



SUBMISSION TO THE STANDING COMMITTEE REGARDING WLPA 2013 AMENDMENT¹

It is a cause of serious concern that the Wild Life Protection Amendment Bill 2013 contains no acknowledgement of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act. Considering that this is the first amendment of the WLPA ever since the FRA was enacted, the amendment provides an opportunity for reducing the present contradictions or lack of clarity at the interface of these two laws. Such participatory conservation mechanisms, apart from leading to more clarity at the interface, would also be in line with the National Wildlife Action Plan and India's obligations under the Programme of Work on Protected Areas of the UN Convention on Biological Diversity.

However, the present text does not address this requirement. In this context, we have specific concerns and suggestions regarding the following²:

Settlement of rights process:

The 2010 bill available on the MoEF website mentioned the following: "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." However, in the current amendment, as introduced in Rajya Sabha, this text has been removed.

The settlement of rights process continues to remain largely unchanged except the amendment providing that the enquiry into rights by the collector would be based on the records of the Gram Sabha and the Panchayat (and not just the State government). This does not clearly enough state the relationship of the settlement of rights procedure with the FRA recognition of rights procedure. Towards this end 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**"

Additionally, to harmonise the settlement of rights process with FRA, the following should 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 of FRA.

It is also suggested that if the proceedings of acquisition of rights are not completed within 2 years then there should be a rebuttable presumption that the notification has lapsed, to protect the rights of bona fide forest dwellers under the Forest Rights Act. However in view of occasional extraordinary circumstances preventing the completion of proceedings, a one-time extension may be permissible.

¹ The submission by Kalpavriksh is in response to the invitation for suggestions and views by the Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests, regarding the Wild Life Protection Amendment Bill 2013. For information or correspondence regarding this submission, please contact Neema Pathak Broome at neema.pb@gmail.com or Shiba Desor at desor.shiba@gmail.com.

² The suggestions are partly based on the detailed suggestions submitted by Kalpavriksh regarding the WLPA 2010 Amendment Bill and partly on the review of the text more recently inserted into the amendment.

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

The present amendment presented in the Rajya Sabha provides for gram sabha consultation only where land falling under Scheduled Areas is to be notified as a Sanctuary or a National Park. While this amendment seems to be made to accommodate PESA, it contradicts the provisions of PESA which will require Gram Sabha *consent* (and not just consultation) in Scheduled Areas. Moreover, the amendment is in direct contradiction with FRA as most areas being declared as National Parks and Sanctuaries would be potential or existing sites for claims or titles under FRA. Any area which is being notified as a PA (irrespective of whether it is a Scheduled area or not) therefore 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. The consultations should be conducted with the purpose of informing them about the purposes and implications of the notification, and obtaining their views and support. The views expressed during these consultations need to be considered in further steps relating to the proposed Protected Area.

Management plans:

The amendment provides that in the case of a Sanctuary in a Scheduled Area, plans are to be prepared in consultation with the concerned Gram Sabhas. This is again contradictory to FRA which will require management for *all PAs* where forest dwellers eligible for recognition of rights under FRA exist (not just Sanctuaries, and not just in Scheduled Areas) to be in consultation with Gram Sabhas.

Under Section 5 of FRA a greater role has been assigned to the gram sabhas towards formulation of rules and regulations and management and governance strategies of their Community Forest Resource. This would imply that the plans that are made by the gram sabhas for their CFR need to be part of the management plan of the new notified PAs and the existing PAs in order to take into account the concerns of the gram sabhas, their rights and their CFR conservation strategies. Hence the drafting of the management plan would need to acknowledge and include gram sabhas, their rules and regulations and strategies for conservation of their CFRs from the time of its inception to its execution and monitoring (rather than a mere consultation). Following are suggestions towards ensuring that the management plan drafting process does not contradict legal requirements under FRA:

Multistakeholder committees are required having adequate role and representation of individuals elected by gram sabhas; in Tiger Conservation Foundation in case of the Tiger Reserve, a Sanctuary Management Committee for a Sanctuary, a National Park Advisory Committee for a National Park and the management committees for Conservation Reserve and Community Reserve. Such committees should be responsible for formulation of the management plan through due participatory process and the use of both traditional and modern knowledge and including the rules, regulations, management strategies adopted by the concerned gram sabhas for their respective CFRs. In addition these committees could also ensure effective implementation of this plan, ecological and social monitoring of the impacts of management practices adopted, and the promotion of co-existence between wildlife and human activity in situations where rights are recognized under FRA and/or allowed under WLPA. Additionally, the State board of wildlife and the standing committee of the National Board need to have adequate representation from local communities.

It will also be important that the State Board of wildlife, in its evaluation of management of the Protected Areas of the state should be explicitly directed to ensure that *Management of Protected Areas in the state* is done in conjunction with sanctuary committees, Gram Sabha, Committees formed under FRA, and conservation reserve and community reserve committees.

Prohibition of activities:

In the amendment to Section 29, it is suggested that 'the activities recognised as rights under FRA' should be added into activities not prohibited under the Act.

It is also suggested that in Section 34B dealing with power to remove encroachment, the following provision must be 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.’

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