

COASTAL COMMONS

a glance at
RELEVANT LAWS



Text: Ananya Rao, Kalpa Viswanadhan, Ananya Majumdar

Photos: Ananya Majumdar, Adith Swaminathan
FRA title image - Copyright Adam Jadhav

Design and Layout: Shalaka Pai

Funding: This study was supported by funds from the Duleep
Matthai Nature Conservation Trust and the Ravi Sankaran Inlaks
Small Grants Programme



INLAKS INDIA FOUNDATION

The Duleep Mathai Nature
Conservation Trust

TABLE OF CONTENTS

HEADINGPAGE

Introduction	7
Jagpal Singh and Others vs. State of Punjab	9
Coastal Zone Notification 2011	13
Environmental Impact Assessment Notification 2006	25
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006	35
Wildlife Protection Act 1972	43

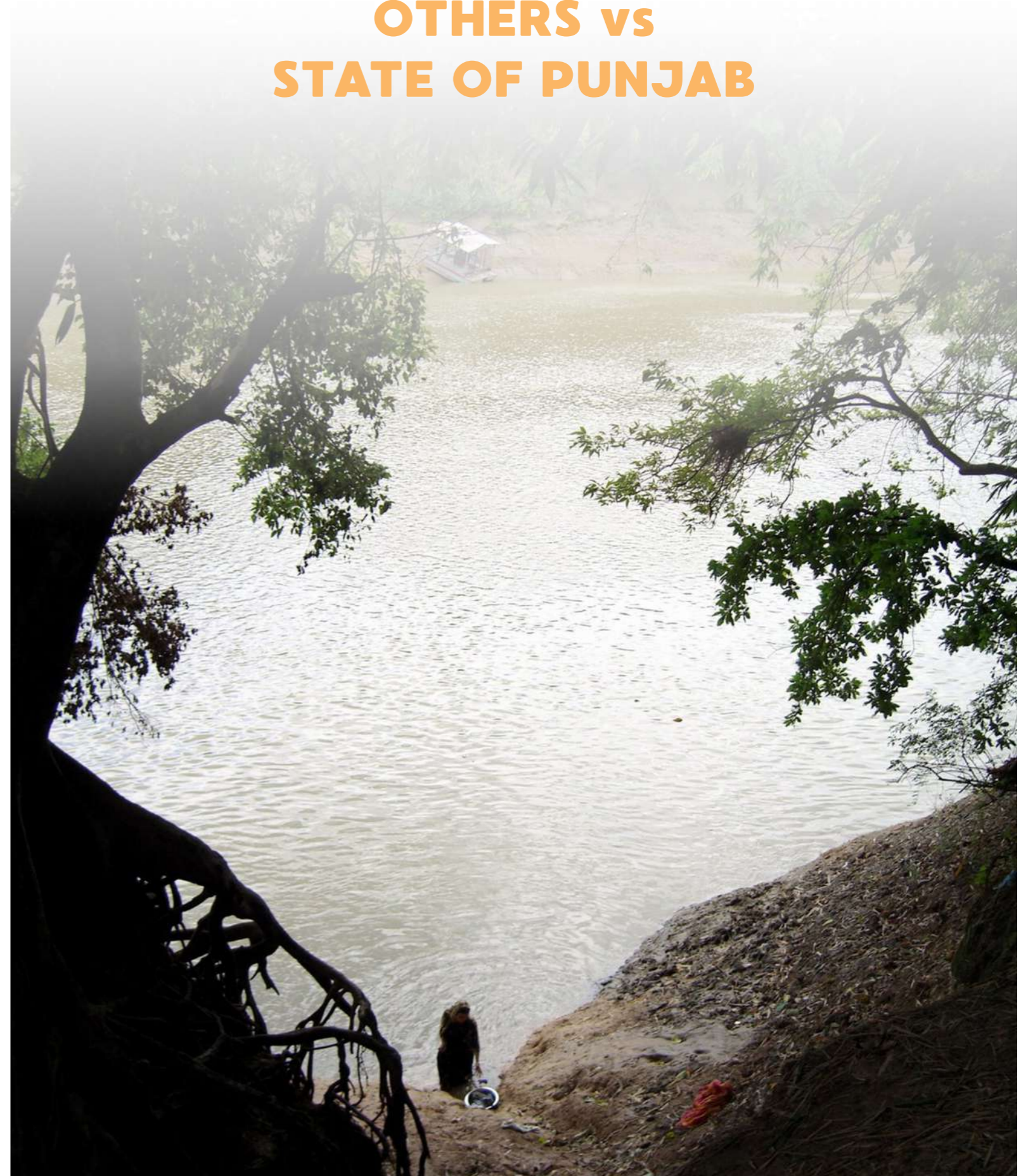
INTRODUCTION

Commons are natural resources and spaces such as pastures, fishing grounds, communal forests, sacred groves, ponds, water tanks, rivers, rivulets and associated banks that are accessed and used by all members of a community. Commons support the livelihoods of local communities who collectively use and manage these shared use spaces. Coastal commons such as beach spaces, intertidal zones, mangroves, mudflats etc. provide fishing communities with a number of services. These shared use spaces are used for a number of livelihood related uses and provide sustenance, in addition to supporting various social and cultural pursuits of local communities.

Although these spaces play an important role in sustaining natural resource dependent communities, there is no comprehensive law that protects community access to these common spaces. However, different laws provide a means of protecting community commons in different ways, either directly or indirectly. They do this by either physically protecting these spaces or protecting/recognizing the community's rights to these spaces or provide a means for the community to participate in environmental decisions that could affect community commons.

This booklet simplifies five such laws: the Coastal Regulation Zone Notification 2011, Environmental Impact Assessment Notification 2006, Wildlife Protection Act 1972, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, a landmark Supreme Court Judgment from January 2011 – Jagpal Singh and Others v/s State of Punjab.

JAGPAL SINGH AND OTHERS vs STATE OF PUNJAB



JAGPAL SINGH AND OTHERS vs STATE OF PUNJAB

..... What is the Jagpal Singh and Others v/s State of Punjab?

The Jagpal Singh and other v/s State of Punjab is a landmark judgement by the Honourable Supreme Court of India in the Civil Appeal No. 1132/2011@ SLP(C)No. 3109/2011, through which the Supreme Court instructed all States and Union Territory governments to design schemes to evict illegal

occupation and encroachment on Gram Sabha/Gram Panchayat land that are village commons. Through this judgment, all allocations of Gram Sabha/Gram Panchayat land to private parties were deemed illegal and void.

..... What is this case about?

In this case, a local builder had made unauthorised construction by reclaiming a part of a village pond in the Gram Panchayat, RoharJagir in Punjab. This pond was recorded in the state's revenue records as a 'village pond' and was being collectively used by the villagers for the purpose of collecting drain water, and for their cattle for drinking and bathing. Villagers had approached the district authority to point out this illegal occupation of this pond which was a village water commons to their notice so that appropriate action could be taken. However the authorities ordered the Gram Panchayat to transfer the title of this land in the name of the appellants and recover the cost of the land as per the collectors rate.

The Supreme Court took note of this illegal usurpation of common property by a private party and dismissed the appellants claim. It noted that common lands inhering in the village communities in India called 'Gram Sabha/Panchayat land' are used for the common benefit and use of villagers for various purposes - for cattle to drink and bathe, storing harvested grain, grazing grounds, playgrounds for children, water-bodies, passages, cremation ground, graveyards etc. These lands are vested through local laws in the State and local village communities have inalienable rights to these commons.

..... What did the Judgment say?

The judges in the Case pointed out that in large parts of the country, common village lands meant for the common, shared-use of the people of the village, though it may exist on paper, is being usurped by powerful interests and that these lands are being put to uses that are inconsistent with its original character of being shared commons. This is sometimes being done with the active participation of state authorities and local powerful vested interests. The Supreme Court

condemned the regularization of illegalities such as the allotment of Gramsabha land to private parties by panchayats and state governments.

It declared orders by state governments allowing Gram Sabha/Gram Panchayat land to be allotted to private parties as illegal and void and ordered States to prepare schemes for the hasty eviction of similar illegal encroachments on common lands after sending

them a show cause notice or brief hearing. The Justices emphasized that illegal encroachment on commons for private use cannot be justified even if these village common lands had been occupied for a long duration of time or expensive constructions had been made on these shared-use spaces or political affiliations of the

encroachers.

The only exceptions to this are leasing of this land to landless members of SCST or already existing public utilities such as schools, dispensaries etc.

..... What does this mean for village commons?

By restoring ownership of village commons to Gram Panchayats and asking them to evict illegal occupation and encroachment over village commons, this judgment strengthens the local community's access to their village commons. Therefore the passing of this judgment empowers communities to claim back their commons from illegal encroachment and private occupation of these shared use spaces. Does this judgment protect coastal commons?

The provisions of this judgment directly protect common spaces that are categorized as Gram Panchayat/ Gram Sabha land. Although the spirit of the judgment can be extended to the case of coastal commons, it has limited applicability for protection of coastal commons such as inter-tidal zones, mud flats, fishing grounds etc which remain to be recognized as shared use village commons. In this scenario, the Gram Panchayat or Gram Sabha may have limited powers to protect coastal commons.

*Since the passing of this judgment many state governments have implemented the orders of the SC by amending existing legislations.

COASTAL REGULATION ZONE NOTIFICATION 2011



COASTAL REGULATION ZONE NOTIFICATION 2011

• •What is the Coastal Regulation Zone Notification 2011 and what does it do?

The Coastal Regulation Zone Notification 2011 (CRZ 2011) is a national law governing the use of coastal land in India. By spatially zoning coastal land and the territorial waters, the CRZ provides a framework for regulating commercial and developmental projects and activities on the coasts. The notification was first introduced and was meant to help:

Protect the coastal stretches from various types of ecological harm
Protect and secure the livelihoods of fishing and other local communities living on the stretch.
Promote sustainable, scientifically reasoned development, bearing in mind the vulnerability of coastal areas to natural disasters and global warming induced sea level rise.

• • • • • What is the relation between the CRZ and coastal commons? • • • • •

By way of regulating coastal land use and conditionally allowing developmental activities in the four CRZ zones, the CRZ essentially offers the first layer of protection for coastal commons. Although it doesn't elaborate on the use of coastal features as 'commons' for local communities and doesn't specify community rights to the same spaces, it conditionally protects these spaces and resources that serve as commons for fishing communities, such as intertidal zones, mudflats, mangroves, tidal-influenced water bodies, territorial waters, groundwater etc. It regulates activities within

certain ecosystems that are used as commons by fishing communities.
The CRZ doesn't elaborate much on the use of commons, it is largely meant to regulate developmental activities on the coast. It indirectly protects certain types of commons. For instance the CRZ notification guarantees public access to beaches by explicitly prohibiting commercial enterprises/ private properties (such as tourist resorts located on the coast) from restricting the public's access to beaches.

• • • • • How have coastal areas been categorised under the CRZ? • • • • •

The CRZ 2011 provides a spatial zoning of coastal land and waters in India into 4 categories - 3 of these categories extend from the intertidal zone to 500m inland, and another one category extends from the

Low tide Line to 12 nautical miles into the territorial sea. Each zone has detailed lists of activities, industries and construction projects that are permissible and restricted in that zone.

Coastal Regulation Zone 1

These are areas that are ecologically sensitive and include geomorphological features which play a role in maintaining the ecological integrity of the coast. This includes all mangrove areas (with an additional buffer of 50 m for mangrove areas that are greater than 1000m²), sand dunes, corals, coral reefs and associated biodiversity, biologically active mudflats, sea grass beds, salt marshes, turtle nesting grounds, horse

shoe crab habitats, nesting grounds of birds, national parks, marine parks, sanctuaries, reserve forests, wildlife habitats and other protected areas and areas or structures of archaeological importance and heritage sites.
The area between the Low Tide Line and the High Tide Line: the inter-tidal zone.

• • • • • Coastal Regulation Zone 2

Areas that have been developed upto or close to the High Tide Line.

• • • • • Coastal Regulation Zone 3

Areas that are relatively undisturbed and do not belong to either CRZ1 or 2.
These include coastal zones in rural areas (developed and undeveloped), areas within municipal limits and in other legally designated urban areas which are not

substantially built up.
Area upto 200 m from HTL on the landward side in case of seafront and 100m along tidal influenced water bodies or width of creek- whichever is less is to be earmarked as 'No Development Zone (NDZ)'.

• • • • • Coastal Regulation Zone 4

The water area from the Low Tide Line to 12 nautical miles on the seaward side (that is the territorial waters). This includes the water area of the tidal influenced water body from the mouth of the water body at sea up to the influence of tide which is measured as five parts per thousand during the driest season of the year.

..... How does the CRZ safeguard coastal commons?

Within the entire CRZ stretches of the country, many areas are considered as commons. The CRZ law protects coastal commons by conditionally restricting the setting up and expansion of any industry, operations, processes, manufacturing and handling or storage or disposal of hazardous substances in CRZ areas. These restrictions regulate coastal land use within each zone, thereby providing a means to conditionally safeguard coastal commons located in such zones from ecological harm. Additionally, the CRZ contain provisions for fishing communities that further protect ease of their access to these spaces.

Many CRZ 1 areas also serve as coastal commons for fishing communities, such as inter-tidal zones, mangroves, coral reefs, mud flats etc. The CRZ protects these commons by conditionally allowing only

certain activities in this zone.

Groundwater commons have also been protected within the CRZ by conditionally prohibiting drawing of water and restricting related constructions within 200 meters of the HTL.

Territorial waters, which fishing communities use as fishing grounds, have been protected by categorizing them as CRZ 4 and conditionally allowing activities in this zone, thereby providing a means to protect common fishing spaces.

(A detailed listing of the permissible and restricted activities in all the 4 CRZ zones has been given at the end of this section)

..... How does the CRZ protect ecologically sensitive zones?

The CRZ protects ecologically sensitive zones by:

Categorizing certain ecologically sensitive zones in CRZ 1 areas

The CRZ provides a separate category of Critically Vulnerable Coastal Area (CVCA) for ecologically sensitive areas. Identified ecologically important

areas such as the Sunderbans mangrove forests, Gulf of Khambat and Gulf of Kutch in Gujarat; Malvan, Achra-Ratnagiri in Maharashtra; Karwar and Coondapur in Karnataka; Vembanad in Kerala, Gulf of Mannar in Tamil Nadu, Bhitarkanika in Orissa; Coringa, East Godavari and Krishna in Andhra Pradesh to be declared as Critical Vulnerable Coastal Areas (CVCA).

..... Does the CRZ protect access to commons in CVCA?

The CRZ clearly mentions that the areas mentioned in the notification and other areas that are worthy of a CVCA categorization have to be declared through a process of consultation with local fisher and other communities inhabiting and dependent on its resources for their livelihoods. Guidelines

of the process identifying, planning, notifying and implementing CVCA are to be developed by the MoEFCC in consultation with the State Government, local coastal communities and fishing communities inhabiting the area.

..... How does the CRZ facilitate local-level decision-making/planning?

The CRZ 2011 provides for the creation of Coastal Zone Management Plans (hereafter CZMP). Two types of maps are required to be designed: a). A map of 1:25,000 and b). A map of 1:4000 scale to map CRZ areas at the local level. CZMPs are maps prepared by a State Government or Union territory through engaging with a scientific institution or agency and in consultation with stakeholders/communities to map areas falling under the four CRZ categories.

Demarcation of the High Tide Line or LTL shall be made on the Coastal Zone Management Plans of scale 1:25,000 prepared by the agencies identified by the MoEFCC. The local zones should be clearly identified and marked in the 1:4000 Coastal Zone Management Plan. These maps are meant to act as guiding documents for aiding decision making for coastal development projects.

..... How do these maps provide a means to safeguarding coastal commons used by fishing communities?

These plans map important infrastructure for fishing communities. The guidelines for CZMP preparation state that fishing villages, common properties of fishing communities, fishing jetties, ice plants, fish drying platforms, or other facilities of fishing and local communities like roads, schools and dispensaries should be indicated in local level CZMPs. These maps should also demarcate existing fishing zones, fish breeding grounds and coastal commons such as beach areas that are used by fishing communities for various fisheries-related activities. Additionally, these plans are

required to include a long-term plan for coastal land use in addition to a long-term housing plan for the fishing community.

These CZMPs can be used at a local level to facilitate and strengthen implementation of the CRZ as it demarcates the CRZ areas and provides a plan of land use.

(Annexure I- Section 2: Classification of CRZ Areas)

..... Can communities participate in CZMP preparation?

The finalization process of the CZMP entails a stakeholder consultation stage. Draft CZMPs are required to be given wide publicity. Suggestions and objections on these draft CZMPs are solicited through a public hearing which are held at the district level by the concerned CZMAs. Based on the suggestions and objections received during the hearing, the CZMPs need to be revised and the approval of the MoEFCC is to be obtained. Approved and finalized CZMPs are put up on the website of SCZMAs. A hard copy of

the map is also required to be made available in the Panchayat office and District Collector's office. Local level CZMPs are available to be used by officials of local bodies to determine the CRZ at a local level. These plans available with Revenue Authorities, demarcate the CRZ areas and the land use plan of the area. (Annexure I – section IV: Public Views on the CZMP) The finalised CZMP is valid for a period of five years after which it is revised.

• • • • • How does the CRZ facilitate decentralised decision-making around coastal commons? • • • • •

The CRZ allows (albeit in a limited way) for decentralized decision-making and implementation through district level bodies called District Level Committees (DLC). These bodies provide a forum for traditional coastal communities including fishing communities to participate in decisions around the

CRZ/projects falling within the CRZ zones, thereby providing a means of formally including the voice of fishers in decisions that are likely affect their commons and livelihoods. A maximum of three fisher/traditional coastal community representatives from a coastal district can participate in these bodies .

• • • • • What are the special provisions for fishing communities in the CRZ? • • • • •

The CRZ allows for provisions that allow fishing communities to access/use their commons and allows for building fishing associated infrastructure:

Construction of public facilities in the Low Tide Line – High Tide Line (intertidal) Zones which are not ecologically sensitive is allowed, with the prior approval of the concerned State Coastal Zone Management Zone Authority.

Reconstruction and repair works of dwelling units of local communities including fishers is allowed, if it is in accordance with local town and country planning regulations - thereby securing the livelihoods of coastal communities.

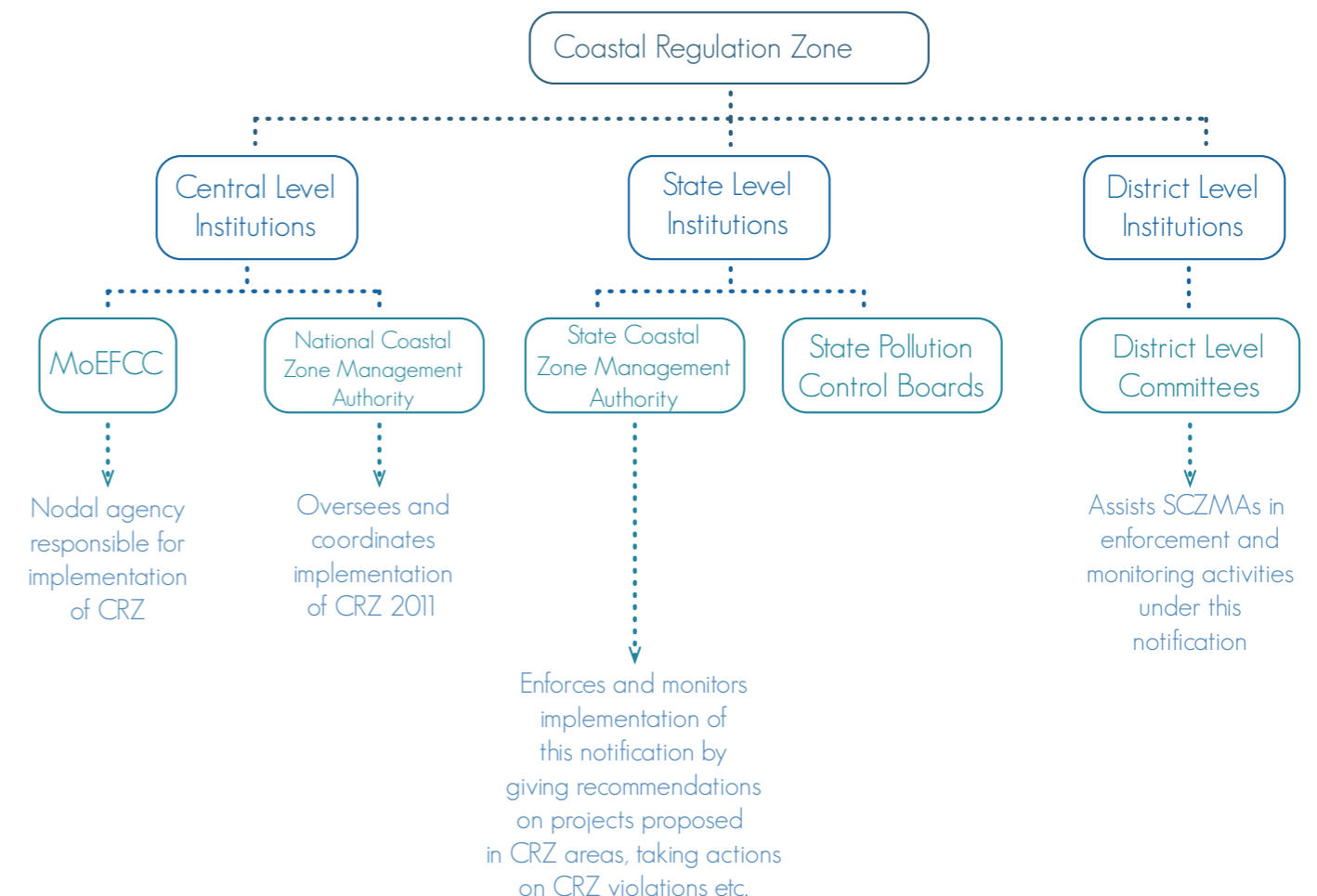
Existing dwelling units of traditional coastal communities including fishers and tribal communities are allowed in CRZ 1 areas, if these are permissible under provisions of the CRZ Notification 1991. These units can be granted approval by concerned SCZMAs provided they are not used for commercial

activity or sold or transferred to non-traditional coastal communities. This clause safeguards the fishing community's access to coastal commons and fishing spaces by restricting transfer of ownership of these land units to other communities and utilization of the said land for commercial activities.

In the CRZ, it is conditionally prohibited to draw water or do related construction within 200 meters of the HTL. However, it is permitted in areas which are inhabited by local communities and is only for their use. In areas between 200mts-500mts zone where no other source of water is available, drawing ground water is permitted only when done manually through ordinary wells for the purposes of drinking, horticulture, agriculture and fisheries.

Facilities required by local fishing communities such as fish-drying yards, auction halls, net mending yards, traditional boat-building yards, ice plants, ice-crushing plants, fish-curing facilities are also allowed in the CRZ 3's No Development Zone.

INSTITUTIONAL MAP OF THE CRZ



• • • • • What are the processes under the CRZ that safeguard commons? • • • • •

The CRZ provides a procedural framework for permissible coastal projects to get clearance before operations are initiated. The documents required in this process are ideally meant to scrutinize a coastal project proposal based on the likely impacts on coastal ecology and on communities living in the vicinity of the project site.

Activities permissible under the CRZ are also required to be regulated periodically. Furthermore, the CRZ provides for a means to safeguard coastal areas once a project has received clearance for commencement/

operation/expansion. The post-clearance monitoring clause within the CRZ mandates project proponents to submit half-yearly compliance reports to regulatory authorities. These must be displayed on the website of the concerned authority. The CZMA must also have a website with the agenda, minutes, decisions, clearance letters, violations, and actions taken. This ensures transparency and compliance with CRZ norms, thus providing a mechanism to prevent against illegal encroachment and destruction of coastal features including neighbouring coastal commons.

VIOLATIONS UNDER THE CRZ

Industry

No one can:

Set up new industries or expand existing industries.

Possible Exceptions:

- Activities related to the waterfront.
- Construction of memorials, monuments and allied facilities in the sea.
- Department of Atomic Energy projects.
- Non-conventional energy projects.
- Desalination plants.
- Reconstruction, repair works of local communities dwellings.
- Storage of non-hazardous cargo within notified ports.
- Salt harvesting by solar evaporation.
- Agriculture, horticulture, gardens, pasture, parks, play field, & forestry.
- Salt manufacture from seawater.

Construction and Dwelling Units

No one can:

- Undertake construction activities.
- Build on the seaward side of existing roads, or authorized structures.
- Undertake construction in violation of existing local town & country planning regulations.
- Reconstruct authorised buildings if they make changes to the present use or violate existing building norms.
- Develop vacant plots.

Possible Exceptions:

- Weather radars & monitoring.
- Trans harbour sea links.
- Pipelines & transmission lines.
- Public facilities for local inhabitants.
- Existing dwelling units of the traditional coastal communities.
- Reconstruction, repair works of authorised dwelling units.
- Hotels & beach resorts.

Fish Processing

No one can:

Set up or expand fish processing units including warehousing

Possible Exceptions:

- Hatchery & natural fish drying in permitted areas.
- Facilities required by local fishing communities.



Ports and Harbour

No one can:

Undertake port & harbour projects in high eroding stretches of the coast.

Possible Exceptions:

Those projects classified as strategic & defence related.

Land Reclamation, Bunding & Alteration

No one can:

- Reclaim land, create bunds or disturb the natural course of seawater.
- Reclaim land for commercial purposes.
- Dress or alter the sand dunes, hills, natural features.

Possible Exceptions:

- Setting up, construction, modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges.
- Reclamation of land for construction of sea links on stilts and roads (In case of mangrove destruction due to land reclamation, 3 times the number of destroyed mangroves must be replanted).
- Defence & security purposes.
- Controlling erosion.
- Maintenance or clearing of waterways, channels & ports.
- Measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress & freshwater recharge.

Waste Management

No one can:

- Set up or expand units or mechanism for disposal of wastes & effluents.
- Discharge untreated waste & effluents from industries, cities or towns & other human settlements.
- Dump city or town wastes including construction debris, industrial solid wastes, fly ash for the purpose of land filling.
- Cause pollution as a result of oil and gas exploration and drilling, mining, boat houses and shipping in violation of regulations.

Possible Exceptions:

- Facilities required for discharging treated effluents.
- Storm water drains and ancillary structures for pumping.
- Facilities required for treatment of waste and effluents.
- Drainage and sewerage facilities.
- Construction of units and auxiliaries for domestic sewage, treatment and disposal.

Oil and Hazardous Substances

No one can:

Manufacture or handle oil storage or dispose of hazardous substances.

Possible Exceptions:

- Transfer of hazardous substances from ships to ports, terminals & refineries & vice versa.
- Facilities for storage of acetic acid and mono ethylene glycol.
- Facilities for receipt & storage of petroleum products & liquefied natural gas.
- Regasification of liquefied natural gas in areas not classified as sea grass beds.
- Facilities in notified ports for receipt & storage of fertilisers & raw materials required for their manufacture.

Mining

No one can:

Mine sand, rock & other sub-strata materials

Possible Exceptions:

- Those rare minerals not available outside this CRZ area.
- Extraction of sand for building structural foundations and swimming pools of hotels and beach resorts.
- Explorations & extraction of natural gas.
- Exploration and exploitation of Oil and Natural Gas.

Groundwater

No one can:

- Draw groundwater & undertake related construction within 200m of HTL.
- Draw groundwater by mechanical means between the 200–500m zone.
- Draw groundwater by mechanical means.

Possible Exceptions:

- Draw groundwater in areas which are inhabited by local communities & only for their use.
- In areas where no other source of water is available & done manually through ordinary wells for drinking, horticulture, agriculture & fisheries.

ENVIRONMENTAL IMPACT ASSESSMENT NOTIFICATION 2006



ENVIRONMENTAL IMPACT ASSESSMENT NOTIFICATION 2006

The EIA Notification essentially provides a regulatory framework to aid environmental decision making for developmental/commercial projects in India. It applies to all projects falling under a total of 4 categories described in the notification. By way of laying down a mechanism for assessing environmental and social impacts of projects, it provides a means for making environmentally judicious decisions. Although it doesn't directly protect commons used by local communities, the processes laid down by the EIA Notification provide a means for assessing likely impacts on areas in the vicinity which are likely to be directly affected.

• What is the Environmental Impact Assessment Notification? What does it do? •

The Environmental Impact Assessment Notification 2006 (hereafter EIA) provides a process to scientifically and systematically assess the potential impacts of project on the surrounding environment and on the human communities living in the vicinity. It places certain restrictions on new projects or on the expansion of existing projects and activities based on

the potential impact the environment, surrounding areas and human health that these activities might have, by providing a means to measure a proposed project's environmental impact and social costs, that are compared with the benefits that the project will have.

• How does the EIA Notification provide a means to safeguarding community commons? •

New activities are likely to affect resources or spaces that communities use as commons. By providing a framework to assess new projects, in addition to laying down a detailed mechanism for conducting impact assessment studies, the EIA notification provides a means for aiding environmental decision making. These studies take into account a host of potential environmental impacts the project is likely to have, in addition to carrying out social impact assessment

studies that take into account the potential social impacts of the project, such as its impacts on the wellbeing of local communities, their heritage and culture, traditional forms of sustenance etc.

Furthermore, the EIA provides a forum for local stakeholder participation in the project assessment process, by including a 'Public Hearing' stage.

This consultation offers a platform for allows local communities who are likely to be affected by the project or have a stake in the project to voice concerns and their opinions through a formally organised

forum. Through the public hearing stage, the EIA Notification offers local communities the opportunity to formally express concerns on the potential impacts of the proposed project on their community commons

• How does the EIA provide a framework for assessing projects? •

The EIA Notification does this by:

Categorizing projects based on the potential impacts it might have on the surrounding environment, natural and manmade resources and human health. Projects have been divided into two main categories: category A and category B.

It allows for new institutions such as the Expert Appraisal Committee at the Central level and a State

Environmental Impact Assessment Authority and State Expert Appraisal Committee at the State level to assist in appraising proposed projects. The EIA Notification further provides a 4 stage clearance process for assessing proposed projects.

The EIA also details the procedure to be followed by the project proponent and public authorities for organizing these Public Hearings have also been laid out in the Notification.

The project categories, stages of clearance have been explained in the sections below.

• How have the projects been categorized under the EIA Notification? •

Depending on the spatial extent of potential impacts of projects, they have been categorised into two main categories – Category A and Category B.

Category A projects, including the expansion of already existing projects or change in the type of products being manufactured require environmental clearance from the MoEFCC.

Category B projects require prior environmental clearance from the State Environmental Impact Assessment Authority (hereafter SEIAA), at the State Government level. Category B projects are further divided into 'B1' and 'B2'. Both these sub-categories require prior environmental clearance from a State Expert Appraisal Committee (SEAC) formed under this act.

STAGES OF CLEARANCE

Screening ————— Scoping

This only applies to Category B projects. The concerned SEAC will determine whether the project requires an Environmental Impact Assessment (EIA) report. These projects requiring EIA will be in Category B1 and the rest will be in Category B2 (those in B2 do not require an EIA report). This categorization is based on guidelines issued by the Ministry of Environment, Forests and Climate Change (MoEFCC).

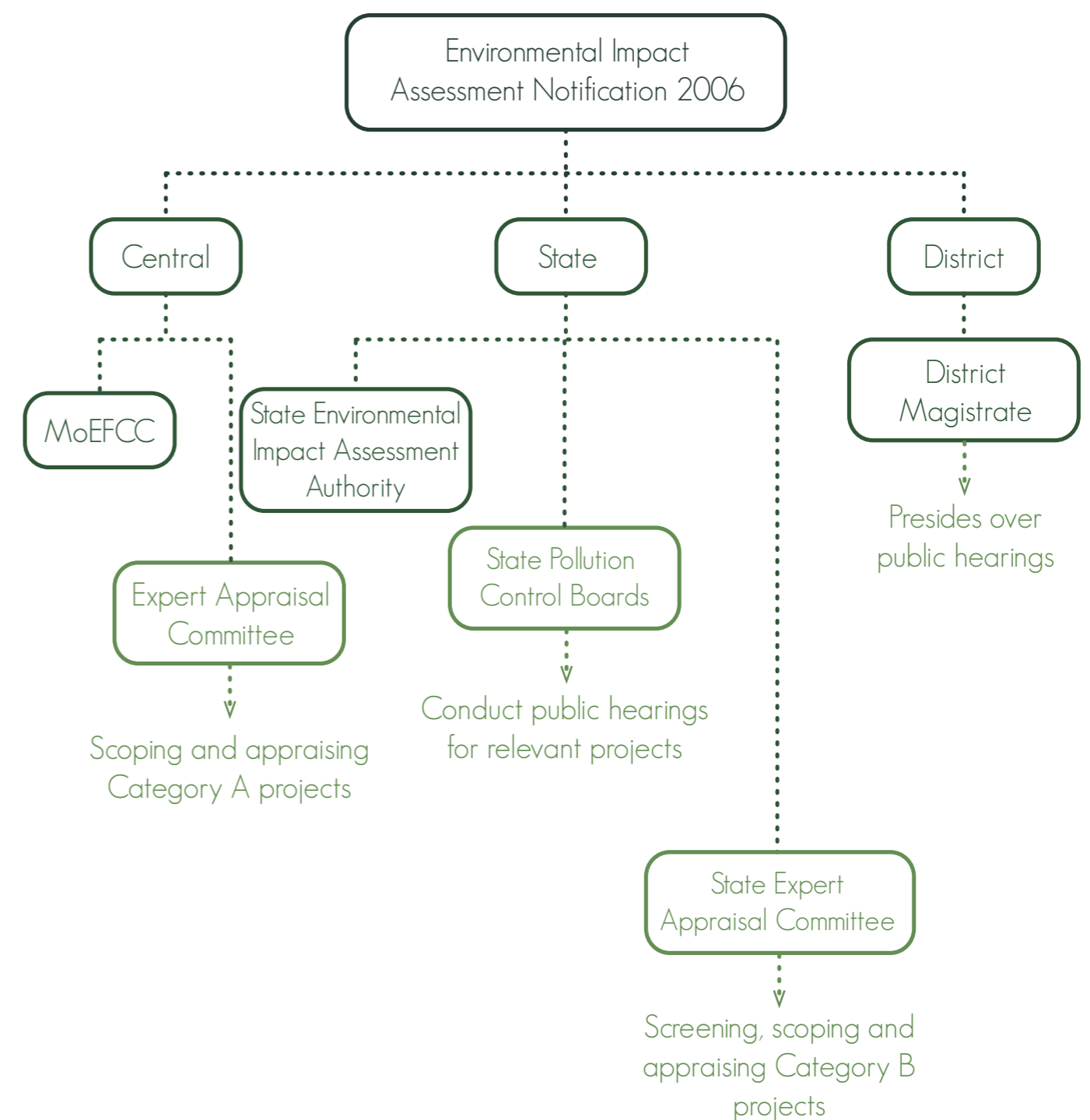
This applies to all categories, except a few projects which don't require scoping. The EAC/SEAC will determine detailed Terms of Reference (TOR) which address all relevant environmental concerns for the preparation of an EIA report for the project. This is determined by the application and possibly through a site-visit. Some applications may be rejected at this stage.

Public Consultation ————— Appraisal

This involves getting public feedback on the proposed project. This is done both through public hearings and written feedback sent in to the concerned authorities.

This is the detailed scrutiny of the application, the final EIA report, the outcome of the public consultations (including proceedings) submitted by the applicant to the regulatory authority. The appraisal is made by the EAC or SEAC in a transparent manner. The EAC/SEAC will make recommendations for grant of prior environmental clearance on certain terms and conditions OR may reject the application, providing reasons for the same.

INSTITUTIONAL MAP



..... What is the purpose of the Public Consultation process?

The effects of projects and activities range from environmental effects to effects on the wellbeing of people living in the vicinity of the project site. The public hearing process allows for a forum through which the concerns of people who will be affected/ are likely to be affected by the project (local people, and those who have a stake in the environmental impacts) are given an opportunity to be heard. It is the responsibility of the regulatory authority to make sure

the concerns are addressed and acted upon.

These forums offer an opportunity for local communities who are likely to be affected by the project to voice concerns related to community commons, livelihoods, potential impacts in surrounding ecosystems and environment, community well-being etc.

..... What kinds of projects require public consultation?

All Category A and B1 projects require public consultation **except** the following projects:

- | | |
|--|--|
| — Modernization of irrigation projects | — All building/construction projects/area development projects and townships |
| — All projects/activities located within industrial estates or parks approved by the concerned authorities and which are not disallowed in such approvals. | — All projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government. |
| — Expansion of roads and highways which do not involve any further acquisition of land | |

..... How are public hearings arranged?

The Public hearing process is initiated by the applicant, who must request for a public hearing to take place. They must follow a standard procedure of drafting a letter to the SPCB or UTPCC in whose jurisdiction the project is located. They also have to forward required documents to :

- | | |
|---|---|
| — The MoEFCC | — District Industries Office |
| — The respective District Magistrate/s | — Concerned Regional Office of the MoEFCC |
| — ZilaParishad or Municipal Corporation | |

... How do the authorities make the documents available for public viewing? How does one send in their concerns and comments? ...

On receiving the documents, the authorities will publicize them within their respective jurisdictions requesting the interested people to send their comments to the concerned authorities. They will make the EIA report available for electronic inspection to the public during office hours. This will be available till the public hearing is over. The MoEF will display the summary of the draft EIA report on its website

and make the full draft EIA available for reference at a notified place during normal office hours in the Ministry at Delhi. The State Pollution Control Boards/Union Territory Pollution Control Board will make similar arrangements for inspection in select offices or public libraries or panchayats.

... When are the hearings and how does one find out about them? ...

The Member-Secretary of the concerned SPCB/UTPCC shall finalize the date, time and venue for the hearing within 7 days of the date of receipt of the draft EIA report from the project proponent. The hearing details along with the places/offices where the public can access the draft EIA and summary EIA will be published in one major National Daily and one Regional vernacular newspaper. A minimum notice period of 30 days will be provided to the public for

furnishing their responses.

The date, time and venue of the hearing must be adhered to. Any postponement of the hearing will only take place in case of an emergency situation occurs and on the recommendation of the concerned District Magistrate. This will be notified to the public through the same National Daily and Regional vernacular daily newspaper, and displayed at public offices.

... When are the hearings and how does one find out about them? ...

The hearings are conducted by the State/Union Territory Pollution Control Boards (hereafter SPCB or UTPCB). They are responsible for forwarding the proceedings of the hearing to the regulatory authority concerned within 45 days of a request to the effect from the applicant.

public hearing process. The SPCB/UTPCB shall arrange for the entire proceeding to be filmed. A copy of the film will be sent to the regulatory authority as part of the proceedings. Attendance shall be noted in the proceedings.

The public hearing takes place at the site of the upcoming project, or in close proximity to it. The District Magistrate or his or her representative, who is not below the rank of an Additional District Magistrate assisted by a representative of SPCB or UTPCC, shall supervise and preside over the entire

A representative of the applicant shall initiate the proceedings of the hearing by making a presentation on the proposed project and Summary of the EIA report. Every person present at the hearing shall be given the opportunity to seek information or clarifications about the project from the Applicant.

A summary of the hearing proceedings, that accurately reflects all the views, comments and concerns expressed shall be recorded by the representative of the SPCB or UTPCC and read over to the audience at the end of the proceedings. The contents should be explained in the vernacular language and the agreed minutes shall be signed by the District Magistrate or his or her representative on the same day and forwarded to the SPCB/UTPCC concerned.
The proceedings of the hearing should be made

available/ displayed at the office of the Panchayat, in whose jurisdiction the project has been proposed. Copies of the proceeding details will also be made available in the concerned Zilla Panchayat office, District Magistrate's Office, SPCB/ UTPCC. The SPCB/UTPSS will also display these details on their website. Comments on the Public Hearing will need to be sent to the concerned regulatory authority or project applicant directly.

..... What happens after the hearings?

The SPCB/UTPCC is responsible for forwarding the proceedings of the hearing to The District Magistrate or their representative. If the SPCB/UTPCC doesn't convey the proceedings of the hearing within the

prescribed period directly to the regulatory authority concerned, then the regulatory authority shall engage another public agency or authority to complete the process within the next 45 days.

..... Are there cases in which the hearings don't happen?

If the SPCB/UTPCC doesn't complete the hearing within the specified period then the regulatory authority shall engage another public agency or authority to complete the process within a further 45 days. If the public agency reports to the regulatory authority that owing to the local situation, it is not

possible to conduct a public hearing in a manner that enables the views of the local people to be freely expressed, then the agency shall report the facts in detail to the regulatory authority which may then decide that the public consultation need not include the public hearing.

..... What is the impact that the public hearings have on the proposed projects?

After the public consultation, the applicant will address all the environmental concerns and make appropriate changes in the draft EIA and (Environment Management Plan) EMP. The final EIA report shall be submitted to the regulatory authority for appraisal.

Note: the EMP basically consists of all mitigation measures to minimize adverse environmental impact as a result of the activities. It also states the steps to be taken in case of an emergency.

..... Can groups or individuals other than the local communities who will be affected participate in the public consultation? How do they voice their concerns?

Part of the public consultation process involves obtaining responses in writing from other concerned people who have a stake in the environmental aspects of the project. The concerned regulatory authority and the SPCB or the UTPCC shall invite responses from the concerned people by placing the summary EIA report, and the application on their website within seven

days of the receipt of a written request arranging for a public hearing. Confidential information will not be on the website. The regulatory authority shall make available (on written request) the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All responses received will be forwarded to the applicant.

.. How does the public stay involved after clearance has been given? ..

The project management must submit half-yearly compliance reports in hard and soft copies to the regulatory authority concerned twice a year. This is termed post-clearance monitoring.

All of these compliance reports are public documents. Copies of them can be obtained upon application. The compliance reports also must be displayed on the website of the concerned regulatory authority, i.e. either the MoEFCC or the SEIAA.



SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006



SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

The Forest Rights Act passed in 2006 is a landmark piece of legislation that recognized forest spaces as shared use commons used by local, forest dependent communities and formally empowered communities to conserve and collectively manage their forest resources and commons. Notification provide a means for assessing likely impacts on areas in the vicinity which are likely to be directly affected.

What is the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 law and what does it do?

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (also known as Forest Rights Act/FRA) is a legal framework which recognizes, vests and records the rights of forest dwelling scheduled tribes and other forest dwelling communities, who are dependent on forests for their sustenance and bonafide livelihood purposes, over the forest commons and resources that

these communities have customarily used.

The FRA provides a listing of claimable rights, defines eligible claimants and the forest commons to which rights can be claimed. Lastly, it provides an institutional mechanism through which these rights can be vested with eligible communities.

How does the FRA protect community rights to commons?

The FRA protects community rights to commons by formally recognizing forest spaces and resources that have been customarily used by forest dependent communities as community commons. Other forest policies and legislations viewed forest spaces as community commons in a limited manner. The FRA however is a landmark legislation that recognizes

the rights of these communities to forest spaces and resources and formalizes the rights of these communities to sustainably use forest resources by empowering Gram Sabhas to collectively decide rules for sustainable usage, management and conservation of their forest commons.

If the FRA recognizes rights to forest commons, how does it apply for fishing communities?

Although the FRA directly recognizes rights to forest commons, it can be used by fishing communities to claim rights to their commons, pursuant to certain conditions. The FRA defines forests as “land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests and Sanctuaries and National Parks”. Therefore, going by this definition, the FRA can be implemented in protected areas (tiger reserves, sanctuaries, national

parks) formed under the WLPA. Under a landmark Supreme Court Judgment in TN Godavarman Thirumalpad vs Union of India and others, forests have been interpreted as all land that falls under the dictionary meaning of the word ‘forest’, irrespective of the nature of ownership or its classification. Therefore, the FRA can be implemented for fishing communities living around Marine PAs and residing/dependent on lands falling under the above mentioned criteria of forest or forest land.

Who are eligible rights claimants under this Act?

The following communities can claim rights under the FRA:

- Members or community of forest dwelling Scheduled Tribes
- Members or community of other traditional forest dwellers (who have for three generation prior to 13th December 2005, primarily resided in and who depend on forest or forest land for their bonafide livelihood needs)

(Note: Fishing communities fall under the ‘other traditional forest dwellers’ or OTFD category are required to prove dependence on these spaces for a total of 75 years (3 generations, 1 generation= 25 years) before 13th December 2005.)

What kinds of rights does the FRA provide?

The FRA recognizes pre-existing rights of forest dwelling and forest dependent communities. It recognizes the right to hold, cultivate and live on forest land; right to conserve, protect and manage community forest resources which the community has traditionally been protecting; rights to community forest resources; the entitlement to fish; the right to

graze and other traditional rights among others. It only recognizes the said rights, where such claims exist/are being exercised on the 13th December 2005. Claims from encroachments after this specified date on forest land do not fall under the purview of the FRA. Rights recognized under the FRA are inheritable, but are not transferable.

• • • • What are the conservation duties of right holders under the FRA? • • • •

Holders of forest rights under this act are empowered to:

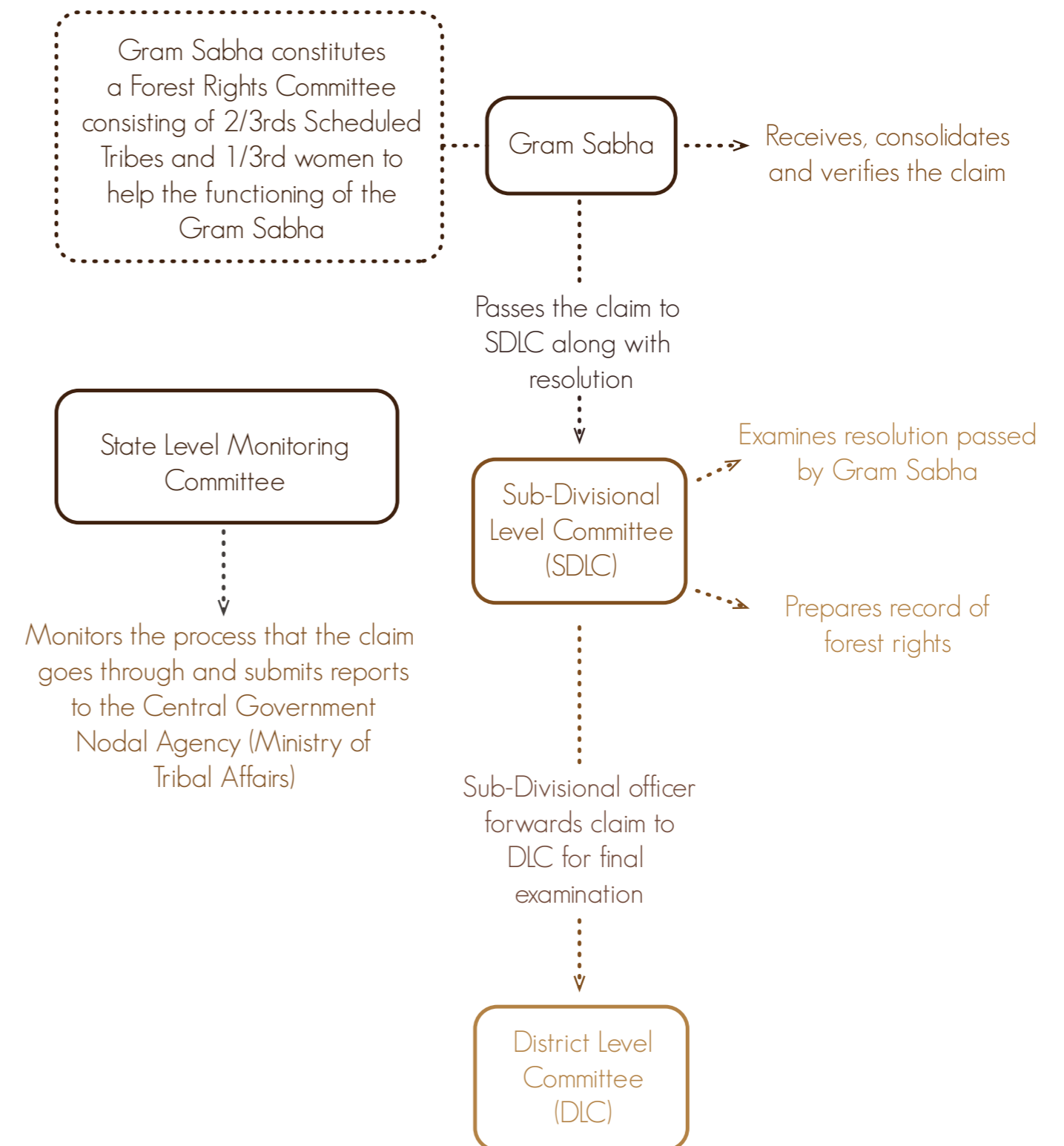
- Protect the wildlife and biodiversity.
- Ensure that adjoining catchments area, water sources, and other ecologically sensitive areas are adequately protected.
- Ensure that the habitat of the local people including their cultural and natural heritage is preserved.
- Ensure that decisions taken by the Gram Sabha to protect wildlife, biodiversity and regulate access to commons are complied with.

• • • • Can the rights /access to commons of communities living in critical wildlife habitats of National Parks and Sanctuaries be curtailed? • • • •

The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries can be modified or resettled. No forest rights holders will be resettled or have their rights affected for the purposes of creating inviolate areas for wildlife conservation **except in cases where the following conditions are satisfied:**

- The process of recognition and vesting of rights is complete in the said area;
- It has been established by the concerned agencies of the State Government that the activities or impact of the presence of rights holders will cause irreversible damage and threaten the species and their habitat;
- The State Government finds that other options such as co-existence are not available;
- A resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of affected individuals/communities given in the relevant laws and the policy of the Central Government;
- The informed consent of the Gram Sabhas in the areas to the proposed resettlement and package has been obtained in writing;
- No resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package. The critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

INSTITUTIONAL MAP UNDER THE FRA



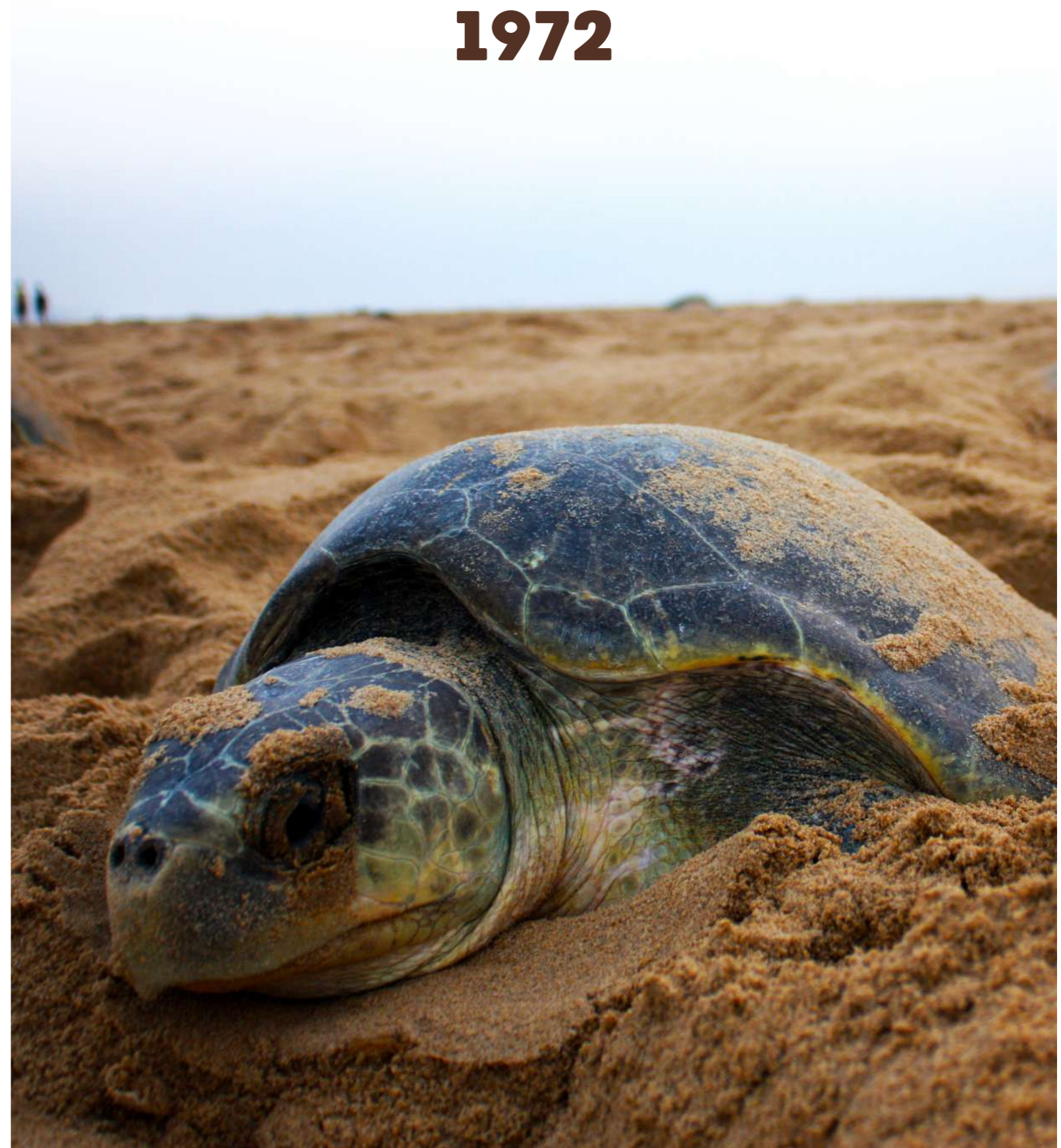
The District-Level Committees, Sub-Divisional Level Committees, and State Level Monitoring Committees have the following constitution of members:

- Officers of the departments of Revenue, Forest, and Tribal Affairs of the State Government
- 3 members of Panchayati Raj institutions consisting of 2 Scheduled Tribe members and at least one woman member.

Any person who is not satisfied with the resolution of the gram sabha can file a petition to the SDLC (Sub-Divisional Level Committee), 60 days from the date of resolution. The Committee will give the aggrieved person an opportunity to present their case. If the person is not satisfied with the decision of the SDLC, then they can file a petition to the DLC (District Level Committee), 60 days from the date of the decision. The DLC’s final decision is binding.

The FRA Rules provide a detailed description of the process to be followed for recognizing rights of the target community, in addition to providing particulars of the functions of the above mentioned bodies involved in the rights claiming process.

WILDLIFE PROTECTION ACT 1972



WILDLIFE PROTECTION ACT 1972

..... What is the Wildlife Protection Act, 1972? What does it do?

The Wildlife Protection Act, 1972 (hereafter WLPA) is a national law that deals with the conservation and protection of India’s wildlife- animals, birds, and plants and other matters connected with the protection of wildlife. It provides a framework for the protection of

India’s wildlife by providing a listing of certain species in 6 schedules, with each of these lists providing varying levels of protection. The act also allows for the creation of a network of protected areas for the purpose of protecting wildlife and ecosystems.

..... How does it protect community access to commons?

The WLPA was designed to separate people from wildlife areas and therefore offers very limited protection to any form of commons customarily used by local communities within protected areas. It mainly provides for a process for local communities living in or around protected areas, to claim certain

limited rights already being exercised in or over such land that falls within the boundaries of protected areas formed under this Act. Certain provisions have been designated under each protected area to deal with claims of people living in and around these areas.

..... Sanctuaries

Any area other than area comprised with any reserve forest or the territorial waters can be declared as a Sanctuary by the state government if it considers the area to be of adequate ecological, faunal, floral, geomorphological, natural significance, for the purpose of protecting wildlife or its environment.

Rights to Commons

The law permits for forest produce to be removed from sanctuaries or national parks only for meeting the personal sustenance needs of the people living in and around the sanctuary. It may not be used for any commercial purpose.

The law safeguards access to commons for fisherpeople by ensuring the right of innocent passage of any vessel or boat through the territorial water in Sanctuaries.

In case a public way or a common pasture stops being used because of these spaces being included within the sanctuary boundaries, the collector must provide for an alternative public way or common pasture as far as may be practicable or convenient, within a period

of two years. In the meantime, compensation will be provided to any affected people. Protects access to fishing ground commons by mentioning that fishers living within a ten km radius of a sanctuary who inadvertently enter sanctuary waters, their boats shall not be seized provided that it is not used for commercial fishing.

States that adequate measure will be taken to protect the occupational interests of fishers wherever the territorial waters are included in the area of the Sanctuary.

Chief Wildlife Warden may or may not allow grazing rights to be continued.

Disallowed activities

No person is allowed to enter a Sanctuary with any weapon except with the previous permission in writing of the Chief Wildlife Warden or the authorised officer.

No person shall use chemicals, explosives or any other substances which may cause injury to, or endanger, any wildlife in the sanctuary

Ban on causing fire inside a sanctuary

Actors Responsible

Claims managed by Collector and Chief Wildlife Warden

..... National Parks

Areas of ecological, faunal, floral, geomorphological or zoological importance can be declared as National Parks.

Rights to Commons

Same as sanctuaries, except all rights falling within National Parks will be extinguished.

Disallowed activities

Same as Sanctuary, except all rights falling within National Parks will be extinguished.

Actors Responsible

Claims to be settled by Collector and Chief Wildlife Warden.

..... Conservation Reserves

After consulting with the local communities, state governments can declare any area owned by the Government, particularly the areas adjacent to National Parks and Sanctuaries and those areas which link one protected area with another, as a Conservation Reserve for protecting landscapes, seascapes, flora and fauna and their habitat.

Rights to Commons

As to be determined by the Conservation Reserve Management Committee respective committees.

Disallowed activities

Not mentioned.

Actors Responsible

Managed by the Conservation Reserve Management Committee.

..... Community Reserves

In areas where the community or an individual has volunteered to conserve wildlife and its habitat, the state government may declare any private or community land not comprised within a National Park, Sanctuary or a Conservation Reserve, as a Community Reserve, for protecting fauna, flora and traditional or cultural conservation values and practices.

Rights to Commons
As to be determined by the Community Reserve Management Committees.

Disallowed activities
Not mentioned. Presumably no change in rights as management lies with the Community Reserve Management Committee.

Actors Responsible
Managed by the Community Reserve Management Committee.

..... Tiger Reserves

In areas where there is a significant tiger population and the creation of such a reserve does not adversely affect the lives of the people living in and around such areas, tiger reserves may be declared. There is a Tiger Conservation Plan that includes details on how reserves are managed to ensure the livelihood concerns of local people.

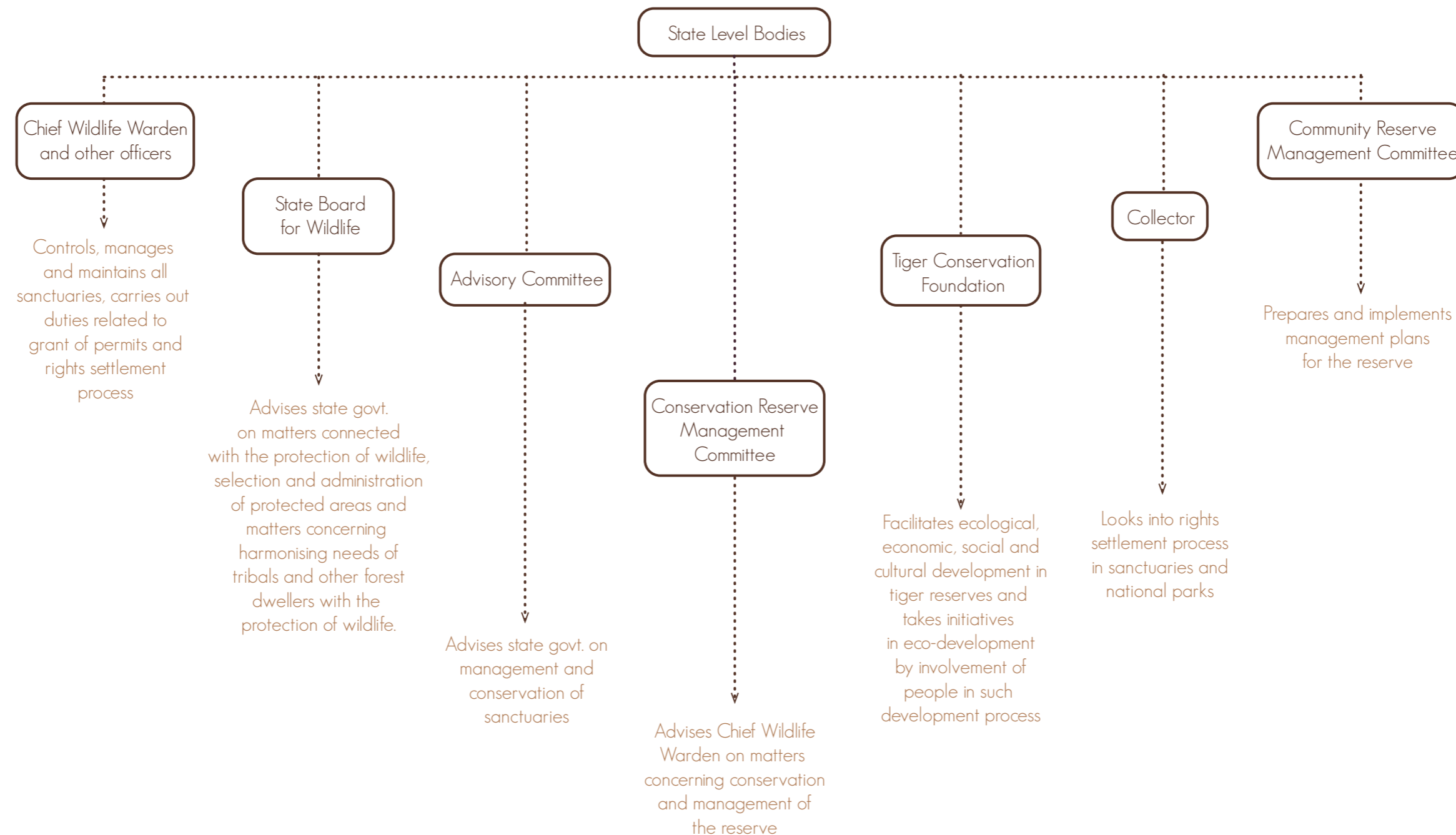
Rights to Commons
Tribes and other forest dwellers will either co-exist with tigers in reserves, or they would have to be relocated (with compensation).

Disallowed activities
Scheduled Tribes and other forest dwellers can be relocated or their rights be curtailed only on mutually agreed terms, that is only if:

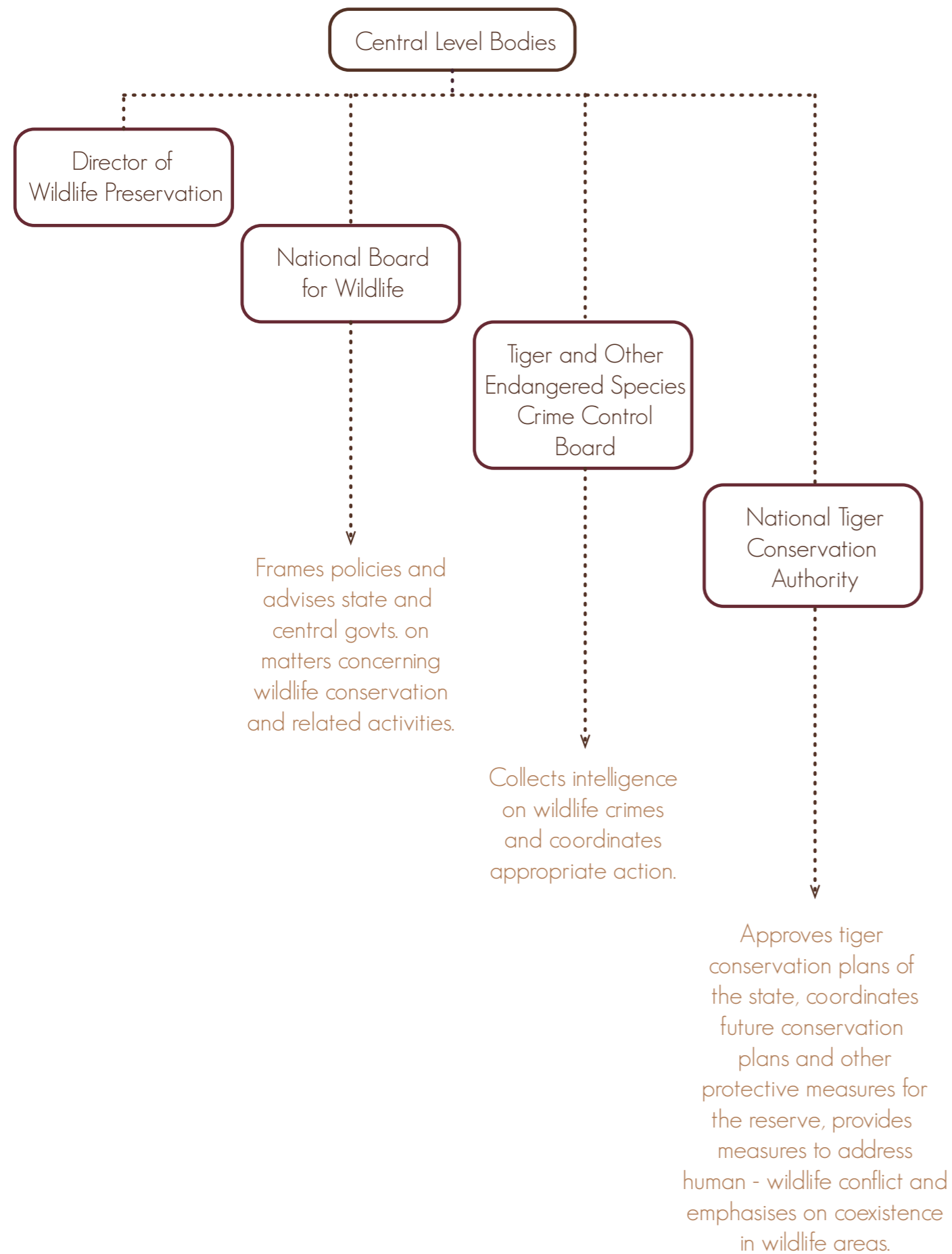
- | | |
|--|---|
| — The process of determining and recognition of rights has been completed, | — A resettlement package has been prepared, which has the full consent of the Gram Sabha or affected people. |
| — It has been established that the presence or activities of these forest dwelling communities causes irreversible damage or threatens the tiger or its habitat, | — Further states that the rights of the concerned forest dwellers cannot be curtailed until and unless the land allocation and other facilities at the relocation site are made available |
| — If it is established that co-existence is not possible, | |

Actors Responsible
Claims to be settled by Collector and Chief Wildlife Warden.

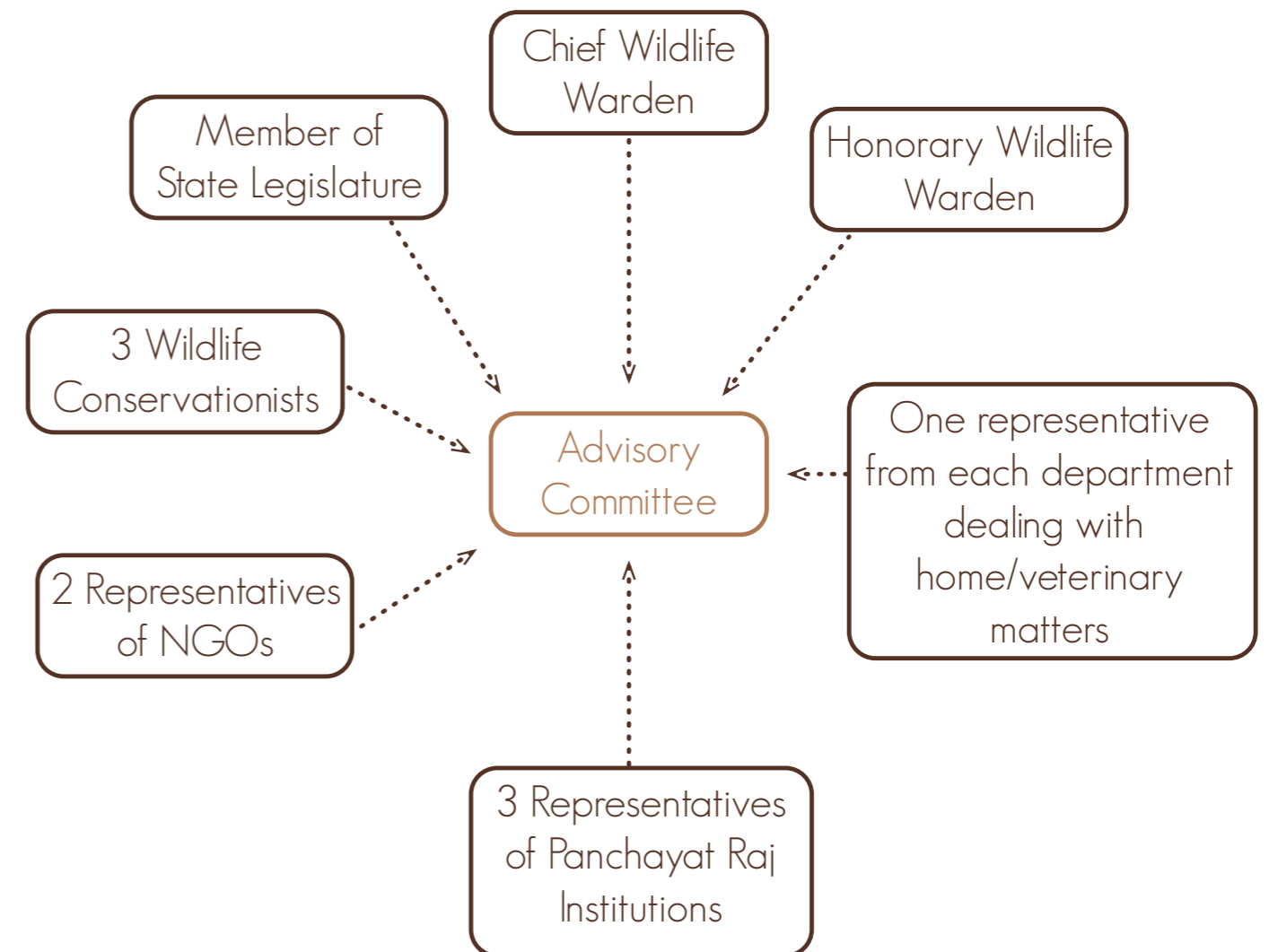
INSTITUTIONAL MAPS UNDER THE WLPA



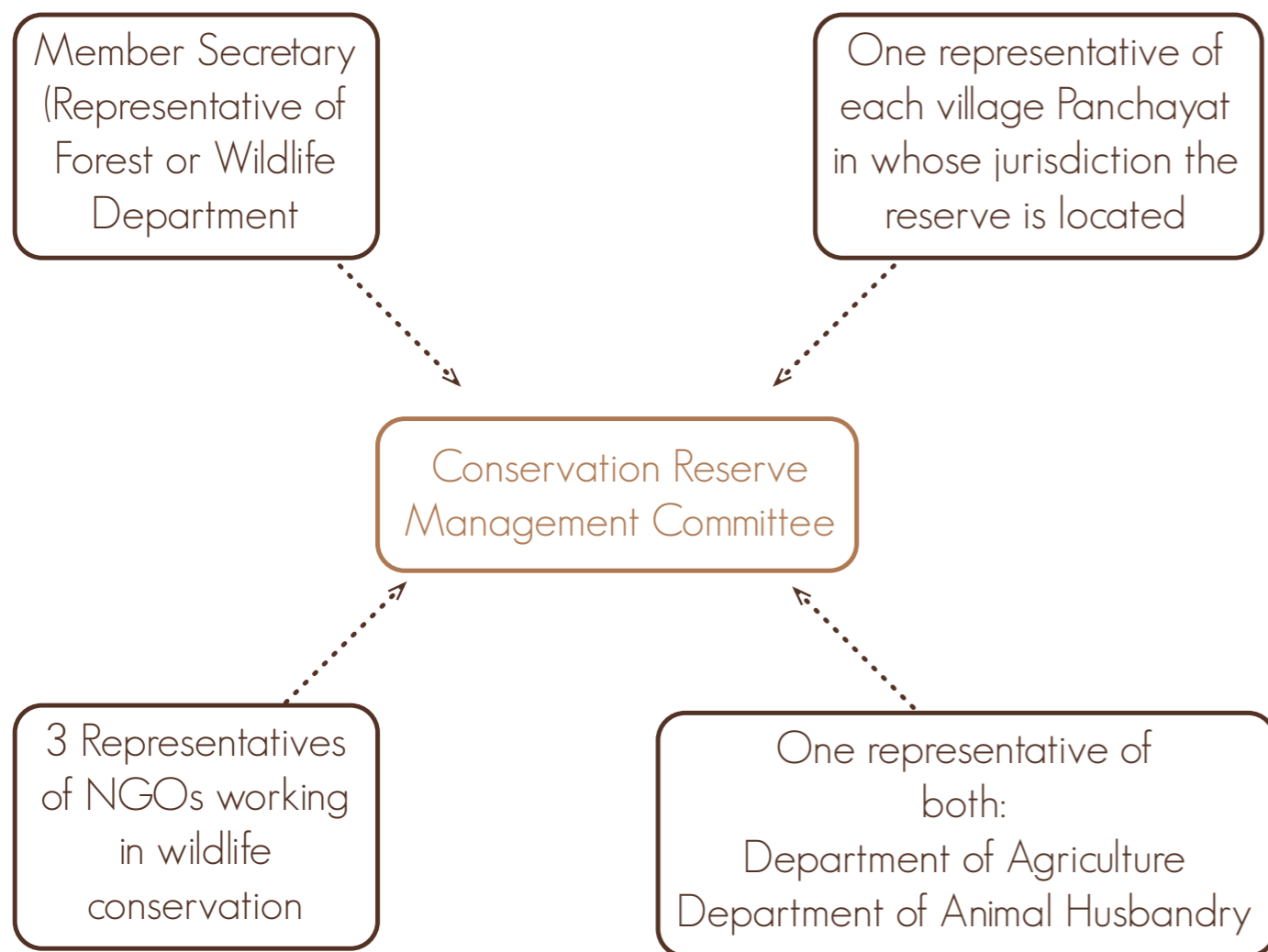
This is the constitution of the committees that are involved with the management of sanctuaries, Conservation Reserves and Community Reserves. Advisory Committees and Conservation Reserve Management Committees provide limited spaces for community participation. Representation is limited to one representative of the village Panchayat in the case of Conservation Reserve Management Committees and 3 representatives of Panchayati Raj institutions in the case of Advisory Committee for Sanctuaries. Community Reserve Management Committees allow for 5 representatives nominated by the Panchayat or Gram Sabha, thereby creating space for community participation.



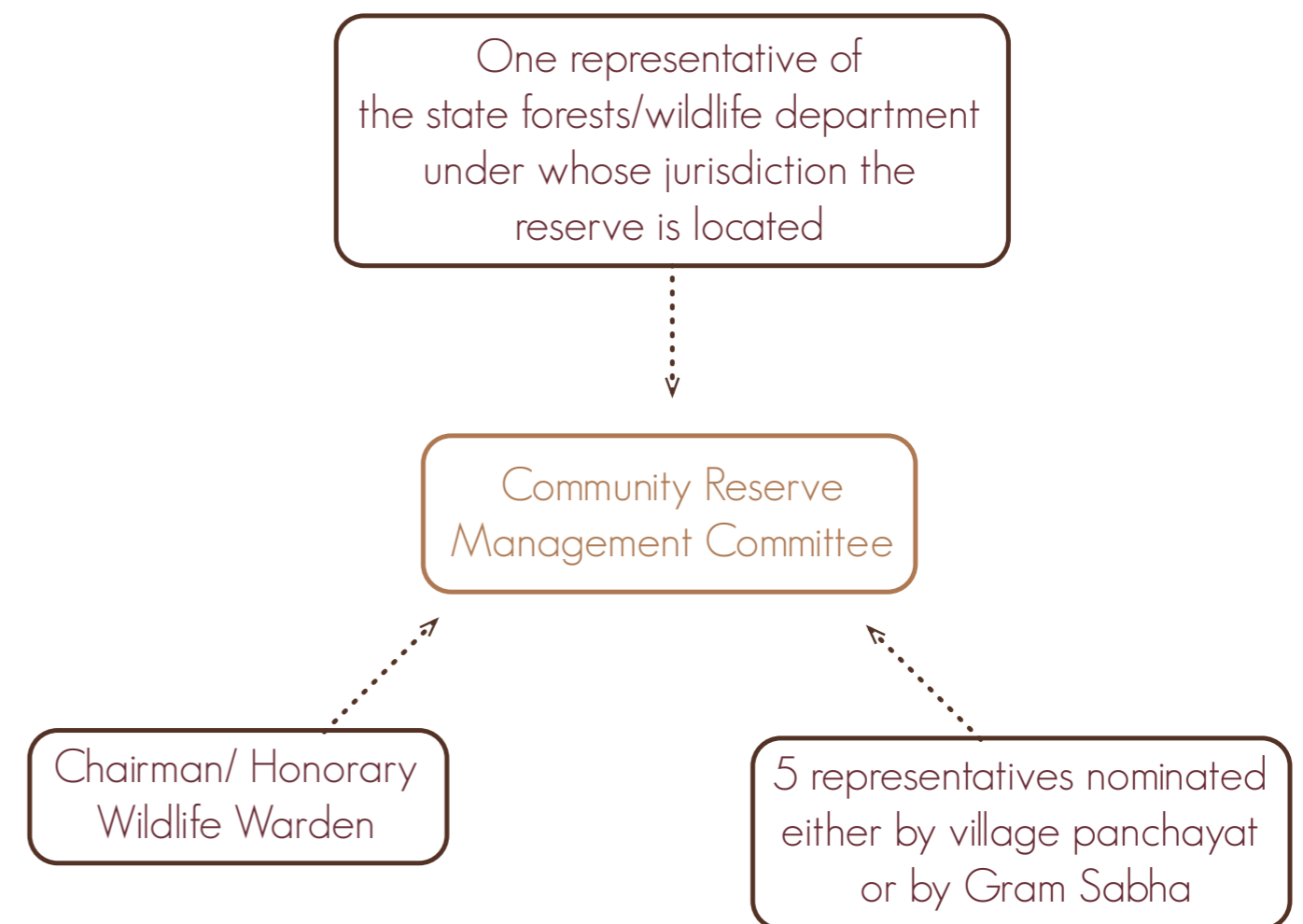
MEMBERS OF THE ADVISORY COMMITTEE FOR SANCTUARIES



MEMBERS OF THE CONSERVATION RESERVE MANAGEMENT COMMITTEES



MEMBERS OF THE COMMUNITY RESERVE MANAGEMENT COMMITTEES



..... What is the rights settlement process under the WLPA?

The WLPA outlines the rights settlement process that is to be undertaken before a protected area is officially declared. These are the steps of the process:

The State Govt. will issue a notification to declare the intention to constitute any area as a Sanctuary or National Park for the purpose of protecting wildlife.

The State Govt. will then appoint an officer to act as the 'Collector' within 30 days of the issue of the above mentioned notification to determine the nature and extent of rights of people in or over the land falling within the limits of the sanctuary or national park.

The collector is required to examine the nature and extent of rights of persons in or over the land falling within the limits of the sanctuary. After this notification is issued, no rights can be acquired in or over the land and specified limits of the Sanctuary except by succession or will. Which means that after the issue of the notification rights can only be availed in cases where they are inherited but are not transferable.

Within a period of 60 days after the issue of the notification, the Collector is required to publish a proclamation in the regional language, in every town/ village or neighbourhood of the proposed sanctuary/ national park. This proclamation must specify clearly the situation, location and limits of the proposed protected area.

Any person who wants to claim rights should write to the collector specifying nature and extent of their rights, including compensation details

The Collector must admit or reject claims in part or whole within a period of two years. If these rights are admitted, the collector may:

- Exclude such land from the limits of the sanctuary.
- Acquire such land or right from the owner, wherever the owner has agreed to surrender their rights to the Government for payment of compensation.
- Allow the continuance of rights in consultation with the Chief Wildlife Warden.

The sanctuary will be notified once the rights settlement process is finished.

Till the rights settlement process is finished, the state govt is required to make alternative arrangements for fuel, fodder and other forest produce for affected people.

For National parks, the same rights settlement process shall apply as for Sanctuaries, however all rights falling within the boundaries of the National Park will be extinguished.

NOTES

NOTES

