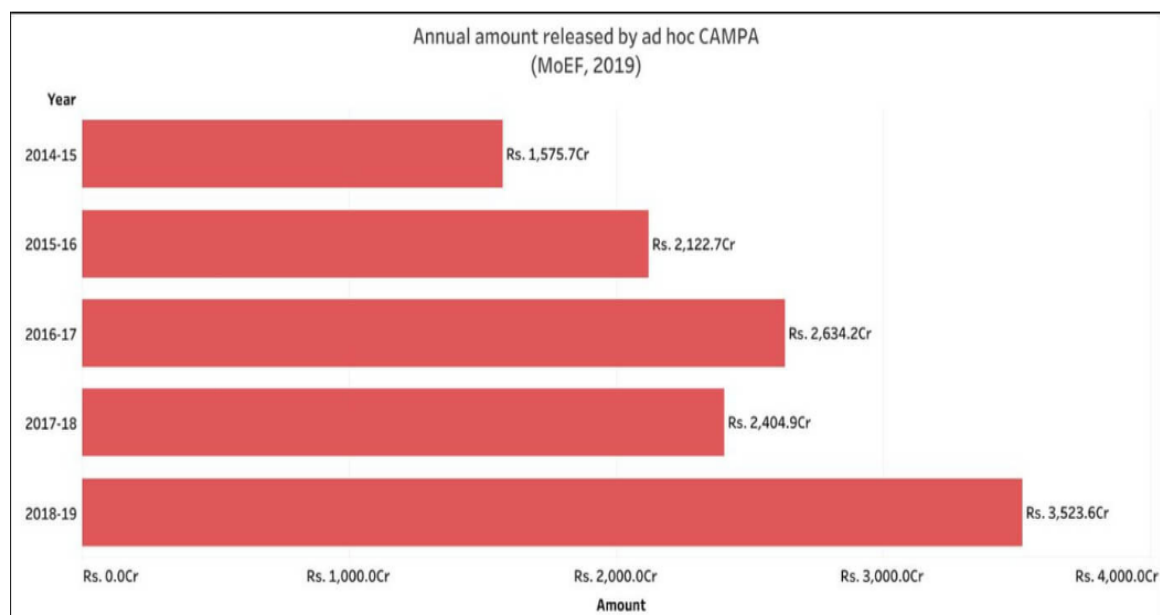
<sup>17</sup>Compensatory Afforestation Fund Act 2016 § 11(3).

<sup>18</sup>Compensatory Afforestation Fund Act 2016 § 19(1).

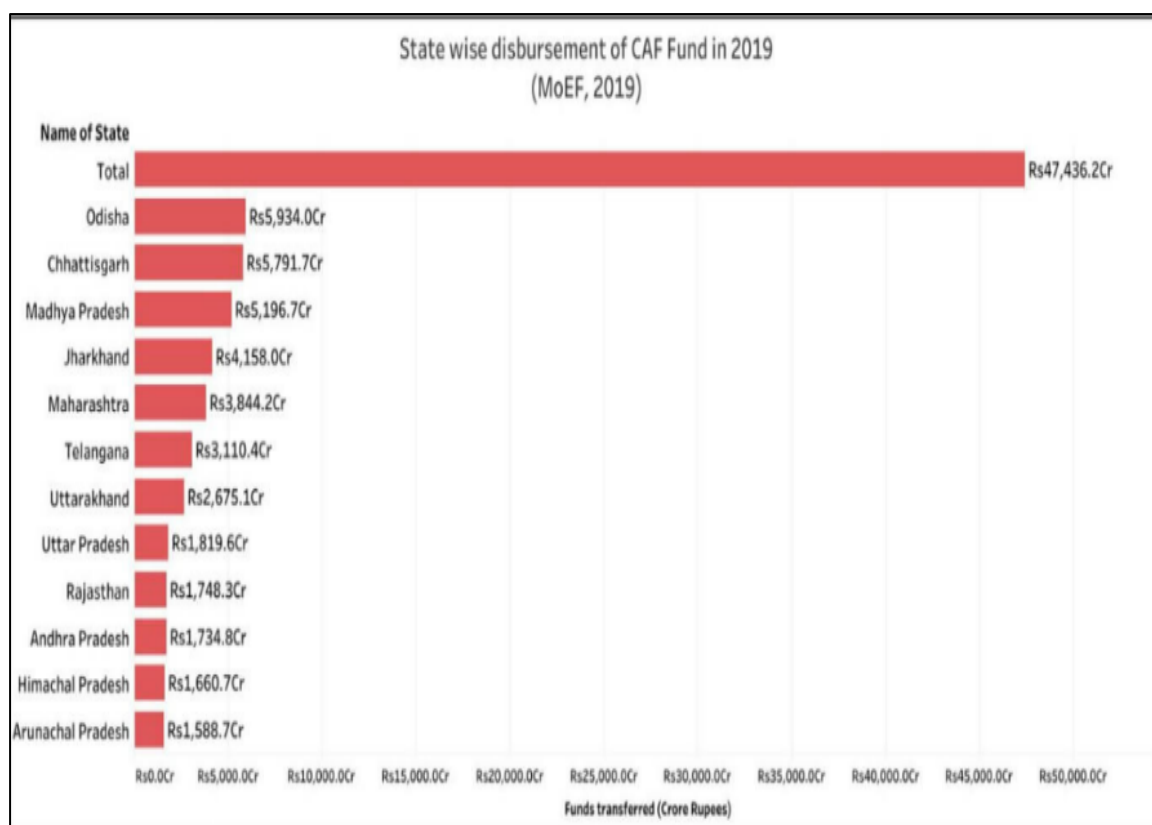
- (vi) Submit reports to the Steering Committee for review or consideration; and
- (vii) Prepare an Annual Report by end-June for each financial year.

#### 1.4 How is the fund being administered?

In January 2019, the Supreme Court directed all funds from the Compensatory Afforestation Fund Management and Planning Authority (CAMPA), amounting to Rs. 54,000 crore to be transferred to a new body. This new body is founded by the Central Government to aid the usage of the fund by both the central and state governments to fulfil the green initiatives undertaken. An ad-hoc CAMPA has been holding the money collected by courts by way of the Compensatory Afforestation Funds and the Net Present Value of forests that have been now diverted into non-forest lands such as used to build a factory or other commercial purposes.<sup>19</sup>



<sup>19</sup>SamanwayaRautray, *Transfer Rs.54,000 CAMPA funds to center: Supreme Court*, ECONOMIC TIMES, January 29, 2019, 11:29 AM. <https://economictimes.indiatimes.com/news/politics-and-nation/transfer-rs-54000-crore-campa-funds-to-centre-supreme-court/articleshow/67733209.cms?from=mdr>



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In April 2019, the Ministry of Environment notified that states possessing forest land exceeding 75%<sup>21</sup> of their geographical area is not required to provide for compensatory afforestation. Rather, the land can be acquired in states with lesser forest cover. It was also stated that the area of the compensatory land is required to be at least five hectares if the land is not contiguous to a forest. According to the State of Forest India Report<sup>22</sup>, over 23.3% of India's land is classified as forest land under the Indian Forest Act, 1927. Notably, between 2015 and 2018 a total of 20,314 hectares of forest land was diverted. The amount released has increased from Rs. 1575.7 crores in 2014-15 to Rs. 3,523.6 crores in 2018-19, by 123%. It was also observed that between 2006 and 2017, about Rs.38,0295 crores were received in various CAMPA Funds of which only Rs. 12,241 crores were released to State and UT Funds till 2018.

After the notifications received in 2018, Rs. 54,685 crores were brought under the control of the central government from the ad hoc CAMPA out of which Rs. 47,436 crore was given to different states to take action on the afforestation activities in accordance with the provisions

<sup>20</sup>MoEFCC, *Lok Sabha Unstarred Question No. 1880 To Be Answered On 29.11.2019* (June 20, 2020, 11:39AM) <http://164.100.24.220/loksabhaquestions/annex/172/AU1880.pdf>

<sup>21</sup> As per the 2019 State of forest India report, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Andaman and Nicobar and Lakshadweep Islands have more than 75% forest cover.

<sup>22</sup>MoEFCC, *India State of Forest Report (2019)*, (20 June, 2020, 11:45AM) <http://164.100.117.97/WriteReadData/userfiles/ISFR2019%20Vol-I.pdf>

of the CAF Act and Rules. The Ministry emphasized that the fund has to be used for fulfilling essential needs like Compensatory Afforestation, Catchment Area Treatment, Wildlife Management, Assisted Natural Regeneration, Forest Fire Prevention and Control Operations, Soil and Moisture Conservation Works in the forest, Improvement of Wildlife Habitat, Management of Biological Diversity and Biological Resources, Research in Forestry and Monitoring of CAMPA works and others.<sup>23</sup>

The total budget for the Union Ministry of Environment, Forest and Climate Change (MoEFCC) has increased from Rs 2,657.94 crore in 2019-20 to Rs 3,100 crore in 2020-21. The amount of fund allocated for the Integrated Development of Wildlife Habitats (IDWH), a centrally sponsored scheme, has been increased to Rs 532 crore in 2020 from Rs 493.57 crore in 2019. IDWH funds are utilized in programmes like Project Tiger, Project Elephant and Development of Wildlife Habitats (DWH). The fund allocated for Project Tiger has also been increased from Rs 282.57 crore in 2019-20 to Rs 300 crore in 2020-21. It is to be noted that the fund for Project Tiger in 2018-19 was high, at Rs 323.44 crore, the budgetary allocation for the fund allocated for Project Elephant has increased from Rs 31 crore to Rs 35 crore in 2020. While the Budget emphasizes on tigers and elephants, it has ignored other species, many of which are endangered. In 2019, the DWH scheme received an amount of Rs 175 crore according to revised estimates, as compared to 2020 where it has been allocated only Rs 148.41 crore.<sup>24</sup>

### **1.5 Are fines imposed under the Polluter Pays Principle credited to this Fund?**

No, fine imposed under the Polluter Pays Principle and other policies are deposited under a fund called the Environment Relief Fund.

### **1.6 Are funds received from international agencies such as the United Nations or other external funders credited to this account?**

No such funds have been credited so far.

### **1.7 Process of disbursal of amounts from the funds and the purposes for which it can be used**

(1) All the money received towards compensatory Afforestation, additional compensatory afforestation, penal compensatory afforestation, Catchment Area Treatment Plan and money that is received exclusively for any other scheme can be utilized in a manner that is

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<sup>23</sup>Pavithra K.M, *Explainer: What are CAMPA Funds?*, FACTLY, June 20,, 2020, 11:49 AM  
<https://factly.in/explainer-what-are-campa-funds/>

<sup>24</sup> Annual reports have not been published on any official website or database. Roshan Chachane, *No CAMPA annual report made public despite spending crores*, THE HITAVADA June20, 2020, 11:51AM)  
<https://www.thehitavada.com/Encyc/2020/2/28/No-CAMPA-annual-report-made-public-despite-spending-crores.html>

specifically approved by the State along with the approved proposals under the Forest Conservation Act, 1980.

(2) Once the money towards these causes has been received, the state CAMPAs will carry out the necessary afforestation practices in accordance with the funds. The State CAMPAs shall carry out their work within a period of one year or two growing seasons after project completion.

(3) The money received by virtue of the Net Present Value (NPV) of the forest land shall be utilized towards natural assisted regeneration, forest management, protection, infrastructure development, wildlife protection and management, supply of wood and other such allied activities.

(4) The money received from user agencies that have converted forest land of protective areas to non-forest land for commercial use or otherwise in accordance to the Supreme Court or by way of decisions taken by the National Board for Wildlife shall be used exclusively for undertaking protection and conservation activities in protected areas of the State.

(5) The State CAMPA is authenticated to release funds to the field officers in defined instalments as per the Annual Plan of Operation (APO) finalized.<sup>25</sup>

Currently funds collected under CAMPA directly go into the Public Account and from thereon to the states.

### **1.8 Audits or reporting mechanism to the government or concerned authorities**

- State CAMPAs must provide a budget for every financial year, stating the receipts and payments specifically.
- State CAMPA shall adopt financial regulations and procedures laid down by the Compensatory Afforestation Act, 2016
- State CAMPA are obligated to maintain appropriate accounts and other relevant records. They are also bound to prepare an annual statement of accounts in a manner prescribed in consultation with the Accountant General.
- The Accountant General shall audit the accounts of the State CAMPAs at a specified interval. Any expense incurred by him in the said procedure shall be payable by the Authority to the Accountant General.
- The same rights and privileges shall be granted to any other person appointed by the Accountant General in relation to the State CAMPAs. He shall also have the right to demand the production of books, accounts, connected vouchers, other documents and papers to inspect the office of the State CAMPA.

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<sup>25</sup>MoEFCC, *Guidelines on State Compensatory Afforestation Green Management and Planning Authority (State CAMPAs)*, (June 20, 2020, , 11:04 AM) [http://mahaforest.gov.in/fckimagefile/2\)GOI\\_guidelines28\\_04\\_2009.pdf](http://mahaforest.gov.in/fckimagefile/2)GOI_guidelines28_04_2009.pdf)

- The accounts of the State CAMPA should be certified by the Accountant General or any person appointed by him for the purpose of the audit. The audit report and an annual report is required to be forwarded to the State Government, the MoEFCC and the Adhoc CAMPA by the State CAMPA.
- The State Government and the MoEFCC are authorised to conduct special audit or performance audit of the State CAMPA at any time desired.
- The Annual Report should mention the following:
  - The details of various projects carried out and the money utilized for the same.
  - The details of the amount received by the State CAMPA from various sources, including the Central Government.
  - The inferences made from the audit report.<sup>26</sup>

## 2. ENVIRONMENT RELIEF FUND

### 2.1 Under what law was the fund created?

The Environment Relief fund was founded under the Public Liability Insurance Act, 1991 as a means to provide relief to the victims of accidents involving hazardous substances. No-fault liability principle is the basis of the fund. In a leading decision of the Supreme Court, *M.C Mehta v. Union of India*<sup>27</sup>, it was held that under the Public Liability Insurance Act, 1991, all industries dealing with hazardous substances have to compulsorily subscribe to Public Liability Insurance. The Environment Relief Fund Scheme has been part of the Public Liability Act under Section 7A since 2008. The Fund was established by a notification of the Ministry of Environment and Forest titled the Environment Relief Fund Scheme, 2008<sup>28</sup>. This Fund Scheme makes it mandatory for companies that can be regulated under the PLIA Act to deposit a sum of money equal to one premium of its insurance policy with a fund manager, which is presently United India Insurance Company Limited (UIICL).

PLIA requires the following amounts to be credited to the ERF:

- An amount that is equivalent to the premium of the insurance policy that is taken out by the owner<sup>29</sup>
- The income from investments
- Any other money that is mentioned in Section 4(2C) of the Act.<sup>30</sup>

<sup>26</sup> Guidelines of Audit under the Compensatory Afforestation Act, 2016

<sup>27</sup> *Mehta v. Union of India* (1987) AIR 1086

<sup>28</sup> MoEFCC, *Notification Gazette of India, No. G.S.R. 768(E)* (June 20, 2020, 11:55AM) [https://upload.indiacode.nic.in/showfile?actid=AC\\_CEN\\_16\\_18\\_00006\\_199106\\_1517807323502&type=rule&filename=GSR\\_768\\_E.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_16_18_00006_199106_1517807323502&type=rule&filename=GSR_768_E.pdf)

<sup>29</sup> Public Liability Insurance Rules, 1991 § 11.

<sup>30</sup> Public Liability Insurance Act 1991 § 4.

- The amount that is transferred by the owner as compensation for damage to the environment under the National Environment Tribunal Act (NETA). However, NETA has become non-functional and is now superseded by The National Green Tribunal.<sup>31</sup>

## 2.2 What is the purpose of the fund?

The primary purpose of the fund is to provide relief to persons (except workmen) who are injured or have died or suffered damage to their property due to an accident that is attributable to the handling of the hazardous substances by the industry. The liability of the owner to provide the relief is of a nature of no-fault liability. Thus, it is not necessary for the claimants to establish any negligence, fault or wrongful act of the industry that has resulted in the death, injury or loss of property of the claimant. Therefore, the Act requires the owner of an industry handling hazardous substances to subscribe to an insurance policy to insure against the liability arising out of such claims.<sup>32</sup>

## 2.3 Authorities established to administer the fund

The Environment Relief Fund Scheme, 2008 nominated the United India Insurance Company Limited as the Fund Manager for a period of five years.<sup>33</sup> United India Insurance Company Limited was reappointed as the Fund manager for several terms, the last being up to the period 31st March, 2019.<sup>34</sup>

## 2.4 How is the fund being administered?

The process of disbursement of relief has been enunciated in the Environmental Fund Relief Scheme, 2008.<sup>35</sup> It has been reported that there has been no expenditure from the fund till now, except the fees to the Fund Manager. The Fund Manager admitted to the fact that the funds have not been used in the financial year of 2017-18. NGT has been functional and awarding compensation for more than 8 years.<sup>36</sup>

## 2.5 Are fines imposed under the Polluter Pays Principle credited to this Fund?

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<sup>31</sup>The National Environment Tribunal Act 1995 §22.

<sup>32</sup>MoEFCC, *Notification Gazette of India, Environment Relief Fund Scheme, 2008*, No. G.S.R. 768(E), (June 20, 2020, 11: 57AM)  
[https://upload.indiacode.nic.in/showfile?actid=AC\\_CEN\\_16\\_18\\_00006\\_199106\\_1517807323502&type=rule&filename=GSR\\_768\\_E.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_16_18_00006_199106_1517807323502&type=rule&filename=GSR_768_E.pdf)

<sup>33</sup>Environment Relief Fund Scheme 2008 § 4(1).

<sup>34</sup>MoEFCC, *Notification G.S.R. 606(E)*, (June 20, 2020, 11:04AM)  
[http://plipms.nic.in/files/June%202016%%220Notification0\(18\).pdf](http://plipms.nic.in/files/June%202016%%220Notification0(18).pdf)

<sup>35</sup>Environment Relief Fund Scheme 2008 § 7.

<sup>36</sup>MoEFCC, *Implementation of India's National Biodiversity Action Plan An Overview (2019): An amount of Rs 66,298.58 crores has been collected through this fund. INR 14,560.63 crores has been released for various works.* (June 20, 2020, 11: 10AM)  
<https://www.cbd.int/doc/world/in/in-nbsap-other-en.pdf>

Yes, the money received through the fines imposed by the National Green Tribunals, specifically through 3 basic principles- the principles of sustainable development, the precautionary principle, and the polluter pays principle are transferred to the Environment Relief Fund.<sup>37</sup> Under Section 24 of the NGT Act<sup>38</sup>, any amount that is payable for the damage caused to the environment is payable to a fund called the Environment Relief Fund. However, all the money imposed as fines is not transferred to the said fund. There is some money that is directed to office administration or transferred to State Forest Authorities. Rule 36 of the NGT (Practices and Procedure) Rules, 2011<sup>39</sup> lays down that a relevant authority can transfer the money from the fund to certain concerned authorities such as the District Collector.

## 2.6 Role of CPCB and SPCB and MoEFCC under these funds

Under section 18 (1) (a) of the Water Act and the Air Act, the MoEFCC has issued directions to Central Pollution Control Board (CPCB) to guarantee better implementation of Public Liability Insurance (PLI) Act, 1991.

CPCB, is required to issue directions to all the SPCBs to make sure that Consent to Establish (CTE) or The Consent to Operate (CTO) is not given or renewed to any industry, which does not fulfill the obligations required under PLI Act, 1991. CPCB is also required to direct the SPCBs and PCCs to ensure that SPCBs/PCCs include PLI insurance policy as one of the checkpoints. SPCBs and PCCs are required to submit a compliance report to CPCB, which in turn is required to submit the first compliance report and quarterly progress report within 60 days and till the next 3 years respectively to the Central Government. <sup>40</sup>

Some of the steps taken by the Ministry to improve the implementation of the Act are as follows:<sup>41</sup>:

1. As per the notification on 16<sup>th</sup> April 2015, the State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs) of all UTs have been advised to include PLI insurance policies as a checklist before awarding or renewing the CTE or CTO of an industry. This letter was succeeded by a follow up letter that was sent on 16<sup>th</sup> June, 2015.

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<sup>37</sup>Centre for Science and Environment, *Green Tribunal: Green Approach*, June 20, 2020 , 11:19 AM [http://cdn.cseindia.org\\_attachments\\_0.93040300\\_1519796939\\_green-tribunal-green-approach-report.pdf](http://cdn.cseindia.org_attachments_0.93040300_1519796939_green-tribunal-green-approach-report.pdf)

<sup>38</sup>National Green Tribunal Act 2010.

<sup>39</sup> National Green Tribunal, *NGT (Practices and Procedure) Rules, 2011*, (June 20, 2020, 11:37 AM) <https://greentribunal.gov.in/ngt-rules>

<sup>40</sup> PTI, *Government suggests norms for units dealing with hazardous chemicals*, THE ECONOMIC TIMES June 20, 2020, 11:39AM) [https://economictimes.indiatimes.com/news/politics-and-nation/government-suggests-norms-for-units-dealing-with-hazardous-chemicals/articleshow/48859553.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/government-suggests-norms-for-units-dealing-with-hazardous-chemicals/articleshow/48859553.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>41</sup>Capital Market, *Environment Ministry Directs CPCB to Ensure Better Implementation of Public Liability Insurance Act, 1991*, BUSINESS STANDARD, (June 20, 2020, 10:00AM), [https://www.business-standard.com/article/news-cm/environment-ministry-directs-cpcb-to-ensure-better-implementation-of-public-liability-insurance-act-1991-115090700842\\_1.html](https://www.business-standard.com/article/news-cm/environment-ministry-directs-cpcb-to-ensure-better-implementation-of-public-liability-insurance-act-1991-115090700842_1.html)



2. A general meeting for sensitizing the general insurance company has taken place on 29<sup>th</sup> April, 2015.

3. An attempt to draft a standard PLI policy has been taken by writing a letter to the Insurance Regulatory Development Authority (IRDA) on 1<sup>st</sup> July, 2015.

4. An advisory has been sent to PSUs, big industry houses and industry associations such as FICCI, CII, CMA, ICC, etc. has been written to subscribe to PLI policy and pay the ERF in July, 2015

## **2.7 Are funds received from international agencies such as the United Nations or other external funders credited to this account?**

None, so far.

## **2.8 Process of disbursement of amounts from the funds and the purposes for which it can be used**

The process of disbursement of relief has been enunciated in the Environmental Fund Relief Scheme, 2008.<sup>42</sup> According to the Scheme, the applications have to be made through Form I to claim for relief to the Collector, who shall then award the claimant the amount of relief through Form II. The Fund Manager or the Insurance Company is required to ensure that the sum that is awarded by the Collector is deposited with him within a period of 30 days of the receipt of the demand. There may be three circumstances:

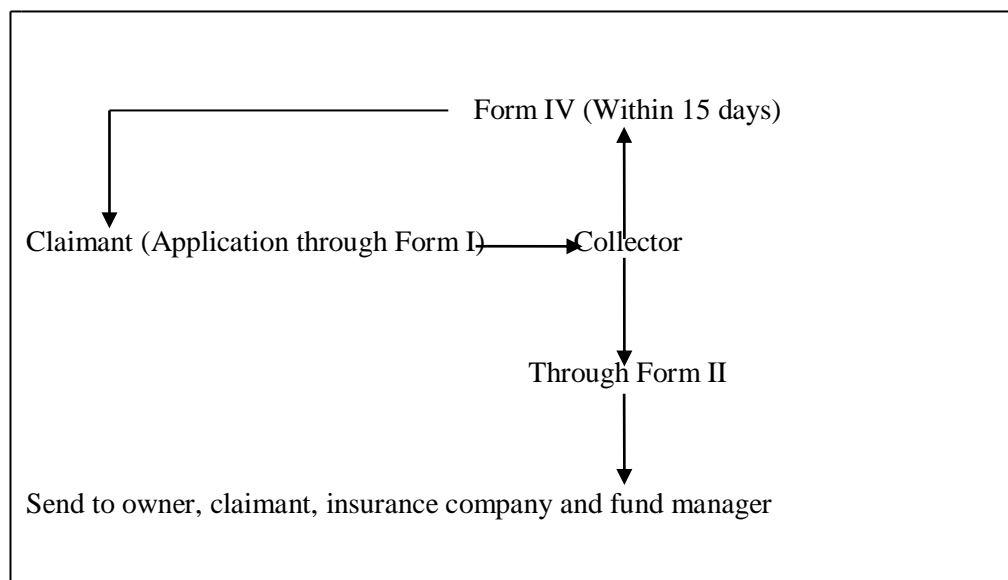
- 1) The claims exceed the insurance liability and relief fund money- The Collector is required to demand the arrears of land revenue or public demand from the owner.
- 2) The amount of award exceeds the amount that was paid under the insurance policy- The Collector would order the excess money to be paid by the Fund Manager. The Fund Manager is required to deposit the excess money as awarded to the Collector with 15 days. The owner is also required to reimburse the amount that is paid from the Relief Fund with a time period of 6 months.
- 3) The liability of the company that is declared is higher than its total assets as such the company is declared insolvent- Matter is to be referred to an arbitrator who is appointed by the Central Government.<sup>43</sup>

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<sup>42</sup>Environment Fund Relief Scheme 2008 § 7.

<sup>43</sup>Ibid.

Process of disbursal of funds is described in the diagram below:



According to Clause 7 of the Notification issued in 2008, the amount under the Relief Fund shall be used exclusively for claims admissible under the scheme.<sup>44</sup>

## 2.9 Audits or reporting mechanism to the government or concerned authorities

Although a compensation for over Rs. 654 crore has been awarded by the National Green Tribunal between 2014 and 2019, only Rs. 2 crore has been paid by the defaulting industries.<sup>45</sup>

## 3. NATIONAL BIODIVERSITY FUND

### 3.1 Under what law was the fund created?

The fund is created under the Biological Diversity Act 2002 and Biological Diversity Rules, 2004. The expenses of the National Biodiversity Authority are defrayed out of the

<sup>44</sup>MoEFCC, Notification No. GSR 768(E), (June 20, 2020, 10:08AM), [https://upload.indiacode.nic.in/showfile?actid=AC\\_CEN\\_16\\_18\\_00006\\_199106\\_1517807323502&type=rule&filename=GSR\\_768\\_E.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_16_18_00006_199106_1517807323502&type=rule&filename=GSR_768_E.pdf)

<sup>45</sup>Bhushan C, Banerjee S and Bezbaroa I, 'Green Tribunal, Green Approach: The Need for Better Implementation of the Polluter Pays Principle', CENTRE FOR SCIENCE AND ENVIRONMENT June 20, 2020, 10:16 AM. [http://cdn.cseindia.org\\_attachments\\_0.93040300\\_1519796939\\_green-tribunal-green-approach-report%20\(1\).pdf](http://cdn.cseindia.org_attachments_0.93040300_1519796939_green-tribunal-green-approach-report%20(1).pdf)

consolidated fund of India<sup>46</sup>. A wildlife enthusiast, Chandra Bhal Singh, filed an application before the National Green Tribunal in 2016, submitting that certain states and authorities have failed to constitute the adequate number of BMCs which led to the formation of such funds.<sup>47</sup> The NGT along with directing the MoEFCC to ensure compliance ordered the preparation of Biodiversity Management Committees (BMCs) and People's Biodiversity Registers (PBR), the document that records the condition of local biodiversity within six months.

Compared to August, 2019<sup>48</sup> the NGT observed an increase in the number of BMCs by almost 1,506.56 percent and PBRs grew by 394.81 percent in January, 2020. The NGT also introduced a fine of Rs. 10 lakhs on default of compliance by the states. In the latest order passed by the NGT in March 2020<sup>49</sup>, it was observed that the compliance of BMCs stood at 90 percent and PBRs stood at 39.12 percent.

The National Biodiversity Authority may direct that any amount of money that is received by way of benefit sharing to be deposited in the National Biodiversity Fund. However, in cases where the biological resource or knowledge was an outcome of access from some specific individual or a group of individuals or organizations, the National Biodiversity Authority may direct such amount to be paid directly to such individual or group of individuals or organizations according to the terms of any agreement or in such manner as it deems fit.

The following can be credited to the National Biodiversity Fund:<sup>50</sup>

- (a) Any grants and loans made by the Central Government towards the National Biodiversity Authority.
- (b) Royalties and charges received under the Biological Diversity Act; and
- (c) All sums that the Central Government decides upon and deems fit to be credited to the National Biodiversity Authority.

Every state also consists of a State Biodiversity Board consisting of a Chairperson, not more than six ex-officio members and not more than five members that are experts in terms of conservation of biological diversity. There is a Fund called the State Biodiversity Fund which shall consist of:<sup>51</sup>

- (a) Any grants and loans made by the State Government towards the State board or the National Biodiversity Authority;
- (b) All sums decided upon by the State Government to be transferred to the fund.

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<sup>46</sup> The Biological Diversity Act 2002 § 17

<sup>47</sup> Ashish Tripathi, *Set up panel for biodiversity in local bodies: NGT*, DECCAN HERALD, (June 20, 2020, 10:38 AM), 2018. <https://www.deccanherald.com/national/set-panel-biodiversity-local-687181.html>

<sup>48</sup> Order of NGT in *Shah Alam v. State of Uttar Pradesh*, application u/s 482 no. - 35169 of 2019 (With report dated 13.09.2019).

<sup>49</sup> Order of NGT in *Chandra Bhal Singh v. Union Of India and others* (OA No. 347/2016).

<sup>50</sup> The Biological Diversity Act 2002 § 27.

<sup>51</sup> The Biological Diversity Act 2002 § 32.

A Local Biodiversity Fund can also be established by the State Governments. The Local Biodiversity Funds will consist of the grants or loans appropriated by the State Government. The State Government can make this appropriation as they deem fit and utilize most optimally their resources to fulfil the objective of the Biological Diversity Act.

The Local Biodiversity Fund shall consist of:<sup>52</sup>

- (a) Any grants and loans that is made to or by way of state governments or bodies;
- (b) Any grants or loans made either by the National Biodiversity Authority or State Biodiversity Boards
- (c) Fees received by those who illegally possessed biological resource for commercial purposes by the Biodiversity Management Committees;
- (d) The sums received by the Local Biodiversity Fund from such other sources as decided by the State Government.

### 3.2 What is the purpose of the fund?

The purpose of the fund is to

- 1) Utilize it in issues relating to the conservation of biodiversity and sustainable use of its components.
- 2) Utilize it for the purpose of equitable benefit sharing resulting from the access and usage of the biological resources,
- 3) Regulate requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians by granting approvals
- 4) Perform other functions as may be necessary to carry out the provisions of the Act or as may be prescribed by the State Government.<sup>53</sup>

It is aimed at finding violations of any citizen of India, corporate body or association registered in India that have obtained any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization.

The national fund shall be used to<sup>54</sup>::

- (a) Provide benefit to the benefit claimers,
- (b) Conserve and promote biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;
- (c) Make socio-economic development of areas referred to in clause (b) in consultation with the local bodies concerned.

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<sup>52</sup>The Biological Diversity Act 2002 § 43.

<sup>53</sup>MoEFCC, *Frequently Asked Questions on The Biological Diversity Act, 2002*, (June 20, 2020, 10:24AM) at <http://nbaindia.org/content/19/16/1/faq.html#:~:text=The%20purpose%20of%20the%20Biodiversity,of%20the%20utilization%20of%20bioresources>.

<sup>54</sup> The Biological Diversity Act 2002 § 27.

The state fund shall be used to:<sup>55</sup>

- (a) Proceed towards conserving of heritage sites.
- (b) Compensate or rehabilitate sections of the people economically affected.
- (c) Conserve and promote biological resources;
- (d) Make socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject exceptions mentioned in section 37 of the Biodiversity Act, after consultation with the local bodies concerned;
- (e) Meet the expenses that are incurred for the purposes authorized by the biodiversity Act.

According to the ABS Guidelines,<sup>56</sup> where the approval for Benefit sharing has been granted by the NBA for the purpose of commercial utilization of the resources, research or transfer of results of research or for IPR, then 5% of the benefits shall go NBA, out of which, NBA shall retain half of the amount and the remaining half to be passed on to SBB for the administrative charges. 95% of the accrued benefits shall pass on to the BMCs or other benefit claimers, if identified. In a circumstance, where the benefit claimers are incapable of being identified, then the funds are required to be utilized for the conservation and sustainable use of the biological resources or promotion of the livelihood of the locals from where the biological resource has been accessed. When the Biological resources was a result of access from some specific individual/group of individuals/organizations, then the amount can be directly transferred to them as per the terms of the agreement or in a manner that is deemed fit.

In case the biological resource that is accessed, have a source from 2 or more SBBs , then the concerned SBB/NBA shall decide on the total amount of the accrued benefits that are to be shared among them.<sup>57</sup>

In case, the approval for Benefit Sharing is given by the SBB, then the SBB is authorized to retain a maximum amount of 5% of the accrued benefits towards the administrative charges and the residual amount has to be passed on to the BMC or other identified benefit claimers. However, the amount may be transferred directly to some specific individual/group of individuals/organizations, if the access was because of them as per any agreement between them or in a manner that is deemed fit.<sup>58</sup>

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<sup>55</sup>The Biological Diversity Act 2002 § 32(2).

<sup>56</sup>Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014 § 15(1).

<sup>57</sup>Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014 § 14(4).

<sup>58</sup>Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014 § 15(2).

### 3.3 Authorities established to administer the fund

The Chairperson is the Chief Executive of the National Biodiversity Fund. He shall exercise the powers and perform duties as may be prescribed to him.<sup>59</sup> The orders and decisions of the National Biodiversity Authority need to be authenticated by the Chairperson of the fund before being put to action.<sup>60</sup> The Chairperson must have adequate knowledge and experience with respect to conservation and sustainable use of biological resources without causing unnecessary damage to the ecology. The Chairperson however is the Backbone of the fund and has full control of the day to day activities of the NBA. The Chairperson is also in charge of all confidential papers and records of the authority and its safe custody. The Disbursement of funds and payments is done on the authority of the Chairperson.<sup>61</sup>

Apart from the chairperson, the fund also authorizes for three ex-officio members to be appointed by the Central Government each of them dealing with the Ministry engaged with Tribal affairs or the Ministry engaged with Environment and Forests. Of these, one shall be the Additional Director General of Forests or the Director General of Forests. Seven Additional ex-officio members are to be appointed to represent the following Ministries:

- Agricultural Research and Education
- Biotechnology
- Ocean Development
- Agriculture and Cooperation
- Indian Systems of Medicine and Homeopathy
- Science and Technology
- Scientific and Industrial Research

Five non-official members are also to be part of NBA. They are to be appointed amongst the specialists in the field of conservation, sustainability and equitable distribution of biological resources.<sup>62</sup>

### 3.4 Are funds received from international agencies such as the United Nations or other external funders credited to this account?

None so far.

### 3.5 Process of disbursement of amounts from the funds and the purposes for which it can be used

The process of disbursement is given only for BMC's and is as follows<sup>63</sup>:

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<sup>59</sup>The Biological Diversity Act 2002 § 10.

<sup>60</sup>The Biological Diversity Act 2002 § 15.

<sup>61</sup> Biological Diversity Rules 2004 § 13.

<sup>62</sup>The Biological Diversity Act 2002 § 8.

<sup>63</sup>MoEFCC, *Report on NBA Audit Guidelines for 2020*, (June 20, 2020 11:00AM) [http://nbaindia.org/uploaded/pdf/Guidelines\\_BMC\\_1.pdf](http://nbaindia.org/uploaded/pdf/Guidelines_BMC_1.pdf)

No	Item	Village Level BMC & PBR (in Rs.)	Block/Taluk level BMC & PBR (in Rs.)	District level BMC & PBR (in Rs.)
1	Amount apportioned for SBB to meets its expenditure for undertaking various activities during the preparation of PBR	15,000	20,000	30,000
	PHASE-I			
1	Awareness/PRA exercise	5,000	10,000	15,000
2	Skill development/field visit /Meetings	10,000	10,000	20,000
3	Collection of primary data	20,000	20,000	35,000
	PHASE-II			
4	Processing of data / documentation /drafting	20,000	30,000	40,000
5	Printing cost of PBR	10,000	20,000	30,000
6	Remuneration /TA/DA to Technical Support group/personnel	25,000	25,000	40,000
7	Miscellaneous charges	10,000	15,000	20,000
	<b>Total</b>	<b>1,15,000</b>	<b>1,50,000</b>	<b>2,30,000</b>

### 3.6 Audits or reporting mechanism to the government or concerned authorities

The NBA is required to prepare annual reports of the previous financial year every year mentioning the details of the activities it was involved in throughout the Previous Financial Year.<sup>64</sup>The National Biodiversity Authority has to prepare, an account based on its spending during a financial year, furnishing complete details of its activities during the previous financial year and furnish before such the specified date, an audited copy of accounts along with an audit report and present it forth the Central Government.<sup>65</sup>

<sup>64</sup>The Biological Diversity Act 2002 § 28.

<sup>65</sup>MoEFCC, *Biodiversity-audit guidelines*, (June 20, 2020, 11:12AM), <http://iced.cag.gov.in/wp-content/uploads/2013/09/Biodiversity%20audit%20guidelines.pdf>

It shall also prepare budget, maintain accounts and other relevant records.<sup>66</sup> Such accounts are to be audited by the Comptroller and Auditor General of India from time to time as may be required.<sup>67</sup>

Details of money deposited in State Biodiversity fund are as follows:<sup>68</sup>

State Biodiversity Board	Money deposited in State Biodiversity Fund
Andhra Pradesh	Rs. 1,14,91,168(2015-16) Rs.109900039(2017-18)
Gujarat	Rs.50,27,024(2014-15) Rs.42,28,110(2-15-16)
Telangana	Rs.24,00,000(2014-15) Rs.72,00,000(2015-16) Rs.20,00,000(2016-17) Rs.8,00,000(2017-18)
Tripura	Rs.4,16,902(2016-17) Rs.2,62,210(2017-18)

The NBA has a report submitted on 2017-2018 stating its financial accounts. However, it does not show the breakdown of the amounts in the fund. It only mentions the return on investments of the fund. The fact still remains that funds meant for the conservation of biological resources had been kept idle due to inaction on the part of NBA in framing the guidelines for the application of funds.<sup>69</sup>

### 3.7 Is money collected from ABS is deposited in the National Biodiversity Fund?

Yes, the money from ABS may be deposited in the National Biodiversity Fund if the National Biodiversity Authority directs so. According to Section 21(3), the National Biodiversity Authority may direct the money collected by benefit sharing to be deposited in the National Biodiversity Fund. However, if the biological resource or the knowledge was an outcome of an access from any specific individual or a group of individuals or organizations, then the NBA may ask to pay them directly in accordance with the terms of any agreement entered into by the person applying for such approval, the local bodies, NBA/SBBs as the case may be and the benefit claimers, or in a manner the NBA deems fit.<sup>70</sup>

<sup>66</sup>The Biological Diversity Act 2002 § 29(1)

<sup>67</sup>The Biological Diversity Act 2002 § 29(2).

<sup>68</sup>MoEFCC, *Finance Report on Biodiversity (2019)*, (June 20, 2020, 9:00AM)

[https://www.biodiversityfinance.net/sites/default/files/content/knowledge\\_products/Biodiversity%20Finance%20Plan%20Report%20Updated%20and%20Final%20%28Digital%20Presence%20-%20Low%20resolution%29%2008-07-2019.pdf](https://www.biodiversityfinance.net/sites/default/files/content/knowledge_products/Biodiversity%20Finance%20Plan%20Report%20Updated%20and%20Final%20%28Digital%20Presence%20-%20Low%20resolution%29%2008-07-2019.pdf)

<sup>69</sup>MoEFCC, *Annual Report of National Biodiversity Authority (2017-2018)*, (June 20, 2020, 10:08AM),

[http://nbaindia.org/uploaded/Annual\\_report\\_2017-18\\_english.pdf](http://nbaindia.org/uploaded/Annual_report_2017-18_english.pdf)

<sup>70</sup>The Biological Diversity Act 2002 § 21(3)



## **4. ENVIRONMENT FUND – MADRAS HIGH COURT**

### **4.1 How was the Fund established?**

The direction to establish the Fund was given by Justice Krishnakumar while listening to a civil revision petition filed in 2010. Subsequently, he had referred the matter to the Mediation and Conciliation Centre, Chennai.<sup>71</sup> According to him, previously, when parties wanted to make some monetary contribution towards any welfare measures, voluntarily, the courts used to order the transfer of those amounts to various organizations under different heads.

“Though the ‘right to clean environment’ is one of the fundamental rights under Article 21 of the Constitution of India, it is also necessary for the same environment to be protected and preserved by the citizen, which can be done through the planting of more trees. This court is of the firm view that it is appropriate that the cost can also be paid to the Environmental Fund,” Justice Krishnakumar said.<sup>72</sup>

### **4.2 What is the purpose of the fund?**

As indicated by Justice Krishnakumar in the judgement, the amounts would be received under the head "EF". These funds would be utilized for the following-

- 1) Planting and nurturing trees ;
- 2) Cleaning and maintaining water bodies

### **4.3 Authorities established to administer the fund**

The Taluk Legal Services Committees of Tamil Nadu has been made responsible for administering the fund.

### **4.4 How is the fund being administered?**

TNSLSA formed an Environment Fund from the costs received and allotted to various authorities for the betterment of the environment of court premises or Legal Services Institutions and other public premises. The Cost Fund was used to plant 1,948 saplings, conducting Conferences and Capacity Building Programmes<sup>73</sup> Fines borne out of welfare from the parties in mediation will go towards this fund.

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<sup>71</sup>Rajesh Dev vs C. VellakannuCRP (NPD) No. 1679 of 2017

<sup>72</sup>DTE Staff, *In a first, Madras High Court sets up 'Environmental Fund'*, DOWN TO EARTH, (June 20,,2020, 10:11AM).

<https://www.downtoearth.org.in/news/environment/in-a-first-madras-high-court-sets-up-environmental-fund--60976>

<sup>73</sup>National Legal Services Authority, *Best state legal services authority*,(June 20, 2020,10:15AM)

[https://nalsa.gov.in/uploads/pdf/2019/11/13/13\\_11\\_2019\\_243823498.pdf](https://nalsa.gov.in/uploads/pdf/2019/11/13/13_11_2019_243823498.pdf)

## 5. ANALYSIS OF THE ENVIRONMENTAL FUNDS AND CONCLUSION

### 5.1 Compensatory Afforestation Fund

#### 5.1.1 Mis-utilization and Non-Utilization of CAF

In *M.C. Mehta v. UOI*, in an order dated 10<sup>th</sup> April, 2018<sup>74</sup>, the Supreme Court had a chance to issue directions regarding the CAF amounting to Rs. 1,00,000 crores that were lying unutilized by the Centre. The issue regarding CAMPA funds came into light when the Chief Secretary of Odisha filed an affidavit after he discovered that those funds are being used for the purpose of constructing roads, science laboratories in colleges and renovation of the bus stand. The Supreme Court lamented at the mis-utilization and non-utilization of the funds and directed the Secretary of MoEF to submit a status report of the funds that are remaining unutilized till 31<sup>st</sup> March, 2018 and state the intended use of the unutilized funds. There is no penalty levied in the CAF Act, 2016 for mis-utilization of the fund. Thus, even if a petition is brought before the Court, the Court can only issue directions and nothing more. Besides that, even if a petition is brought before the Court, regarding non-utilization of funds, the Central government may plead that the questions are matters of policy and that decision of the government would be final.<sup>75</sup>

#### 5.1.2 Violating the Forest Rights Act, 2006

The Forest Conservation Act, 1980 mandates compensatory afforestation of an equivalent area that is diverted for non-forest purposes or acquisition of twice the amount of the degraded forest, if non-forest land is not found. There are reports from certain parts of India, alleging coerced acquisition of land in the name of compensatory afforestation in violation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.<sup>76</sup> The problem arises as the Compensatory Afforestation Fund Rules, 2018 requires for “consultation with Gram Sabha or Village Forest Management Committee.”<sup>77</sup> The word ‘consultation’ results in no legal obligation. However, if the word ‘consent’ would have been used in the place, then it would have created much more legally binding effect. When funds are left unutilized, some percentage of money may be mandatorily used for rehabilitating those who are displaced as a result of the action of compensatory afforestation on a land. By doing so, three purposes will be served- rehabilitation, afforestation and economic development.

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<sup>74</sup> Writ Petition(s)(Civil)No(s).13029/1985

<sup>75</sup> The Compensatory Afforestation Fund Act 2016 § 33(2).

<sup>76</sup> Sanghamitra Dubey, *Plantations, CAMPA loom large over Community Rights*, DOWN TO EARTH (July 20, 2020, 10:17AM), <https://www.downtoearth.org.in/blog/forests/plantations-campa-loom-large-over-community-rights-54932>.

<sup>77</sup> Compensatory Afforestation Fund Rules 2018§ 5(3),

Moreover, the CAF Act neither penalises the misuse of the land that has been acquired nor provides for any effective monitoring mechanism by which the plantations may be examined. There is a provision<sup>78</sup> for a monitoring group to examine the work implemented in the States, however, it seems that their examination is not effective. There are reports of plantations that do not exist in reality, yet are listed on the e-green-watch website of the government.<sup>79</sup>

### 5.1.3 NPV Value calculation

The CAF is to be charged when a forest is diverted for any non-forest purpose. As mentioned earlier, CAF includes any contribution towards compensatory afforestation and the NPV of the land. The primary reason for charging NPV, is that when a forest is diverted for a non-purpose, all the tangible and intangible benefits that flow from the forests are also lost, which is not covered by a mere compensatory afforestation. NPV is charged to compensate for the lost benefits. The NPV value is fixed on the basis of the net flow that is accrued over a time period of 20 years.<sup>80</sup> For the purpose of calculation of NPV, the forests have been classified into Six eco-classes and three canopy cover density classes.<sup>81</sup> It is to be noted that India's forests is a home to a variety of trees and plants with different rotation period. Therefore, using a blanket period of 20 years for the calculation of NPV, might lead to certain absurdity. For instance, what if the dominant tree species in the forest land may yield some economic value only till 15 years, that is less than 20 years? Or the economic value of the dominant tree species may yield produce for more than 20 years? Since different species of tree takes different time from its formation to its final felling (rotation period), calculating NPV by taking a period of 20 years may seem generic. Therefore, the value of NPV may be calculated by estimating the average physical rotation period (rotation that coincides with the natural lease of life of a species in a place) of the dominant tree species in each unit.

## 5.2 Environment Relief Fund

### 5.2.1 Lack of Monitoring Mechanism

There are serious discrepancies in the manner the ERF is handled. There is no statement of account available for the ERF Funds from the years 2010-2018. This shows that no systematic data is maintained in the absence of any monitoring mechanism. The main problem with ERF is the lack of any systematic collection and update of data. The PLIA Act also does not mandate the same. It is recommended to have a strong monitoring mechanism to examine the collection of the data and maintenance of the data.

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<sup>78</sup>Compensatory Afforestation Fund Act 2016 § 16.

<sup>79</sup>Soumitra Ghosh, *Compensatory Afforestation*, 52 (8) ECO. POL. WEEKLY, (2017).

<sup>80</sup>Supreme Court order dated 05.05.06 I.A. No. 1337 with I.A. Nos. 827, 1122, 1216, 1473.

<sup>81</sup>MoEFCC, *Letter Dated February 5, 2009*, (June, 20, 2020, 11:09AM), [https://mpforest.gov.in/img/files/LM2\\_26-29S.pdf](https://mpforest.gov.in/img/files/LM2_26-29S.pdf)

### *5.2.2 The discrepancies over Form III*

According to the ERF Notification, 2008, Form III is required to be submitted by the owner to the fund manager and collector to inform about the payment of the ERF contribution. The Ministry itself admitted that there are many owners who are ignorant to subscribe to the PLIA policies.<sup>82</sup> However, there is a lack of research on why has there been no case where penal actions have been initiated against the companies under the penalty under Section 16 of the PLIA Act. the filling of the Form may be digitalized so that forms which are incomplete cannot be submitted.<sup>83</sup>

### *5.2.3 Lack of PAN no. and Tax deduction and Collection no. (TAN) of the ERF*

The matter of PAN, recovery of TDS and the legal status of the ERF has to be decided in consultation with the Central Board of Direct Taxes (CBDT).<sup>84</sup> However, in the audit report of till 2016-17 highlighted the issue of the ERF not having TAN or PAN owing to the confusion over whether the fund has any legal status or not. It is also not clear whether CBDT has been consulted for this purpose or not and what was the outcome of the consultation.<sup>85</sup>

## **5.3 National and State Biodiversity Fund**

### *5.3.1 Reluctance of the Biodiversity Board in Expending on certain areas*

It seems that the State Biodiversity Boards are generally reluctant in expending amount on the following identified areas:

- Building up of databases on biological resources,
- Identification of heritage sites
- Documentation and
- Action Plan

While, there is considerable improvement in the number of BMCs that are established after the NGT's to form BMC's after Chandra Bal Singh filed a petition, however, there is no considerable improvement in building databases and creation of document for biological resources and traditional knowledge. For instance, the CAG Report on Economic Sector

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<sup>82</sup> Ministry of Environment, Forest & Climate Change, *Environment Ministry Directs CPCB to Ensure Better Implementation of Public Liability Insurance Act, 1991* India Environment Portal (June 20, 2020, 9:00AM), <http://www.indiaenvironmentportal.org.in/content/418223/environment-ministry-directs-cpcb-to-ensure-better-implementation-of-public-liability-insurance-act-1991/>

<sup>83</sup> MoEFCC, *Letter Dated February 5, 2009*, (June, 20, 2020, 11:09AM), [https://mpforest.gov.in/img/files/LM2\\_26-29S.pdf](https://mpforest.gov.in/img/files/LM2_26-29S.pdf)<sup>84</sup>The Environment Relief Fund Scheme 2008 § 6(7).

<sup>84</sup>The Environment Relief Fund Scheme 2008 § 6(7).

<sup>85</sup> MoEFCC, *Letter Dated February 5, 2009*, (June, 20, 2020, 11:09AM), [https://mpforest.gov.in/img/files/LM2\\_26-29S.pdf](https://mpforest.gov.in/img/files/LM2_26-29S.pdf)

government of Andhra Pradesh, 2018 points out that the state has not built any comprehensive biological database even after eleven years of its formation. In fact, the state has not even prepared any Action or Strategy Plan till 2014-15. It was only in 2016 that it came up with a Vision Plan to be implemented till 2018-19. However, the vision plan also could not be implemented due to lack of funds from the government. The Report also noted that the A.P. government did not identify heritage sites even after nine years.<sup>86</sup> Similarly, if we look at the annual expenditure of Gujarat from the State Biodiversity Fund in the year 2017-18 (Table below), it is seen that whereas Rs. 30, 00,000 has been sanctioned for databases, no money has been expended for that purpose. No money had been sanctioned for Action Plan and documentation for 2017-18. Similarly, whereas Rs.20,00,000 had been sanctioned for the purpose of heritage sites, no money has been spent on that.<sup>87</sup>

Expenditure of State Funds of Gujarat met from SFB in 2017-18<sup>88</sup>

Details of Expenditure (Rs.)	Sanctioned Amount(Rs.)	Expenditure Amount(Rs.)	Balance Amount(Rs.)
150 PBR & Other	17250000	14632500	2617500
Technical Manpower	6400000	505000	5895000
Radio Programme	2400000	841430	1558570
300 BMC/LBF	7500000	1852500	5647500
Data Base	3000000	0	3000000
Heritage Site	2000000	0	2000000
Action Plan	0	0	0
Documentation	0	0	0
20 Workshop	2000000	450000	1550000
PracharPrasar	1500000	18345	1481655
Total	42050000	18299775	23750225

For Tamil Nadu, till date, they have not notified the anything regarding People's Biodiversity Register. The State Biodiversity Board website says that the page is under construction.<sup>89</sup> In

<sup>86</sup>Comptroller and Auditor General of India , *Economic Sector government of Andhra Pradesh –(Report 4 of 2018)*, (June 20, 2020, 9:09AM)  
[https://cag.gov.in/sites/default/files/audit\\_report\\_files/Chapter\\_3\\_Compliance\\_Audit\\_of\\_Report\\_No\\_4\\_of\\_2018\\_-\\_Economic\\_Sector\\_Government\\_of\\_Andhra\\_Pradesh.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Chapter_3_Compliance_Audit_of_Report_No_4_of_2018_-_Economic_Sector_Government_of_Andhra_Pradesh.pdf)

<sup>87</sup> Gujarat Biodiversity Board, *Annual Report, 2017-18* (June 20, 2020, 10:06AM)  
[https://gsbb.gujarat.gov.in/upload/document/1579781281\\_Final\\_17-18\\_English.pdf](https://gsbb.gujarat.gov.in/upload/document/1579781281_Final_17-18_English.pdf)

<sup>88</sup>Ibid.

<sup>89</sup>Tamil Nadu Biodiversity Board, *People 's Biodiversity Register*, (June 20, 2020, 9:03AM),  
<http://tnbb.tn.gov.in/peoplesBiodiversityRegister.jsp>

Karnataka, though Rs. 5,00,000 had been sanctioned for maintenance of biological heritage sites in 2018-19, no money has been spent for that purpose. Out of Rs. 80,00,000 that was sanctioned for PBR documentation, only Rs. 21, 81,615 has been expended. (Table Below)<sup>90</sup>

A portion of Budget Estimation and Expenditure table of Karnataka State Biodiversity Board for the Year 2017-18<sup>91</sup>

EXPENDITURE	SCHEME	INR	EXPENDITURE	BALANCE
<b>Grant –in –aid- General</b>	103			
Travelling allowance		800000	315583	484417
Training Programmes/BMCs		6000000	1340000	4660000
PBR Documentation		8000000	2181615	5818385
Workshop and Seminar		500000	353839	146161
Incentives for Biodiversity Elements/Awards		200000	0	200000
Maintenance for Biodiversity Heritage Sites/Heritage Trees		500000	0	500000
Financial Assistance to PilikalaNisagaraDhama		200000	0	200000
Projects and Special Studies		1100000	239840	860160
Office Rent		2500000	2379211	120789
			<b>6810088</b>	

### 5.3.2 Non-Operating or poorly functioning biodiversity boards

In some states, the biodiversity boards are non-operational, for instance, in Jammu and Kashmir, the Biodiversity Board was non-functional for three years from 2015.<sup>92</sup> No

<sup>90</sup> Karnataka Biodiversity Board, *Annual Report 2018-19* (June 20, 2020, 9:03AM) <https://karunadu.karnataka.gov.in/kbb/english/Annual%20Report/Annual%20report%2018-19.pdf>

<sup>91</sup>Ibid

<sup>92</sup> Yogesh Sagotra, *Biodiversity Board Remains non-functional in J&K* GREATER KASHMIR (June 20, 2020, 9:05AM) <https://www.greaterkashmir.com/news/jammu/biodiversity-board-remains-non-functional-in-jk/>

documentation of biological resources were done till 2018. It was only in December 2019, that an interaction meet was held with the J &K Biodiversity Board to decide on how to prepare People's Biodiversity Registers.<sup>93</sup> In West Bengal, the State Biodiversity Boards' website shows only three annual reports- only from 2004-2009. There are no more annual reports uploaded on the website till date. So, it is difficult to comment upon how the biodiversity funds are being utilized.<sup>94</sup> Similarly, in Tripura, the images of annual reports uploaded are till 2014-15.<sup>95</sup> Rajasthan State Biodiversity Board website does not show any annual report. The last audit as shown on their page for public information is for the year 2012-13.<sup>96</sup> The website of Uttar Pradesh State Biodiversity Board also shows annual report only till 2012-13.<sup>97</sup> Lack of disclosure of such information on the official website of the states makes their working and their utilization of funds questionable.

It is seen from the above analysis that the environmental funds are not working satisfactorily. Some of the recommendations suggested in this note could be considered for better implementation of these environmental funds. Enhanced monitoring mechanism coupled with the removal of ambiguous provisions may improve the working of these funds.

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<sup>93</sup> Early Times Report, *Interaction Meet on Biodiversity Management Committee Held*, EARLY TIMES (June 20, 2020, 9:05AM), <http://www.earlytimes.in/newsdet.aspx?q=280996>

<sup>94</sup> West Bengal Biodiversity Board, *Annual Report*, (June 20, 2020, 9:16 AM) [http://wbbsb.gov.in/annul\\_report.php](http://wbbsb.gov.in/annul_report.php)

<sup>95</sup> Tripura Biodiversity Board, *Annual Report*, (June 20, 2020, 9:20AM) <https://biodiversity.tripura.gov.in/reports>

<sup>96</sup> Rajasthan State Biodiversity Board, *Finance and Accounts*, (June 20, 2020, 9:03AM) <http://environment.rajasthan.gov.in/content/environment/en/rajasthan-state-biodiversity-board/publicinformation/finance-and-accounts.html#>

<sup>97</sup> Uttar Pradesh State Biodiversity Board, *Annual Reports*, (June 20, 2020, 9:27AM) [http://www.upsbdb.org/annual\\_reports.php](http://www.upsbdb.org/annual_reports.php)