

Comments on the Draft Wild Life Protection (Amendment) Bill 2021¹

The draft WLPA (Amendment) Bill 2021 is coming 15 years after the enactment and implementation of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 (also the Forest Rights Act or FRA) but has still not attempted to take into account its various provisions. The current amendment process provides an opportunity for reducing the present contradictions or lack of clarity at the interface of these two laws tying various loose ends. Doing so will also be keeping in line with the Programme of Work on Protected Areas (PoWPA) of the UN Convention on Biological Diversity (CBD) and a step forward towards Target 3 being currently discussed under the Post 2020 Global Biodiversity Framework. Our comments below are related to both what is already in the proposed amendments as also some of what has been omitted:

Settlement of rights process:

The draft amendments do not reconcile the relationship of the settlement of rights procedure as laid down in Sections 19 to 25A of the WLPA with that of the recognition of rights as well as alteration of rights process under Sections 3 (1) and (2) and Sections 4 (1), (2) and (5) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No. 2 of 2007). In the current draft the settlement of rights process continues to remain unchanged except to say that the compensation for extinguishing rights in Sanctuaries and National Parks will be in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR 2013) replacing the Land Acquisition Act 1894.

The 2010 draft amendments to the WLPA had proposed insertion of ***“26B. Compliance with Forest Rights Act. In the settlement of rights for all scheduled tribes and forest dwellers in sanctuaries and National Parks for which the notification under sub-section (1) of Section 18 or sub-section (1) of Section 35 has been issued after the commencement of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No. 2 of 2007), the Collector shall ensure that the provisions of that Act are complied with.”*** We strongly suggest that this statement is reinserted in the current amendments.

It is important to incorporate in the present amendment the following text: **“In settling the rights of Scheduled Tribes and other traditional forest dwellers residing in the proposed sanctuary, the Collector shall be guided by sections 3 and 4 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No. 2 of 2007) and related provisions of the Rules under this Act”**.

Also in order to harmonise the settlement of rights process with FRA, the following also needs to be added: **“No right recognized under FRA can be extinguished by this process without the consent of the rights holders and following due process as per Section 4 (1), (2) and (5) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No. 2 of 2007), the Collector shall ensure that the provisions of that Act are complied with”**.

¹ This submission by Kalpavriksh is in response to the invitation to suggestions and views by the Department related Parliamentary Standing Committee on Science and Technology, Environment and Forests, regarding the draft Wild Life (Protection) Amendment Bill 2021

Regarding consultation with the gram sabhas for notification of Protected Areas:

The current draft does not provide for any gram sabha consultations before the declaration of Protected Areas, thus coming in direct contradiction with FRA and PESA as most areas being declared as National Parks, Sanctuaries as well as Tiger Reserves, are either already or have a potential to be claimed under the FRA and also where provisions of the Panchayat Extension to Scheduled Areas (2006) Act apply. PESA requires Gram Sabha's consent (and not just consultation) in Scheduled Areas before the declaration of any project including protected areas within the PESA area. The process of notification as well as denotification of PAs (irrespective of whether it is a Scheduled area or not) needs to go through a detailed process of consultation with and consent from those who either already have rights or are likely to claim rights over these forests.

Management of Protected Areas:

The current draft amendments provide that in the case of a Sanctuary, management plans are to be prepared in 'consultation' with the concerned Gram Sabhas. This is contradictory to Section 5 of and Rule 4 (e) and (f) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No. 2 of 2007) which provides for constitution of wildlife conservation and management committees and drafting of wildlife management and conservation plans in ALL areas where rights holders whose rights under the FRA have been recognised, reside. This includes areas within wildlife sanctuaries, national parks and tiger reserves. The amendments must provide for such management and conservation plans prepared by gram sabha constituted wildlife management and conservation committees to be incorporated in the larger plans of the conservation reserves, wildlife sanctuaries, national parks and Tiger Reserves. Additionally, considering the immense significance of these plans for ensuring biodiversity conservation as well as reconciling rights of the local communities, it is important that the draft Management Plans are prepared in consultation with the concerned gram sabhas and also made public for wider comments and suggestions. These plans should also be placed before the State Board for Wildlife for its approval.

Power to remove encroachments

We suggest that in Section 34A of the WLPA, dealing with power to remove encroachments, the following provision is added in the power to remove encroachment, ***'Provided that no such order shall be passed unless the affected person is given an opportunity to be heard, and the processes under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No. 2 of 2007) have been completed.'***

Prohibition of activities and Section 29: Destruction, etc, in a sanctuary prohibited without a permit

The current draft reads

Explanation.-- For the purposes of this section, grazing or movement of livestock permitted under clause (d) of section 33, or hunting of wild animals under a permit granted under Section 11 or hunting without violating the conditions of permit granted under Section 12, or the exercise of any rights permitted to continue under clause (c) of sub-section 24, or the bona fide use of drinking and household water by local communities, shall not be deemed to be an act prohibited under this section.

In addition to the above all rights recognised under Section 3 (1) and (2) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No. 2 of 2007), should be included as “not be deemed to be an act prohibited under this section”.

In the same explanation the term “**local community**” needs to be defined clearly to mean “**scheduled tribe and other traditional forest dwellers**” residing within and in the immediate vicinity of the PA (area to be specified).

Conservation Reserves and Community Reserves

The current draft does not address this but an amendment needs to be inserted in **Section 36 B** of the Wild Life (Protection) Amendment Act of 2006 to say that the **Conservation Reserve Management Committee should be the main managing body**, rather than being only an **advisory to the CWLW**. Current draft Bill needs to incorporate this amendment.

For Section 36 D, the current draft amendments suggest that the Community Reserve Management Committee “*shall consist of not less than five representatives nominated by the Village Panchayat or where such Panchayat does not exist by the members of the Gram Sabha and one representative of the State Forests or Wild Life Department under whose jurisdiction the community reserve is located.*”

Considering that the land does not belong to the forest department and the community is volunteering for the conservation of the area, the forests department representative should NOT be on the committee, this is a deterrent for declaration of many areas as community reserves. **The Community Reserve Management Committee should include as its members, two representative (one woman and one man) from the gram sabhas (as defined under PESA and FRA to be the assembly of individual pada/settlement/revenue villages falling within a Panchayat) or other similar institutions (AND NOT THE PANCHAYATS) of the villages in and around the conservation reserve, with adequate representation from the disprivileged sections.** In case of Villages which have constituted wildlife management and conservation committees under Rule 4 (e) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No. 2 of 2007), Such committees should be part of the Community Reserve Management Committee.

Representative of the Forest Department as also the representatives of other government departments, NGOs working on social and rights issues, NGOs working on conservation issues, should be in advisory and supportive role as part of a district or sub district level convergence committee which ensures that such plans as prepared by the Community Reserve Management Committees are supported and facilitated.

Insert 2A of the current amendment draft states that “*Where a community reserve is declared on private land under Sub Section 1 of Section 36C, the community reserve management committee shall consist of the owner of the land, a representative of the State Forests or Wildlife Department under whose jurisdiction the community reserve is located and also the representative of the Panchayat concerned or the tribal community, as the case may be*”.

Considering that a private land owner is volunteering to declare their area as Community Reserve, no forest department official should be on the decision making committee of the Community Reserved declared on lands privately owned. This will be a huge deterrent towards

declaration of such lands as community reserves as it places power in the hands of the forest department. Representative of the forest department as also the representatives of other government departments should be in advisory and support role as part of a district and sub district level convergence committee which ensures that such plans as prepared by the Community Reserve Management Committee are supported and facilitated.

Formation of Standing Committee of State Board of Wildlife

The formation of the Standing Committee (SC) of the State Board of Wildlife (SBWL) under Section 6(a) of the current amendment may lead to centralization of decision making power in the hands of a few individuals in the State. The State Board of Wildlife in its current capacity itself is underrepresented by forest-dwelling communities and NGOs working on social and forest rights issues. The amendment under Sec. 6 A (2) allowing for the Vice-Chairperson to select not more than 10 members from the board in effect means that the Standing Committee can function with just two members i.e the forest minister and a member, with no accountability to the State Board and hence rendering the state board **defunct and of cosmetic value only**. The Bill intends to replicate the model of the National Board for Wildlife and its Standing Committee. It is pertinent to point out that the National Board for Wildlife headed by the Prime Minister has not met since 2014; all its statutory functions are carried out by the Standing Committee headed by the Environment Minister with no accountability to the Board. At present the State Boards by virtue of their composition are still able to speak in the interest of wildlife. This will no longer be the case once the Standing Committee of the State Board is constituted.

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