Response To The Draft Karnataka Private Conservancies Rules And Policy, 2018

28th September, 2018

To,

1. The Principal Chief Conservator of Forests (Head of Forest Force), Karnataka Forest Department.

2. The Principal Chief Conservator of Forests (Wildlife), Karnataka Forest Department.
At: Aranya Bhavan, 18th Cross, Malleshwaram, Bangalore- 560003

Copy to:
The Minister,
The Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhavan, Jor Bagh Road, New Delhi- 110003

Dear Sir,

Subject: The proposed Karnataka Private Conservancy Rules, 2018.

We refer to the Karnataka Private Conservancy Rules, 2018 that you have proposed. You have had a consultation in June, 2018 regarding the same, which was attended by forest officials, conservation groups and wildlife enthusiasts, who raised a number of concerns to the proposed rules and policy. We represent Equitable Tourism Options (EQUATIONS), a research organization that studies the social, cultural, economic and environmental impacts of tourism. We would also like to share a few of our concerns about the policy and rules.

The policy proposes to declare private areas along boundaries of protected areas, which are a minimum of 100 acres, as private wildlife conservancies. The policy states that any land that is declared as a private conservancy cannot have activities such as agriculture, horticulture, pig farming etc. The owners of such private wildlife conservancy can use 5% of the land for building infrastructure for tourism.

The proposed policy and rules are expected to aid conservation by securing important lands that form wildlife corridors and bring in private investment and inputs into conservation in India. However, on closer look, we feel that the proposed changes will serve the interests of only a handful of tourism players, at the cost of local communities and encourage proliferation of tourism, which will not actually aid conservation. The proposed policy and rules also dilute accountability mechanisms, delegitimize democratically elected bodies and privatise common resources.

Beyond the scope of power and authority of the Forest Department: Firstly, the Forest Department has acted beyond the scope of its power and authority by trying to propose policies that will govern agricultural land. The proposed policy seeks to give directions on what has to be done on land that is agricultural land, which is under the mandate of the agriculture department or the revenue department. As making policies that would affect agricultural land is beyond the official mandate of the Forest Department, the rules and policies framed for private conservancies are not valid.
**Privatisation of common resources:**
Secondly, the proposed policy and rules create a system to privatise forests by ignoring that environmental resources such as forests and wildlife are common resources, which are commonly held for the benefit of everyone, with equal responsibilities as well. The public trust doctrine rests on the principle that certain properties like air, water, sea and forests are held by the Government in trusteeship for the free and unimpeded use of the general public (MC Mehta vs. Kamal Nath, Supreme Court, December 1996). The common resource in question here is the wildlife and other biodiversity of the area. The Forest Department, which controls forest areas in India, is holding these in public trust for the common good of all people. However, by creating private wildlife reserves, public natural resources will become solely for the benefit of some individuals who claim to be owners of the land. It also places the responsibility of caring for and protecting such resources only in the hands of such owners.

Placing responsibility for common resources only in the hands of private individuals is problematic as accountability mechanisms are disrupted. The core principles that govern the public trust doctrine are that it empowers citizens to question ineffective management of natural resources and that it should be made freely available to all people, irrespective of status in life (Kamal Nath vs. Union of India). When resources are held by the State or by bodies of the State, they are subject to the laws of the land such as Right to Information. However, when private wildlife reserves are created, it creates a system where accountability mechanisms are done away with, as private individuals are not subject to strict accountability mechanisms that the State is subject to such as citizen’s right to information.

**Delegitimizing Democratically elected bodies:**
The Constitution of India recognizes the power and authority of the Panchayati Raj Institutions. Revenue lands around protected areas are under the jurisdiction of the constitutionally mandated local self governing units - the Gram Sabhas. Section 3E of the Karnataka Gram Swaraj and Panchayat Raj Act, 2015 states that the Gram Sabha is the basic unit for local self governance in the planning, implementation, monitoring and evaluation of all economic, social, cultural and environmental programs and all central, state and district sector Government schemes. The Act very clearly places in the Gram Sabha, the authority to prepare and implement plans that concern the environment. Moreover, the Biological Diversity Act, 2002, empowers the Biodiversity Management Committees (BMC’s), which are under the local Gram Panchayats, to be the bodies that can work for protecting the biodiversity of the area. They are also empowered to charge a fee for any commercial use fo the biodiversity.

However, the proposed policy does not acknowledge the existence of the local governance mechanisms and attempts to undermine the Panchayati powers by ensuring that a parallel authority is created. After declaration of a private wildlife conservancy, a management committee will prepare the management plan for the area. Once an area is declared a private wildlife conservancy, all forest, wildlife and environment rules are applicable. Essentially, this means that the Gram Sabha will no longer have jurisdiction over the area. The proposed policy has the result of delegitimizing democratically elected bodies. This is not to say that the conservation of forest and wildlife areas outside PAs is not important. However, the method used for this cannot be in such a way as to undermine local democratic institutions.

**Prioritising tourism over other uses:**
Thirdly, the policy is prioritising and legitimizing only certain uses of the land-it is prioritising utilization for tourism over utilization of the land for agriculture, grazing etc. The assumption is that, tourism is compatible with the policy’s objective of conservation, whereas other activities such as agriculture and grazing are not. However, choosing tourism over other activities has not
been made on any sound scientific basis. Tourism, like any other human activity, also causes changes to the environment and surroundings and is a consumptive industry which requires resources of water, electricity, land and other public utilities. It also leads to competition for local resources, especially land and water.

The UNWTO recognizes that fragile natural environments, even when there are quite low levels of visitation, can threaten biodiversity⁴. With tourism, the biotic pressures on the protected areas and corridors will also increase. Replacing traditional activities of agriculture with that of tourism will only result in privileging certain land uses over others, without fulfilling the stated objective of conservation of the protected area. The UNWTO guidelines also caution against policy decisions made without sufficient evidence. It states:

"Where there is limited evidence about the possible impact of a development or action, a cautious approach should be adopted. The precautionary principle means putting in place measures to avoid damage before it occurs rather than trying to repair it afterwards”.

The precautionary principle is also a principle that has been upheld by the Supreme Court of India in many cases that concern the environment. In the landmark judgement of M.C. Mehta v. Kamal Nath⁵, a motel had diverted the course of Beas river to beautify the motel and also encroached upon some forest land. At that time, Mr. Kamal Nath, who had a stake in the ownership of the motel, was also the Minister of Environment and Forest and clearly in a position to influence decisions taken regarding environment clearances. Applying the precautionary principle, the Supreme Court stated that since the Beas river is unstable and unpredictable, it would be best not to change the course of the river as impacts of such an action are unknown.

In the current situation, the impact that tourism will bring in is unmeasured. Tourism of any kind will cause changes to the environment, and in the absence of any carrying capacity studies that show what is the limit beyond which change is unacceptable, changing the land use of the areas surrounding protected areas would be unwise. This policy suggests bringing in changes in land use for areas around protected areas. There is an absence of scientific data comparing the impacts of agricultural activities to that of tourist activities. Replacing agriculture with tourism will not conclusively result in better conservation and management of the protected area. Making a policy change without sufficient knowledge of the impacts that will result from it would be a hasty decision and would certainly not be keeping in mind the precautionary principle.

**Unplanned proliferation of tourism around Protected Areas:**

The unplanned proliferation of tourism outside protected areas has been well documented by a number of researchers (Karanth & DeFries, 2010). These tourists’ resorts and hotels are often cheek in jowl with the boundary of the protected areas, increasing pressure on the protected area. The proposed policy and rules encouraging more tourism to be developed right along the periphery of the protected area, which is counter-productive in multiple ways. First, in the absence of any carrying capacity studies being conducted, blindly encouraging tourism of any kind around all land surrounding a protected area or in corridors would lead to a situation of unplanned proliferation of tourism. This, again, would only increase pressure on the protected area. Second, the number of visitors per day who can enter most protected areas, particularly tiger reserves, is restricted. Logically, the tourist facilities provided outside of the protected areas should be in relation to the number of tourists who can even enter a protected area in a day. Otherwise, by the simple laws of economics, supply of tourist facilities will be in excess of the demand, resulting in dead investments and a lack of employment for the local people. Again, this tourism will not even be able to support the very people who had been previously dependant on the land.

**Impact on local economy and livelihoods:**
Fourthly, the growth of luxury resorts around protected areas have already affected the local economy in a multitude of ways. Agricultural lands support a number of people, apart from the legal title owners, such as agricultural labourers, tenants, livestock owners etc. The policy proposed will only support legal title holders to land, who own a minimum of 100 acres of land, while ignoring a number of other dependants on the land. This sort of a situation is the reality in areas around Nagarhole National Park. As more resorts took up agricultural lands around the area for tourism purposes, the agricultural labourers, who are Dalits and were dependent on the agricultural economy of the area, now have to go farther away just to find employment. The shift in the economy has adversely affected already marginalized communities.

This policy will deprive agricultural labourers, land tenants, livestock owners and all other people who are dependent on the land of their livelihood. A loss of employment means an increased risk to vulnerability and uncertainty, forced migration, identity loss and a high risk of being exploited without any security net. The State is an institution that has been democratically created by the Constitution of India to ensure the social, cultural and economic well being of all citizens. However, the proposed policy encourages a framework that only further marginalizes already marginalized communities.

Further, the gap that this policy will bring in, certainly cannot be filled by tourism. While tourism generates some employment, this employment generation is to a very small extent and will not absorb the unemployment this policy will cause. A few studies that have been conducted regarding the employment generated by tourism demonstrate this very well.

A study by Madhya Pradesh Ecotourism Development Board (MPEDB) in Bandhavgarh\(^1\) shows that though 62% of the people involved in tourism activity at a village, Tala, are local people, they are all largely involved in the unorganised sector of drivers, cooks, labour, guide and general business. 88% of the people of village Tala are involved in this work. All the managerial level work is therefore conducted by outsiders. Further, in villages other than Tala, only 1% of the people are involved in tourism activities. Another study conducted by Krithi Karanth and Ruth DeFries (2010), shows that less than 0.001% of population living within 10 kms of a Protected Area (PA) find employment in the tourism industry\(^2\). Further, tourism is not a year-round activity. It is completely dependant on the tourist season, are is also influenced by political, economic and social factors, which can be unpredictable. Tourism would be ideal as an additional means for income for a few months in a year and not as the only source of income. To completely shift the local economy from agriculture to tourism would be detrimental to economic well being of populations dependant on the area.

**A tool to legalize illegal encroachments:**

Fifthly, the proposed policy and rules would become a very convenient tool to legalise illegal encroachments in forest areas. In June 2017, the Comptroller and Auditor General of India (CAG), in a report titled ‘Administration of National Parks and Wildlife Sanctuaries in Karnataka’, reported that the encroachment of forest area in Karnataka which was 42,51845 acre during July 1995, increased to 1,65,796 acres as per June 2011. This further increased to 2,04,442 acres by October 2014. Even within the PAs, which has stricter enforcement of Acts and rules, the encroachment of lands in the 10 PAs which were sampled was to the tune of 9,524 acres of land. The encroachment of forest land both within and outside PAs is a serious issue. However, the proposed policy and rules seem to ignore this issue and provide instead a way in which these encroachments can be regularised, in the name of protection of wildlife and tourism. The CAG report identified that 86% of resorts are being operated in and around protected areas without due approvals from the Forest Department. There are 51 commercial hotels in the sampled protected areas, that is, Bandipur, Biligiri Ranga Hills, Kuduremukh, Bhadra, Cauvery Wildlife Sanctuaries and Dandeli Anashi Tiger Reserve. Out of these 51, only seven hotels are
running as per the norms by obtaining licenses from the forest department. Resorts and hotels in and around PAs can be a challenge to conservation as they can cause alienation of land from local communities, cut off access to forest resources or water resources to local communities, cause fragmentation of the landscape, cause air, noise, water and land pollution, bring in garbage, add stress on local resources of water and land among other things. The legal framework provides some checks and balances to mitigate the impacts of tourism to the landscape. However, resorts that are operating without due permissions are a big threat to both the environment and the local communities as these resorts are not made subject to the checks and balances that are embedded in the law.

The problem posed by the alarming numbers of resorts that are operating without due permissions from the Forest Department has not been addressed in any way. Instead, the proposed policy and rules could actually become tools that would aid the illegal resorts to continue to operate in the guise of being private conservancies.

**Fragmentation of landscapes and corridors:**

Lastly, this policy would further fragment landscapes and wildlife corridors. Surrounding areas of protected areas have many different land uses such as agriculture, forests or fallow land, human settlements and sometimes even intensive activities like mining. A well respected forest official, Mr. H.S. Pabla, had shared that in the case of protected areas that are in Madhya Pradesh, the land use is mostly agriculture, fallow land and forests. These areas are used by wildlife for various purposes like finding food and water in other areas where there is less availability inside the protected area. When the population of the animal inside the protected area increase, the animals have the ability to spread to the surrounding areas. However, the development of tourism establishments hinders the movement of animals to other protected areas through these land6. This is because tourism infrastructures get fenced and hedged. A report on the tourism in Corbett region shows that the resorts and tourist infrastructure block the Kosi wildlife corridor, which is one of the 10 corridors identified as crucial by the Wildlife Institute of India7. The report on elephant corridors by the Wildlife Institute of India also recognizes that the Anamalai- Neliampathy high land range, which has a huge elephant population is threatened by an explosion of tourist facilities. As each of these studies show, a proliferation of tourism in wildlife areas will only hinder wildlife movement. This policy, encouraging tourist facilities in the periphery of protected areas, will only intensify the problems of wildlife corridor fragmentation.

Over and above this, we are disappointed that the Government of Karnataka has not made the draft rules and policy available to the public. The media has been abuzz with changes that are being proposed to legal and policy framework around forests, yet the draft versions have not been put out for the public. Also, the consultation itself was not sufficiently advertised to the public and the invitation was issued to a select list of forest officers and friends of the forest department. This itself limited public participation in many ways.

We sincerely hope that you rethink this policy and see our inputs in the spirit of truly contributing to sustainable, equitable and democratic tourism. We look forward to hearing from you.

Yours sincerely,

Nayana Udayashankar,
Equitable Tourism Options (EQUATIONS)

References: