

To
Hon'ble Shri Nand Kumar Sai
Chairperson
National Commission for Scheduled Tribes
Government of India

01.01.2018

Dear Sir,

Sub: for urgent consideration during your meeting on the 02.01.2018 on the NTCA order and compensation for relocation from Protected Areas

From media reports we came to know about a meeting being called on 02.01.2018 by your esteemed office to discuss National Tiger Conservation Authority (NTCA) Order No. F.No. 1-7/93.PT (Vol.1), dt. 28th March 2017.

First of all we would like to express our appreciation of your calling a meeting on this extremely pressing issue. As you well understand this order violates both the Wild Life Protection (Amendment) Act 2006 (here on WLPA) and the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA). From section 38V (3) (b); Section 38V (4) and the legal explanation given in these sections of the Wildlife Protection (Amendment) Act 2006 it is clear that the rights under the FRA are mandatory to be recognized **both in the core and the buffer zones of the tiger reserve**. WLPA 2006 clearly specifies that the notification of Critical Tiger Habitat (CTH) of Tiger Reserves (TRs) should ensure the recognition of rights of STs and OTFDs [Sec.38 V (4)] and should ensure that rights are not affected while creating inviolate areas [Sec.38 V (4)(i)]; and that the notification of Buffer Area should promote co-existence between wildlife and human activity [Sec.38 V (4)(ii)] and recognise livelihood, developmental, social and cultural rights of the local people [Sec.38 V (4)(ii)]. In fact the Act mandates that the limits of the buffer area and by default the CTH area, are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee [Sec.38 V (4)(ii)]. Similarly, Section 2 (d) of the FRA clearly specifies that FRA is applicable in all forest areas including national parks and wildlife sanctuaries. **We therefore urge you to kindly ensure that this order, which is in violation of two important laws passed by the Parliament of India, is withdrawn with immediate effect.**

Please also see a letter sent in this regard the Ministry of Tribal Affairs (MoTA) on 26th April 2017 (**Annexure 1**). We would like to reiterate all the demands mentioned in the letter.

Secondly, regarding the second important agenda point of the meeting on compensation to be paid in case of relocation from the PAs, we would like to bring to your notice testimonies shared by over 70 participants representing local community members from over 32 Protected Areas (PAs), civil society actors and researchers covering over 13 states who recently participated in a meeting at India International Centre (IIC), New Delhi on the “Status of Implementation of Forest Rights Act (FRA) in Protected Areas (PAs)” (Pl see **Annexure 3** for the list of participants). **The most horrifying accounts that emerged from these testimonies were related to the inhuman manner in which relocation is currently taking place from various PAs.** Contrary to what the state forest departments are conveying, these relocations are far from voluntary and in most cases they are in violation of Sections 4 (2) and (5) of the FRA and Section 38V (5) of the WLPA 2006 (pl see **Annexure 2**). These testimonies clearly indicate that relocations currently taking place in dozens of PAs are not just a simple matter of coercion being used or illegalities being practiced but are of criminal nature under the Indian Penal Code. Gross human

rights violations have been reported from many PAs including, physical violence, physical and sexual assault on women, destruction of property and interference in property rights. These are also offences attracting various provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. These atrocities have reached such scale and magnitude that people living in PAs are beginning to believe that inside PAs in India, the fundamental rights under Article 21 of the Constitution - the right to life and liberty, dignity and livelihood- do not exist. Few of these atrocities have also been covered in the local media (which is a miniscule representation of what is actually happening on the ground). Please see **Annexure 4** for media reports and photographs contributed by people from these PAs.

We would urge you to bring to the discussion that neither the Constitution of India, nor WLPA and the FRA require relocation from PAs as the first step towards “conservation”. In fact Section 38 (V) 5 of the WLPA and Section 4 (2) and (5) of the FRA clearly specify that relocation has to be voluntary [Sec.38 V(5)]; on mutually agreed terms and conditions [Sec.38 V(5)]; after completing the process of recognition and determination of rights of STs and other forest dwellers [Sec.38 V(5) (i)]; ascertaining with consent of the STs and OTFDs that their presence and activities does cause irreversible damage and shall threaten the existence of tigers [Sec.38 V(5) (ii)]; with the consent of the concerned STs and OTFDs conclude that other reasonable options of co-existence of these STs and OTFDs with the tigers are not available [Sec.38 V(5) (iii)]. **Under these circumstances we strongly urge the NCST to first discuss these violations before any discussions on “compensation for relocation”. Compensation packages are meaningless when the process of relocation itself is forced and fraught with gross human violations. We urge the NCST to ensure that ALL ongoing/proposed illegal relocation are stopped with immediate effect and not carried out till an effective and inclusive monitoring system is put in place to ensure that all legal procedures are followed for taking decisions on relocation of STs and OTFDs from PAs.**

Finally, we would urge you to ensure that the funds now available with the state governments under CAMPA are used towards ensuring co-existence of human and wildlife communities in and around PAs, in accordance with Section 38 V (4) ii and iii. In the situations where these funds are to be used for relocation *only if* it is being carried out as per the provisions under WLPA and FRA mentioned above, we agree with your concern that the existing compensation is highly deficient. However, **the NCST's proposal for doubling the existing compensation will not address the contradictions in the existing package.** An increased compensation will continue ignoring the most important issue of compensation for existing property (including common property) rights; compensation for the recognised forest rights, include rights to use, manage and conserve forests under Section 3 (1) I of the FRA; and ensuring that appropriate livelihood options are provided to the affected individuals and communities [WLPA Sec.38 V(5) (iv)]. In the currently ongoing relocation processes even where the forest rights have been recognized (e.g. Simlipal Tiger Reserve in Odisha) these rights are not compensated in the relocation package.

Relocation package therefore needs to be revised based on the National Land Acquisition Rehabilitation and Resettlement Policy 2013. Additionally, we would like to bring to your notice that both WLPA and FRA emphasize on providing for secure livelihood, basic facilities and land allocation in addition to compensation for the acquisition of forest rights. In order to ensure that no further injustice is carried out during the process of relocation it is of utmost importance that ALL the customary and recognized forest rights of the communities being relocated are reinstated (in proportion with the existing rights) at the new location. This should be done without affecting the rights of and after consultation with those already living in the area, who have rights over these forests. The above should in addition to any cash compensation that the NCST is considering. **We urge that cash compensation is in addition to and NOT as a replacement of secure livelihoods, basic facilities, land/property/common property rights and forest rights of the communities being relocated.**

Considering the points mentioned above we request the NCST to bring to the discussion and consider stressing the following issues:

1. Immediate withdrawal of the illegal National Tiger Conservation Authority (NTCA) Order No. F.No. 1-7/93.PT (Vol.1), dated 28th March 2017.
2. Recognition of forest rights as per FRA and its Rules on priority in all PAs including TRs, as the forest dependent STs and OTFDs living in or are dependent on these PAs are among the most vulnerable people in terms of their livelihood security and social status.
3. According to FRA relocation can only take place (and only after the consent of the concerned communities) from Critical Wildlife Habitats (CWH), and therefore ALL relocation from ALL PAs & TRs must stop till CWH guidelines have been formulated.
4. Any process of relocation can ONLY start after clear procedures for ensuring that relocation is VOLUNTARY as per FRA & WLPA, and not through coercion and violation of human rights (as widely reported) have been framed.
5. Relocation package is revised based on the National Land Acquisition Rehabilitation and Resettlement Policy 2013; and any cash compensation is in addition to and NOT as a replacement of secure livelihoods, basic facilities, property rights and forest rights of the communities being relocated.

Many thanks for your kind consideration

Yours sincerely,



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