

CAMPAIGN FOR SURVIVAL AND DIGNITY

Contact: Q-1 Hauz Khas Enclave, New Delhi 110 016. Ph: 9873657844. www.forestrightsact.com,
forestcampaign@gmail.com

Proposed 2010 Amendment to the Wild Life (Protection) Act

The Ministry of Environment and Forests has recently proposed a set of amendments to the Wild Life (Protection) Act that are, according to the draft Statement of Objects and Reasons, aims to address the failure of the existing law to reduce wildlife crime and to act as a “deterrent.” However, instead of addressing the underlying problems with this law, the proposed amendment will exacerbate them.

We fear that this amendment is aimed at simply enhancing wildlife authorities' powers in order to make it more possible for them to extort money and harass people, as there does not seem to have been any effort to address the very real problems with the current system. Bureaucracy, unaccountable powers and commercial interests pervade the amendment, though it has been served to the public under the façade of protection of wildlife.

There are three major problems with the proposed amendment:

Dangerous Distortion of Forest Rights

In the “final” version of the proposed amendment (not in the earlier draft), a new section has been introduced that is a dangerous distortion of the Forest Rights Act. The amendment states that “In the settlement of rights... in sanctuaries and National Parks for which the notification ... 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.” (emphasis added)

The Forest Rights Act applies to all forest areas including all national parks and wildlife sanctuaries, not only those that were notified after it came into force. Rather than truly address the fact that the Wild Life Act's provisions have been used in an illegal and arbitrary manner to take away people's rights in all protected areas, this amendment in fact seeks to undermine the Forest Rights Act (see below for more details).

Enhancing Draconian Penalties In a Context of Unchecked Powers

Few people realise that the existing Wild Life Act is already one of the most draconian and repressive laws on the statute books. To give some examples, Section 57 of the Act states that any person found with meat, skins or other items related to a wild animal will be presumed guilty unless they can prove their innocence. Section 51(5) bars any consideration of probation (i.e. release under supervision) of offenders caught hunting or trading in wildlife parts. Chapter VIA, the next chapter, makes provisions for seizing of property of those, and of their families, who have “benefited from illegal hunting and trade”; once again the burden of proving that the said property is not liable to forfeiture is on the accused. Finally, section 51A says that anyone convicted for hunting who was once convicted earlier (regardless of the first offence, which could, for instance, have been for cutting grass) will be denied bail unless the court sees “reasonable grounds for believing they are not guilty.”

These provisions are unmatched in almost any other law in the country today; the provisions on bail, seizure of property and presumption of guilt, for instance, are almost identical to those of the infamous Prevention of Terrorism Act. In practice, it is easy enough to plant meat or skins on anyone, after which the accused is faced with the almost impossible burden of proving their own innocence. This has resulted in large numbers of activists, local leaders, adivasis and even scientists facing endless false cases. Meanwhile, the so-called investigations mounted by the wildlife authorities consist almost entirely of stereotyping certain local communities as “criminal tribes” - a hoary tradition carried down the years from the British, notwithstanding that these are among the most brutally oppressed communities in the country.

Now, the Environment Ministry proposes to enhance these provisions with extreme penalties – minimum three year jail sentences and extremely high fines. In practice, this will only result in even more people being harassed and intimidated, in more unjust jail sentences and more brutality. The Amendment also proposes to make it possible for people to be placed in remand with the Forest Department – an unheard of concept which will, once again, increase the possibility and likelihood of torture and other forms of brutality.

Draconian provisions have never resulted in better law enforcement. It is obvious to anyone with a basic knowledge of criminal law that reversing the burden of proof, making bail difficult and adding other draconian powers does nothing to enhance actual prosecution of offenders – it merely makes it more likely that the authorities will catch innocent people and scapegoat them. This was exactly the reason that the “anti-terror” laws were opposed, and the logic applies even more strongly to the Wild Life Act. Such penalties will only mean that the reign of terror that the wildlife authorities already enjoy over forest dwellers in protected areas will become worse.

Failure to Address the Lack of Accountability, Transparency and Democratic Functioning in the Law

The key problem with the existing Wild Life Act – and the reason it fails to serve as a “deterrent” - is not the lack of adequate penalties but the fact that the law fails to pay any respect to principles of rights and democracy. It instead relies on colonial principles of autocratic and centralised control. Without recognising and respecting the rights of local communities, such systems only empower the forest bureaucracy, encouraging corruption, brutality and incompetence rather than actual conservation.

In recent years, and in particular in the wake of the Forest Rights Act of 2006, this approach has been recognised both in India and around the world as inimical to conservation. But the new Amendment does nothing to address this. In particular:

- No steps have been included to address the glaring injustice of enforcing wildlife restrictions in areas where the settlement of rights under the Wild Life Act is incomplete (leave alone the much broader rights process under the Forest Rights Act).
- No provisions are included to address harassment and attacks on forest dwellers in these areas.
- Only a few cosmetic changes have been included:
 1. the time for people to file claims after the initial proclamation has been extended from two months to six months;
 2. people are allowed to collect water for drinking and household needs (which in any case is

- now a right under the Forest Rights Act); and
3. A provision that requires the Forest Department to provide "alternative sources" of MFP, food, water etc. until rights settlement is over, has been extended to national parks as well as sanctuaries. In fact this provisions has not been implemented anywhere in the country.

It is clear that the intention is to allow the current draconian, corrupt, unaccountable and anti-people rule of the wildlife authorities to continue. If this is what the government believes wildlife conservation requires, it only demonstrates a total lack of good faith.