

COMMENTS ON THE WILD LIFE (PROTECTION) AMENDMENT ACT 2002

Kalpavriksh

1. BACKGROUND

The Wildlife (Protection) Amendment Act 2002 (hereafter referred to as the WLPA or the Act), is based on a set of recommendations suggested by an Expert Committee in 1997.

Taking into consideration the increase in wildlife crimes and growing alienation of local communities from wildlife conservation programmes, the Central Government constituted an inter-State committee in the year 1995. The Committee, was chaired by Dr. M.K. Ranjitsinh and comprised mostly wildlife conservation officials and NGOs. The report of the inter-State committee was considered by the Indian Board of Wildlife and its Standing Committee, which further recommended comprehensive amendments to the Wildlife Act, on the basis of the proposals of the said committee. The draft prepared by the committee will be referred to below as the Committee Draft

WLPA Act to some extent has tried to move away from the original exclusionary and non-participatory model of conservation, as also strengthen conservation vis-à-vis commercial and industrial pressures, which needs to be applauded (see Part 2 below). However, there are still many gaps, and flaws in orientation, which need to be pointed out before the Act is implemented (see Parts 3 and 4 below). **Most serious are provisions that are weak against the powerful destructive forces damaging wildlife, others that are going to adversely and unjustifiably affect the legitimate survival rights of people within/around protected areas, and yet other provisions that could stifle community initiatives at conservation.**

2. GENERAL COMMENTS

2.1 Progressive Provisions

- a) Expansion of the definition of “animal” to include all chordates and invertebrates, many of which (e.g. fish) the previous Act had left out (Sec. 2 clause 1).
- b) Constituting a National Board for Wildlife under WLPA¹ (Sec.5A), and bringing alteration in the boundaries of PAs² and diversion of land for commercial purposes within the purview of the Board (sec 5C). It is hoped that such a step will make it difficult to denotify or alter the boundaries of protected areas, which many state governments are doing in the name of people but often to suit commercial interests, thereby neither benefiting wildlife nor local people. It is expected that these provisions will act as a check against decisions such as diversion of land in Great Himalayan National Park for a hydro-electric project.
- c) Constitution of advisory committees for sanctuaries, consisting of officials, community representatives, and NGOs (Sec. 33B), is one step forward in the direction of making

¹ The earlier Indian Board of Wildlife did not have a legal backing.

² As per the existing WLPA, alteration of the boundaries of a PA can be done by a resolution passed by the legislature of the State. Supreme Court rulings in the Writ Petition (Civil) No. 337/95 (Centre for Environmental Law, WWF-India Vs Union of India & Ors.) have ensured that the state governments seek the approval of the Standing Committee of the Indian Board for Wildlife before any alteration in area. The new provision now formalises this under the WLPA.

management of sanctuaries more participatory and hopefully reducing human-wildlife conflicts.

- d) Inclusion of categories such as Conservation Reserves (Sec. 36A) and Community Reserves (Sec. 36C) will help bring in much more area within the PA network hopefully without creating serious conflict situations as have been created in the past, and could be used by communities for gaining legal backing for their conservation efforts.

However, despite the above and some other progressive provisions, WLPA Act still contains serious loopholes in dealing with commercial and industrial forces, and retains an essentially top-down and exclusionary vision of wildlife conservation. It displays a reluctance to actually decentralise decision-making powers, and in doing so has not kept in step with the constitutional changes towards decentralisation. In some instances the Act has gone back on positive recommendations of the Committee draft. The two sets of recommendations below are aimed at pointing out some of these gaps in the Act, which need immediate attention.

2.2 Problematic Or Regressive Provisions

(Note: By “gram sabha” below, we mean the entire adult population of a settlement, and not only elected representatives).

2.2.1 Protection of threatened species and habitats

For several years now, conservationists have pointed out that the single biggest threat to wildlife and wildlife habitats is the model of ‘development’ that encourages the haphazard growth of industries, cities, and commercial activities. For instance, according to a Kalpavriksh study, at least 80 protected areas in India are threatened with mining within or adjacent to their borders. Unfortunately, the WLPA Act does not have very many new provisions to counter this. Indeed, some provisions in the Committee Draft have been dropped from the Act, including a critical one on restricting such activities in a 5-km. radius around each PA. *Most critical, however, is that the Act does not provide protection to the habitats of threatened species that are outside PAs, which is a serious lacuna given that such habitats are being gobbled up by destructive activities all over India.*

The Act also fails to provide for an institutional mechanism, which wildlife scientists have been asking for, to continuously monitor, update, and revise the species Schedules that determine the extent of protection that each species receives under the law. The updating of this list has been somewhat ad hoc in the past, and there is also no mechanism to regularly generate information on the status of each of the species that is listed.

It is also noteworthy that there is a predominant **forest** focus in the Act, as there was in the original Act. It almost appears that no wildlife exists in marine areas, wetlands, grasslands, deserts, and so on. Of course such ecosystems have been covered under PAs under the existing WLP Act, but their coverage has been much less representative and adequate than that of forests...and unfortunately this may continue to happen under the new Act. Even the aspects related to resource use deal mostly with forest produce.

Suggestions:

- a) **A protective zone should be established around PAs, in which large-scale ‘developmental’ activities such as mining, dams, industries, and so on, are kept out; rather than a standard size for such a zone, however, it should be determined according to ecological needs for each PA, or perhaps at the level of states.**

- b) **The Committee Draft's provision to ban all new construction for tourism purposes, inside PAs, should be brought in (the WLPA Act had a weaker version of this, allowing such construction if the National Board permits it).**
- c) **Provisions should be introduced for the conservation of critical habitats for threatened species even when they are outside PAs, perhaps linking them to the Environment Protection Act to be declared as "ecologically sensitive areas", or specifying procedures for the clearance of large-scale 'developmental' or commercial activities in such areas.³**
- d) **WLPA Act should explicitly cover all kinds of ecosystems, and every place where forests and forest produce are mentioned (except in relation to the Forest Act), the scope should be enlarged to include them.**

2.2.2 Protected Areas (including Conservation Reserves and Community Reserves):

The WLPA Act recommends four categories of PAs in the country, including two new ones of Conservation Reserves and Community Reserves. However, the criteria used to decide the categories to be assigned to a particular PA are not spelt out. This means that some level of arbitrariness continues with regard to how wildlife authorities assign a particular category to a particular area. This arbitrariness then carries forward into the management strategies, which are often not oriented to the specific local objectives and needs of the area but are based on some standard all-India prescriptions.

Secondly, the two new categories are presumably intended to encompass landscapes and habitats that are under resource use or community control, and have significant wildlife values. However, their potential is considerably limited because existing national parks and sanctuaries cannot be converted to either of these new categories (even where assessments may show that such conversion may help conservation).

Third, the category of Community Reserves, while welcome in itself, is severely restricted because it is applicable only to community and private lands. Across India there are hundreds, possibly thousands of instances of communities conserving and managing wildlife/biodiversity-rich habitats that belong to the government. Such areas could be declared as Community Reserves, wherever communities need a legal backing. The WLPA Act does not allow for this. Finally, the Act specifies a uniform format of administering these CRs, which may stifle the very large and diverse range of institutional and customary structures/rules that communities have evolved.

³ The National Wildlife Action Plan (NWAP) 2002 - 2016 which was released by the Prime Minister during the XXI meeting of the Indian Board for Wildlife (IBWL) held on January 21, 2002, states that areas around protected areas and wildlife corridors should be declared ecologically fragile under the Environment (Protection) Act, 1986 (EPA). At the above stated meeting the IBWL adopted the "Wildlife Conservation Strategy 2002" which amongst other things states in point 9: "Lands falling within 10 km. of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under section 3(v) of the Environment (Protection) Act and Rule 5 Sub-rule 5(viii) & (x) of the Environment (Protection) Rules". Subsequent to this meeting of the IBWL, the Addl. DGF (Wildlife), MoEF, has written to the Chief Wildlife Wardens of all States and Union Territories (D.O. No. 6-2/2002 WL-I dated February 5, 2002) asking them to list out such areas and furnish detailed proposals for their notification as eco-sensitive under the EPA.

Suggestions:

- a) The Act should lay out a clear set of criteria for each kind of PA, developed in a participatory manner. Declaration and categorisation of a PA must therefore depend on these criteria and be accompanied with a clear statement of conservation objectives, which will help in designing the management approach to be followed for the PA.
- b) The Act should authorise or facilitate a time-bound, one-time reclassification of all existing PAs, based on the established criteria. This also means that the provisions allowing only new areas to be declared Conservation Reserves and Community Reserves, should be deleted, and all areas should be open to all categories depending on the conservation values and social/cultural factors.
- c) The provisions that permit only private and community land to be declared Community Reserves, should be deleted, and all kinds of lands should be open to such declaration, if it serves the interest of conservation better.
- d) The provision relating to the composition of the Community Reserve Management Committee should be made much more flexible. The provision should simply state that the Committee's selection and mode of functioning will be left to the respective gram sabha(s), defined as all adults of the village; it could also specify that such selection should equitably represent the various sections of society.

2.2.3 People's participation and livelihoods

It is a welcome step that the WLPA has recognised people's institutions in several provisions. However, local Panchayats have been taken as the bodies to represent local people's interests. Panchayats are often not truly representative of all sections of society, particularly the disprivileged.

Moreover, most of the provisions for people's participation are not in the nature of empowering them to take part in decisions, or manage their own surrounds with authority (other than the provisions for Community Reserves). Even the proposed committees for Sanctuaries and Conservation Reserves are only advisory in nature.

There is a welcome recognition of the bona fide needs of communities in/around PAs. However, there are some provisions that are likely to negate any positive impact of this recognition, and cause severe conflicts between people and PA managers. These include the provision that state governments should give alternatives to all resource needs pending the completion of the settlement process (implying thereby that the existing resource use activities should be stopped), the prohibition of all commercial use of resources, and the direct conversion of areas where rights have been earlier settled into national parks (see Specific Comments 5,6,8, and 11 below).

Suggestions:

- a) Gram sabhas (village assembly) should be taken as the basic unit of governance at village level, and members of gram sabhas (elected or chosen by such sabhas) should represent the bodies concerned with management of PAs. Explicit provisions should be made to ensure participation of disprivileged sections in this governance.
- b) Provisions should be made for meaningful involvement of communities in/around PAs of all categories, in the management of the PA, by setting up joint or co-management committees with decision-making powers (not only advisory in nature). If need be, this can be implemented in a phased manner, trying a few representative PAs across the country, and then extending to the rest after learning lessons from the initial sample.
- c) The process of settling rights relating to PAs, should include a realistic assessment of the current usage of each PAs (not only going by government records, which are often outdated and incomplete), recognition of the customary (even if unrecorded) rights of

traditional users, clear establishment of such rights (and corresponding responsibilities) within the framework of the conservation objectives of the PA and the livelihood needs of the people. Such a process needs to be carried out even for areas where in the past settlement has been carried out, but where clearly resource use activities are continuing, for this indicates that the settlement is outdated, or incomplete, and may have ignored customary or traditional (but unwritten) rights.

- d) The provisions regarding giving alternatives while settling rights, and regarding commercial uses, should be immediately clarified (see suggestion in Specific Comment 5 below).

2.2.4 Institutional structures for implementation

In the Act the relationship between the PA level committees, State Board and National Board is not very clear. It is also not clear how the conflicts amongst and within these bodies are to be resolved. The functioning of the boards and the committees are left to these bodies to decide, with no overall framework.

Suggestions: The WLPA Act should specify creation of some general guidelines for all the boards and committees, within which state or site-specific rules and regulations could be framed by each of the boards and committees.

These guidelines should:

- a) specify that all sectors constituting the boards and the committees are adequately represented in any decision making body or quorum of the boards and committees.
- b) specify the precise relations between the various institutional structures authorised under the Act.

3. SPECIFIC COMMENTS (Clause-wise)

1. Section 5A (1) (e) & (f): It is laudable that the National Board for Wildlife is widely represented, however, it does not include any representatives of the local communities.

Suggestion: five of the community representatives from different state boards and/or protected area committees be included in the national board by rotation This could be from the 15 non-governmental people already included (subclauses e and f).

2. Section 5B (1), (2) & (3): The objective and functions of the Standing Committee are not clear. The standing committee is in addition to the sub-committees that may be created for specific functions (section 5B (3)).

Suggestion: In case the Standing Committee is expected to be the executive body of the National Board, it is important that it is represented by all sectors (governmental, NGO, academic, community) constituting the National Board and that its membership is not left to the discretion of the Vice-chairperson alone.

3. Section 6. (1): The composition of the State Board has broad representation, but community representation is weak and unclear.

Suggestion: The state board must include five representatives of the local communities from the committees of the sanctuaries, conservation reserve and community reserve committees, on rotation. This should be done keeping in mind adequate representation of the disprivileged sections, including women. Instead of specifying two tribal representatives as standard across all states, the community representatives should reflect, as far as possible, the ethnic composition of the communities in and around protected areas in the respective state.

4. Section 8: The functions of the State Board cover a lot of aspects , but some aspects have not been covered.

Suggestion: The functions of the state board also need to include the following:

- a) **Ecological and social monitoring and evaluation of management practices being practiced within the PAs done in conjunction with sanctuary committees, and conservation reserve and community reserve committees.**
- b) **Formulation of status of wildlife report for the state every two years.**

5. Section 18 A (2): This provision about giving alternatives while rights are being settled, is extremely regressive. This assumes that all rights are going to be extinguished anyway, therefore the provision of alternatives from the start. This almost negates the intent of Article 24(2)c of the Act, which allows for rights to continue. This provision will result in needless and serious conflicts between wildlife officials and local people, and could be an enormous waste of resources if in the settlement process the original rights are continued.

Suggestion: This provision must be deleted, and replaced with the Committee Draft's provision clarifying that till rights are settled, they are deemed to continue within Reserve Forests and Territorial Waters. This clarification should also apply to all other kinds of land/waters. Pending this amendment, a clarificatory note to the effect that provision of alternatives should *not* be interpreted to mean stoppage of existing resource use activities, should be issued to all state governments.

6. Section 19: The process of settlement of rights is entirely based on the recorded government rights. This WLPA continues to ignore the following facts pointed out by activists for years (including by bringing this to the attention of the Committee):

- Government records of rights have not been updated in most instances for years, sometimes decades, hence are outdated.
- In many cases the customary uses and rights of the people have not been recorded, or only partially recorded. Many activities carried out for bona fide use (e.g. honey collection or medicinal plant extraction for home use) are not recorded, but are crucial for the people. Under these circumstances it would be a folly to take into account only the government records into account during the process of settlement of rights. Such an oversight will only intensify the existing conflicts facing the settlement process in the country today.

Suggestion: The process of settlement of rights needs a clear set of guidelines, which specifies the identification of all customary and traditional uses, their continuation if appropriate to the conservation objectives of the area, the provision of alternatives for uses that are now destructive or unsustainable, and the stoppage of non-customary commercial uses by outsiders or recent settlers. The Settlement process must start with the assumption that traditional people have a positive relationship with the ecosystem and wildlife, and not with the assumption that these people are inevitably causing “pressure” on the habitat or are “enemies” of wildlife. Additionally, the proclamation of the Collector must be made *orally* in each relevant settlement, not only in writing, given the level of illiteracy in villages. Finally, there should be a provision for a public hearing in several convenient places, prior to final notification of the PA, as also provided for in the National Wildlife Action Plan. (Note: Kalpavriksh has prepared a set of guidelines for the Settlement of Rights process, which can be provided on request).

7. Section 28 of the original Act was regarding grant of permit by the Chief Wildlife Warden, for various activities. The Committee Draft had included a provision to ensure that tourism within a PA is carried out only “as per the management plan approved by the Chief Wildlife Warden”. This has been dropped in the WLPA.

Suggestion: Section 28 (d) of the Committee Draft needs to be brought back into the WLPA, since it is with the intention of regulating tourism in PAs.

8. Section 29 is overall welcome, but contains provisions that have the potential to create conflicts and lead to serious injustice. While the provision on water diversion/stoppage could help to check the construction of large dams outside PAs which have serious consequences on the PA, it could also be a hindrance to smaller scale water harvesting activities in villages.

Secondly, while the provision on forest produce being removed only for bona fide needs of people and not for commercial purposes is welcome as a shield against destructive commercial activities, it would also stifle the small-scale livelihood needs and rights of local people, many of which can be a powerful stake in conservation (see, for instance, the example of Biligiri Sanctuary in Point 9 below). It is indeed ironical that while such a blanket prohibition is sought to be imposed on communities, tourism still has an open door in that “construction of commercial tourist lodges, hotels, zoos and safari parks” can still be undertaken with the permission of the National Board!

Suggestions:

On water diversion: Rules or other subsidiary guidelines/circulars under the Act could specify that the words “....or change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wildlife therein”, should not be interpreted to adversely affect the bonafide water requirements of the villagers residing in and around the PA. This point has been added keeping in mind that in many areas, PAs include the traditional tanks of local villagers and such tanks (as also stream/river stretches, lakes, and so on) are used by the local communities for drinking and irrigation purposes.

On commercial uses: There also needs to be a flexible interpretation (and eventually an amendment to make it explicit) regarding the provision on commercial uses, to enable situations such as that of Biligiri Sanctuary (see Point 9 below), or of Keoladeo Ghana National Park and many other PAs where grass removal for sale is done by villagers, benefiting both them and the wildlife. Such uses should be allowed as rights depending on the local situation, with a clear understanding of their being within conservation limits, and with appropriate mutual control mechanisms between the user communities and the PA managers.

9. Section 33B. We appreciate the inclusion of this provision for Sanctuary Advisory Committee in the Act. The following suggestions will be critical to strengthen this committee and make it more effective and relevant.

Suggestions:

Section 33 B (1), the committee needs to include as its members:

- a) **Representatives of the department of Rural Development, Tribal Welfare and other line agencies functioning in the area. This will facilitate coordinated action of all line agencies for conservation and development of the PA and villages in and around.**
- b) **Representatives of the gram sabhas of one third of the villages in and around the PA by rotation. Adequate attention needs to be paid to the representation of disprivileged sections, including reserving 50% of the seats for women from various sections of the society.**

In Section 33B (2), the activities of the committee must include among others:

- a) **Ensuring consultation with all relevant gram sabhas for the management plan of the PA and approval of the management plan.**

- b) **Ecological and social monitoring (including by trained members of communities) of the impacts of the management practice adopted for the sanctuary.**
- c) **Advise on the basis of ecological impact assessments about extraction and level of extraction of produce from a sanctuary, and with help of the concerned gram sabhas arriving at a mechanism for sustainable extraction of natural produce.**

Note: It may be useful here to site examples of PAs facing conflict today which can be resolved by incorporating the above suggestions. The Soliga tribals in Biligiri Rangaswamy Temple (BRT) Sanctuary have been sustainably extracting medicinal plants for sale, with help from a local NGO and a Research organisation. In turn, they are helping with the protection of the sanctuary. A blanket ban on commercial use of forest produce can adversely affect such initiatives. In Andhra Pradesh, sanctuaries like Nellapatu Bird Sanctuary have been established in traditional village irrigation tanks and heroneries. Creation of PAs in these areas has restricted access of people, causing serious conflicts, and threatening the survival of the birds. The PA committee in such instances can help resolve the conflicts by assessing the impact of people's use of the area, based on modern wildlife management principles and traditional knowledge systems.

- 10. Section 34A (1) (a) This provision regarding encroachment is perhaps intended to remove vested interest land grabbers; however, it could also be used against poor people who are traditional residents but have no document to prove it, or whose traditional rights are improperly recorded. Indeed, experience suggests that the "soft" targets will be aimed at, often leaving out more powerful offenders. In addition, the issue of encroachment is quite complex. These complexities were partially covered under a set of circulars issued by the Ministry of Environment in 1990.

Suggestion: This section needs to be clarified in rules or a circular, similar to the circular issued by MoEF in October 2002, that action on encroachments should be taken in accordance with the circulars issued by GoI in 1990.

- 11. Section 35(8), The clarification here regarding the possibility of directly notifying areas where rights have been settled, into national parks, is also problematic from the point of view of many communities whose traditional resources uses and survival needs may simply not be recorded as rights (see point 6 above). In such cases, these people will find themselves to be offenders, since in a national park no rights and activities can continue.

Suggestion: A clarification needs to be issued that where resource uses are existing, and are traditional or customary in nature, the process of settlement as specified in point 6 above, needs to be carried through even in areas where on paper the settlement process has been completed.

- 12. Section 36A (1), Creation of this new category of Conservation Reserves is a welcome addition, as it could be particularly useful for providing legal backing to areas heavily populated yet ecologically sensitive or critical for conservation, as also to landscapes with a range of land uses from natural habitats to agriculture and pastoralism. However, the management structure for such a Reserve needs to be more decentralised, with the full participation of local communities and local line departments.

Suggestions:

Once the area has been declared Conservation Reserve, no major change in the land use should be allowed except as recommended by Conservation Reserve Management Committee in consultation with the Chief Wildlife Warden.

In Section 36 (B), the Conservation Reserve Management Committee should be the main managing body, rather than have only an advisory function to the CWLW. The Committee

should be headed by a prominent citizen of the area, from the local communities. The Committee should include as its members:

- a) Representatives from all relevant line agencies in the area.**
- b) One representative each from the gram sabhas of the villages in and around the PA, with adequate representation from the disprivileged sections, including 50% reservation for women from all sections.**

The functions of the committee should include the following:

- a) Formulation of the management plan for the PA in consultation with all the relevant grams sabhas in and around the PA.**
- b) Regular ecological impact assessment of the resource use inside the reserve with help from relevant gram sabhas and using local expertise and knowledge along with modern wildlife management principles.**
- c) Working out ecologically sensitive livelihood and development options along with the relevant gram sabhas and concerned line agencies working in the area.**

13. Section 36 C (1): This welcome new category of Community Reserves is finally a recognition of local people's efforts at conservation in the country. It is surprising, though, that while the Act recognises people's efforts at conservation it does not entrust them with the responsibility of carrying on with their practices and institutions. Instead a new uniform institutional structure is being imposed. We believe that only where communities feel responsible and capable of managing their resources, would they apply for legal protection. There are numerous examples across India where such communities have established their own systems of management and local institutions sensitive to local context and situations. The role that they envisage from external agencies including government agencies is that of legal, moral and technical support.

In addition, often such efforts are initiated not necessarily on private lands but traditionally used lands and resources, which may legally be under the jurisdiction of government agencies. It is not clear what is meant by the term "community land" in this section. If government owned lands are kept out of the purview of this provision, then hundreds of well deserving communities in the country will not be able to use the benefits of this category, nor extend the benefits to the biodiversity they are conserving. For example, the few hundred ha. of forests conserved by the village Jardhagaon in Uttaranchal, with populations of leopard, Himalayan bear, and over 100 spp. of birds, are officially reserved forests (though there is no local presence of the Forest Department and instead the village has appointed its own forest guard). Tens of thousands of ha. of forested Revenue land have been protected by the communities in Uttaranchal as Van Panchayats, and it is not clear whether these will be applicable for Community Reserves. 1800 ha. of forests protected by the Gond villagers of Mendha-Lekha in Maharashtra are also under Reserved Forests. It would be a shame if none of these could be declared Community Reserves.

Suggestions:

- 1. All community efforts at conservation, irrespective of the legal status of the land, should be allowed to be established as a community reserve if the concerned community shows desire, willingness and capability to do so.**
- 2. For Section 36D, the following clarification should be issued (and eventually such the section should be replaced by language reflecting the following): Each community while applying would need to specify the local institution, its structure, functioning, rules and regulations (including whether written or unwritten) to the State Board and the CWLW. This local institution will be designated the Community Reserve Management Committee. In consultation with the gram sabha (if the Committee is not the gram sabha itself), the Committee will organise a meeting with all the line agencies, including**

officer in-charge of the FD, and constitute a Community Reserve Advisory Committee if the community so desires.

- 3. The Advisory Committee will meet with the gram sabha once every three months and carry out the following functions:**
 - a) Help in the formulation of a management plan for the PA, and provide technical inputs wherever needed and sought by the community.**
 - b) Help in carrying out monitoring and evaluation of the ecological and social impacts of management practices and resource uses in the PA.**
 - c) Impart information on developmental programmes, scheme, etc. that may be applicable in the area.**
 - d) Help with book keeping, accounts, maintaining minutes, etc.**
 - e) Advise on financial resources for carrying out conservation and village development activities.**
 - f) Ensure that all sections of the community are adequately represented in the local institutions and equitably share the benefits of conservation, including reservation of seats for women from all sections of the community.**

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