

India's project tiger may uproot four lakh forest dwellers, Adivasis: Plea to withdraw notification

Friday, September 20, 2024



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Counterview Desk

The advocacy group National Alliance for Justice, Accountability and Rights (NAJAR), in a representation to Dr GS Bhardwaj, Additional Director General of Forests (Project Tiger), who also happens to be Member Secretary of the National Tiger Conservation Authority (NTCA), has objected to the NTCA's directive for the relocation of tribal communities from tiger reserves without proper adherence to the Wildlife Protection Act, 1972 (WLPA), the Forest Rights Act, 2002 (FRA) and the Right

1972 (WLPA), the Forest Rights Act, 2006 (FRA) and the Right

to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR) and the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST PoA).

An initiative of the top human rights network National Alliance of People's Movements (NAPM), NAJAR, in a signed representation by 32 activists and lawyers from across India, has sought withdrawal of the NTCA directive, insisting on upholding "the rights of four lakh forest dwellers and adivasis."

Text:

We are writing on behalf of National Alliance for Justice, Accountability and Rights (NAJAR); which is an initiative of National Alliance of People's Movements (NAPM) - a three-decade platform of movements, collectivizing progressive legal professionals for democratic causes and solidarity with people's movements across the country.

We strongly object to the directive under reference above issued by the National Tiger Conservation Authority (NTCA), calling for the expedited relocation of tribal communities from tiger reserves across the country. Your letter referred above states that 591 villages consisting of 64,801 families mostly Adivasis who are entitled to forest rights are to be summarily relocated from Critical Tiger Habitat (CTH) of 54 tiger reserves in 19 tiger-bearing states of the country. This would mean displacement of nearly 4 lakh forest dwellers.

This directive fails to consider constitutional safeguards as well as legal rights of these communities as guaranteed under the Wildlife Protection Act, 1972, the Forest Rights Act, 2006, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and where applicable, the Panchayats (Extension to Scheduled Areas) Act, 1996. Our objections are based on the following grounds:

Violation of the Wildlife Protection Act, 1972 (as amended in

2006)

The Wildlife (Protection) Act, 1972 under section 38 (V) (4) (i) mandates only voluntary relocation, and whenever there is a requirement of keeping any area inviolate for the purpose of tiger conservation, such exercise needs to be carried out, without affecting the rights of the scheduled tribes or such other forest dwellers.

Further, the state government is required to prepare a Tiger Conservation Plan in terms of Section 38 V (3) and (4) for each Tiger Reserve, and the statute places an obligation on the state to address the concerns of local communities in such place.

Therefore, such plan must ensure not only the protection of the tiger reserve itself, but also ensure that 'ecologically compatible land uses' are adopted 'for addressing the livelihood concerns of local people'. Further under Section 38V(4), it is mandated that when preparing a Tiger Conservation Plan, the state government shall 'ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve.'

Insofar as buffer or peripheral area to the critical/ core tiger habitat is concerned, here the State government must 'aim at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people.' (Section 38V(4)(ii)).

Where relocation of the local populace is found to be necessary to creation of inviolate areas for tiger conservation, no Scheduled Tribes or other forest dwellers can be resettled or have their rights adversely affected, and such relocation must be 'voluntary relocation on mutually agreed terms and conditions' after the pre-conditions laid down under Section 38V(5) (i) to (vi) are satisfied.

These conditions are:

(i) Completion of process of rights recognition (under the Forest Rights Act, 2006) and land acquisition (under LARR, 2013).

(ii) Consent of the Scheduled Tribes and other forest dwellers has been obtained that their activities or their presence will cause irreversible damage and threaten the existence of tigers and their habitat. This is the first layer of consent from the local community the statute requires.

(iii) Consent of the Scheduled Tribes and other forest dwellers has been obtained that other reasonable options of co-existence are not available. Here, we have a second layer of consent required from the local communities, as mandated by statute.

(iv) R&R package in accordance with the National Relief and Rehabilitation Policy has been prepared 'providing for livelihood for the affected individuals and communities.'

(v) Informed consent of the concerned Gram Sabha and of the affected persons has been obtained to the above R&R package. This is a third layer of consent the statute mandates, qualifying this with the additional requirement of 'informed', which means there is an additional burden on the state government to be completely transparent regarding the R&R package being proposed.

(vi) The facilities and land allocation at the resettlement location have been provided, failing which 'their existing rights shall not be interfered with.' This provision stands apart from other rehabilitation initiatives, where R&R can take place with an ongoing project. Here the statute requires all the R&R facilities must be in place beforehand and prior to the relocation, failing which the community can also withdraw its consent. This is the fourth layer of consent provided under statute.

The NTCA directive has not established, scientifically, how the presence of forest dwellers in the critical tiger habitats is negatively impacting tiger conservation efforts. This cannot be assumed, but has to be scientifically proved as per the requirement of the law and final conclusion regarding no possibility of co-existence has to be arrived at, in conclusion with the forest dwellers.

Additionally, in issuing such directions, the NTCA has exceeded its jurisdiction because the Proviso to Section 38 O (2) is very clear when it says that while NTCA can issue directions from time to time in exercise of its powers, "no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes." Therefore, without first complying with the provisions of WLPA as enunciated above and provisions of FRA to ensure that rights of Scheduled Tribes and Other Traditional Forest Dwellers are protected, NTCA could not have issued such directions. As a necessary corollary therefore, these directions

are without jurisdiction and without any force of law and, therefore, not binding on any of the State Authorities.

Violation of the Forest Rights Act (FRA), 2006

The Forest Rights Act, 2006 (FRA) recognized and vested forest rights in forest dwellers, including adivasis, to land and other resources that includes the right to protect and manage forests, wildlife and biodiversity. The Act requires that these rights be demarcated and recorded and then settled before any relocation takes place (Section 4(2)). The law explicitly prohibits eviction or removal from forest land any forest dweller under their occupation 'till the recognition and verification procedure is complete' (Section 4(2)(a)).

This has been violated in all the villages already relocated. Additionally, the law requires free and informed consent of Gram Sabha to proposed resettlement (Section 4(2)(e)) in writing. This requirement of consent is not a mere formality which can be carried out in a rushed manner. Additionally, Gram Sabhas have the right and duty to ensure preservation and conservation of customary lands (Section 5).



The NTCA directive does not acknowledge these rights and mandatory legal requirements. This is a direct violation of the FRA and also WLPa itself which explicitly requires the prior recognition of the forest rights. The NTCA directive, in fact, encourages violation of these mandatory legal requirements in the name of 'swift relocation'!

Lack of free, prior, and informed consent:

The WLPa requires prior consent of the inhabitants for demarcating the core and buffer area. that their activities harm

the core area and where no other means of co-existence is possible, then they can request for relocation. WLPA nowhere mandates relocation from core area as a legal requirement, but only inviolate through modification of rights that may or may not include voluntary relocation. The FRA too mandates that no relocation of forest-dwelling communities can take place without obtaining the free, prior, and informed consent (FPIC) of the Gram Sabhas (village assembly) concerned. The NTCA directive does not mention any process to meet its own legal requirements for obtaining such consent, thereby ignoring a crucial legal and ethical requirement. Without FPIC, any relocation efforts are not only illegal but also unethical.

Violation of Panchayat (Extension to Scheduled Areas) 1996

The Panchayat (Extension to Scheduled Areas) 1996 requires the Gram Sabha or Panchayat to be consulted before re-settling and rehabilitating persons in Scheduled Areas (Section 4(i)). The NTCA directive does not acknowledge the vital process under PESA (where applicable) that is required to be complied before relocating communities in Schedule -V Areas.

Impact on Adivasi livelihoods and cultural rights

Relocating adivasi communities without proper settlement of their rights and without their consent would disrupt their livelihoods and threaten their cultural and social existence. Adivasis have a deep connection with their land, which is integral to their identity, culture, and way of life. Any relocation without ensuring their rights and obtaining their consent is an infringement on their cultural rights as recognized under national and international laws.

Adverse effects on conservation efforts:

It is a well-established fact that adivasi communities have lived in harmony with nature and have been the true custodians of forests and wildlife. Ignoring their role in conservation and forcibly relocating them could have unintended negative consequences for conservation efforts. Engaging with and empowering these communities is crucial for the long-term success of tiger conservation initiatives.

Legal Precedents and Judgments:

There are several legal precedents and judgments by various High Courts and the Supreme Court that underscore the importance of settling the rights of forest-dwelling communities under the FRA before any relocation can take place. The NTCA cannot issue any directives that violate these judgements and legal mandates.

Considering the above, we would wish to place on record the following recommendations:

- The NTCA should immediately withdraw its directive D.O No. 15-3/2008-NTCA dated 19th June, 2024, until the rights of the adivasi and forest-dwelling communities under the FRA, 2006 are fully recognized and settled and stop all proposed relocations from tiger reserves.
- The NTCA should order an inquiry into whether the mandatory legal provisions specified under WLPA and FRA have been complied with regard to (a) in the notification of all the 54 Tiger Reserves and (b) in the villages where relocations have already carried out. Criminal prosecutions have to be ordered against all those who have violated the provisions of WLPA and FRA and whether the relocation has been carried out as per applicable law, LARR 2013 in particular where the centrally sponsored scheme for relocation is only the central government's share of the contribution for relocation.
- A comprehensive consultation process after completion of FRA implementation should be initiated with the concerned Gram Sabhas to obtain their free, prior, and informed consent.
- Any relocation should be truly voluntary, with adequate compensation, rehabilitation, and measures to ensure the continued livelihoods and cultural rights of the affected communities as also required under various laws and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Conclusion

In light of the above objections, we strongly urge the NTCA to

forthwith withdraw its directive and ensure that all actions are in compliance with the WLPA, Forest Rights Act, 2006, LARR 2013 and PESA, 1996 (where applicable), respecting the constitutional, legal and human rights of adivasi and forest-dwelling communities. Sustainable conservation can only be achieved through inclusive and participatory approaches that uphold the rights of the people, especially those who have traditionally protected our forests and wildlife.

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