

Wilpattu Forest complex (SCFR 130/2017) –Petition summary

On the 31st of March 2017, the Environmental Foundation Limited together with the Wildlife and Nature Protection Society filed a Fundamental rights application in the Supreme Court, invoking the jurisdiction of the Court in relation to the illegal forest clearing and construction taking place within the Maraichchukaddi-Karadikkuli (Kallaru), Vilaththikulam and Veppal forest reserves in the Wilpattu Forest complex. The primary grievances highlighted in the petition are threefold, namely, (i) the release of forest land for the alleged purpose of resettlement in contravention of applicable laws and regulations, (ii) the failure of relevant state agencies to prevent construction and forest clearing within the Maraichchukaddi-Karadikkuli (Kallaru), Vilaththikulam and Veppal forest reserves from being carried out in violation of the provisions of applicable laws and regulations, and (iii) the grave and irreparable environmental damage caused to the aforesaid forest reserves as a consequence of the acts or omissions of relevant state agencies. The respondents listed in the application include, among others, the Forest Department, Central Environmental Authority, Department of Wildlife Conservation, and the District Secretariat of Mannar.

The Wilpattu Forest Complex (hereinafter referred to as the “WFC”) comprises of seven (07) Forest Reserves, namely, (i) Maraichchukaddi/Karadikkuli Forest Reserve, (ii) Vilaththikulam Forest Reserve, (iii) Veppal Forest Reserve, (iv) Periyakuriyatti Kulam Forest Reserve, (v) Mavillu Forest Reserve, (vi) Periyamarippu Forest Reserve, and (vii) Veerakkuli Cholai – Eluwankulam Forest Reserve, two (02) Sanctuaries, namely, (i) Wilpattu North Sanctuary, and (ii) Thabbova Sanctuary, and a National Park – The Wilpattu National Park (hereinafter referred to as the “WNP”). The Forest Reserves in the complex fall under the mandate of the Forest Department in terms of the Forest Ordinance as amended, and Sanctuaries and the National Park are controlled and managed by the Department of Wildlife Conservation in terms of the Fauna and Flora Protection Ordinance as amended.

The Wilpattu National Park, the Forests Reserves and Sanctuaries are contiguous and form a single flourishing ecosystem which extends from Karuwalagaswewa up North until Silavathurai. The WFC represents the only other ‘villu’ ecosystems in the Island and the only ecology in the Island with both fresh and sea-water villus present. The forest complex is rich in habitat diversity and supports a large number of flora and fauna including several threatened faunal species such as the Asian Elephant, the Sri Lankan Leopard and the Freshwater Crocodile. Owing to its ecological value, the area is eligible for protection under the provisions of a number of international Environmental instruments to which Sri Lanka is a party including, among others, the Convention on Wetlands of International Importance (The Ramsar Convention), the Convention on Biological Diversity, the Convention on the Conservation of Migratory Species and Wild Animals (the Bonn Convention) and the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention).

The sequence of events outlined in the petition begins in late December 2016 with the petitioners receiving information through several newspaper articles and other public domains that an unidentified group was in the process of clearing forests and constructing houses within the WFC. Having confirmed the veracity of the reports by way of a preliminary site visit, the 2nd petitioner – the Environmental Foundation Limited- made written inquiries regarding the legality of the same from the Conservator General of Forests, the Chairman of the Central Environmental Authority and the District Secretary of Mannar. In response to their written inquiry the Petitioner received, from the District Secretary of Mannar, a set of documents indicating release of forest land for the alleged purpose of resettlement by the Forest department.

The Maraichchukaddi-Karadikkuli (Kallaru), Vilaththikulam and Veppal forests are Reserved Forests declared under section 3(1) of the Forest Conservation Ordinance. As a general rule, trespassing in to forest reserves, felling or otherwise damaging or destroying trees within such reserves, constructing buildings, preparing land for the construction of buildings and/or occupation of building constructed on land within the reserves, the construction and/or use of any road constructed through such reserves as well aiding and abetting of any one or more of the aforesaid acts are prohibited and are deemed offences under the Ordinance (section 07). The exception to this rule is incorporated in section 08(1) of the Ordinance which provides that acts specified in section 07 will not be deemed prohibited if done in accordance with any regulation made by the Minister or with the permission in writing of a forest officer duly empowered.

The exercise of this discretionary power vested in a duly empowered forest officer under section 08(1) of the Forests Ordinance is subject to the provisions of Part IVC of the National Environmental Act No. 47 of 1980 as amended (hereinafter referred to as the "NEA"). In terms of section 23AA under Part IVC of the NEA, notwithstanding the provisions of any other written law, from and after the coming into operation of the Act, certain predetermined activities undertaken in Sri Lanka by any Government Department, Corporation, Statutory Board, Local Authority, Company, Firm or an individual must obtain prior approval from the appropriate project approving authority for their implementation. By virtue of an Order issued under section 23Z of the NEA and published in Gazette notification number 772/22 dated 24.06.1993, the

- (a) Extraction of Timber;
- (b) Conversion of Forest covering into non-forest uses;
- (c) Involuntary resettlements other than resettlement effected under emergency situations,

if undertaken within 100 m from the boundaries of, or within any area declared under the Forest Ordinance, are prescribed projects for the implementation of which approval must be sought under Section 23AA (1) of the NEA.

For this purpose, section 23BB(1) of the Act imposes a duty on all project approving agencies to require project proponents to submit, within a specified time, an Initial Environmental Examination Report (IEER) or an Environmental Impact Assessment Report (EIAR), as required by the project approving agency, relating to such project and containing such information and particulars as may be prescribed by the Minister.

Sections 23BB (2) and (3) of the Act supported by regulations 7 (ii) and (iii) and 11(i) and (ii) published in gazette notification number 772/22 dated 24.06.1993, lay down procedural requirements to ensure public participation when granting approvals for the implementation of given projects under section 23AA of the NEA. Section 23 BB (4) read together with regulation 15 under the Gazette notification number 772/22 require approvals granted for any prescribed project to be published by way of publication in the Gazette and in one newspaper each in Sinhala, Tamil and English languages.

During the process of drafting the Petition, the forest area belonging to the Maraichchukaddi-Karadikkuli (Kallaru), Vilaththikulam and Veppal forest reserves excluding the heavily deforested parts of these reserves, among others, were declared a Conservation Forest from the 21st of March 2017 by Order issued under section 3A of the Forest Conservation Ordinance and published in Gazette notification number 2011/34 dated 24th March 2017. This however does not legalize the forest clearing. Rather, it underscores the ecological value of the Wilpattu Forest Complex, which is a vital part of Sri Lanka's natural heritage.

Two primary reliefs were prayed for in the Petition- (i) the issuance of an interim Order directing relevant state agencies to immediately suspend all steps relating to deforestation, construction and/or any other related activity within the Wilpattu Forest Complex, and (ii) the issuance of a declaration that the release of forest land under the control of the Forest Department for alleged resettlement purposes is illegal, null and void and of no force or avail in law.