

Friends,

Recently the Environment Ministry has released new draft guidelines regarding critical wildlife habitats and critical tiger habitats. The new guidelines are about creating "inviolable" areas for protection of wildlife (and tigers). The basic question is: are the Ministry and the State Forest Departments willing to relinquish the absolute control they have wielded over these areas in the name of wildlife protection? Are they willing to respect people's rights and science, and to move to a more open, accountable and democratic model of conservation?

From the draft guidelines, in tiger reserves, the answer is clearly no. The answer in other protected areas is more mixed; considerably ahead of where it used to be, but still far from a yes. The very fact that these are being treated separately is itself a sign that problems continue.

The problems are as follows:

- The draft relocation protocol for tiger habitats is simply a repeat of the old approach with a few modifications, dressed up in better language. A table is given below which demonstrates how the guidelines fail to deal with most of the current problems in tiger reserves. In the present context this is far more disturbing, since it is only in tiger reserves that large sums of money have been allocated for relocation, and it is here that the most pressure is being put on people. The very fact that in these areas the Ministry is proposing to continue with an illegal, coercive approach is a sign of how seriously these issues are being taken.
- Further, both sets of guidelines continue to approach the issue backwards - they assume that the critical habitat has to be identified first, followed by negotiations over people's rights, relocation etc. In both cases the initial identification is to be done either by the Forest Department alone (in tiger reserves) or by the department and "scientific experts." The problem with this is that it creates a fait accompli, after which there will be great pressure to relocate people and otherwise introduce absolute restrictions in these areas. Whatever the letter of the law or a guideline might say, such pressure will negate the democratic process: witness the fact that the Wild Life Act's provisions on people's rights have remained unimplemented for decades on end in most protected areas, even as draconian restrictions are imposed under other sections of the same Act. Thus, while the critical wildlife habitat guidelines talk of taking people's rights into account, they also call for initial identification to be done within six months - at a time when the Forest Rights Act has not even been implemented in most protected areas. If the Ministry is serious about achieving truly effective outcomes, it should recognise that these areas should be identified through a negotiated process, initiated after rights recognition is complete, scientific studies on human impact are done and indigenous knowledge is incorporated into a comprehensive understanding.

- Both sets of guidelines also ignore the most crucial issues involved in relocation implementation. Both the Forest Rights and the Wild Life (Protection) Acts provide two safeguards on this: 1) relocation should provide a secure livelihood and 2) no relocation can take place until facilities are complete in the new site. The second condition is completely ignored in both guidelines. The first is dealt with in the tiger reserve guidelines by turning the provision on its head - thus, only cash compensation is provided under "option 1", but the displaced can't access it unless they show proof of buying land. Thus the burden for finding a livelihood - within a fixed cash limit - is put on the people, and they can't even access their own compensation until they satisfy a government official that they have bought land! The corruption this will breed can easily be imagined.
- Finally, at a legal level, the premise of the relocation protocol for tiger reserves is wrong. The Ministry assumes that critical tiger habitats can be dealt with separately from wildlife habitats, and devotes a great deal (in paras 4 and 5) of the draft protocol to justifying this position. The draft even goes as far as to misquote section 13 of the Forest Rights Act to justify this position, leaving out the crucial first phrase in the section. This is all simply a red herring. The Forest Rights Act applies to all forest areas without exception, and therefore any tiger reserve in a forest area (i.e. all tiger reserves) is covered by its provisions, including the safeguards on relocation contained in section 4(2). Hence, there can only be one set of guidelines - relating to critical wildlife habitats - and these must cover all protected areas, including tiger reserves. The provisions in the Wild Life Protection Act on critical tiger habitats (sections 38V(5)(i) to 38V(5)(vi)) remain of relevance insofar as they offer additional protections; but they cannot be taken to reduce the protections contained in the FRA.

Finally, we reiterate our position that the MoEF should not be framing these policies. The MoEF is merely an administrative authority for certain purposes under the Forest Rights Act. Policy formulation should either be done by the nodal agency - the Tribal Ministry - or ideally by an inter Ministerial committee.

Separate comments on the two draft guidelines are below.

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Continuing Problems with the Guidelines for Relocation from Tiger Reserves

It is in tiger reserves that the existing problems are most severe, yet the new draft relocation protocol simply fails to address these issues. This chart summarizes the current position, the legal requirements and the new protocol's requirements:

Current Problems	What is Required by Law	What New Protocol Says
CTHs demarcated without any scientific basis	has to be established on "scientific and objective criteria" on a "case to case basis" (s. 2(b) FRA, 38V(4)(i) WLPA)	Ignore this issue and repeat the original "800-1200 sq km" formula based on "deliberations with experts and simulation results" (para 4.4); no scientific studies of any reserve required before drawing the boundaries
CTH demarcated by Forest Department	Consultation with an expert committee and an "ecological and social scientist" (s. 38V(4)(i), 38V(5)(iii) WLPA)	Field Director made responsible for "identification" (para 5.6) - i.e. status quo continues
Relocation without rights being recognised	38V(5)(i) WLPA, s. 4(2)(a) FRA	Accepted and stated - para 6.2 - but 6.2.1 says recognition takes place after consent is taken for relocation; one can imagine what kind of "recognition" will happen
Relocation without scientific proof of irreversible damage / impact on tigers and their habitats.	38V(5)(ii) WLPA	Section quoted but ignored; no reference to studies of human impact anywhere; relocation is taken for granted, including in the title of the protocol, despite the lip service to informed consent
No consent of forest dwellers to finding of irreversible damage	38V(5)(ii) WLPA	Ignored
Relocation without gram sabha consent (not happening everywhere)	38V(5)(v) WLPA	Provided for in para 6.2.2.6, but there is no reference to what happens if the gram sabha refuses consent and how the administration will then proceed
Relocation just giving cash, no livelihood	4(2) FRA; 38V(5)(iv) WLPA - says "livelihood"	"Option 1" talks of ten lakhs compensation, and then places burden on families that

		<p>they can only access the cash if they purchase land - i.e. instead of state providing livelihood, burden is put on people and they are prevented from even getting their compensation without 'satisfying' officials that they have purchased land. This is a great formula for corruption. "Option 2" talks about providing land etc. within the same limit. Neither option says anything about compensating people as per the rights they lost; meaning, for instance, however much land a family may own or cultivate, and however big it may be, it will receive the same amount.</p>
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Comments on the Draft Critical Wildlife Habitat Guidelines

- The guidelines do not provide time lines for (a) constitution of the National Steering Committee and (b) issue of parameters for identification of CWH by this Committee. Without these timelines, all other timelines are impractical as they are directly dependent on and follow from these; no action on critical wildlife habitats is possible without the "scientific and objective criteria" required by law.
- As said above, the guidelines retain the notion that identification of the CWH and relocation of people are separate steps. As a result, para 5.2.5 of the guidelines is grossly inadequate. Further para 5.5.4(b) states that the resettlement package should be prepared 'on receipt of the notification of the CWH from the MoEF'. This is a misreading of the law and ignores the fact that section 2(b) of the Forest Rights Act specifically states that the identification of the CWH has to be done in "accordance with the procedural requirements of sections 4(1) and 4(2)", i.e., the vesting of rights and the safeguards against relocation. Therefore, no CWH can be identified until these sections are complied with first. As such the identification of the area to be notified as CWH itself is possible only after the area where co-existence with modified rights and/or area from where people want to be relocated are demarcated, or in other words until the resettlement package as well as the package in lieu of modified rights are already agreed upon and consented to by the Gram Sabha. Therefore, para 5.2.5 should be explicit that the proposal made by the EC will not be complete without the package in lieu of

modification of rights and relocation/ resettlement consented to by the concerned individuals and the Gram Sabhas. Paras 5.2.8(e), 5.3.1, and 5.5.4(b) should be suitably modified.

- Hence, an Expert Committee (EC) should be constituted only where the recognition of rights process under the FRA is completed. Further the identification of CWH should be by the entire EC, and not only by the technical members of EC as stated in para 5.2.1 and para 5.2.4 of the draft.
- Further, para 5.2.5 should clarify that the package should be for each of the claims for each of the rights claimed and recognised under the Forest Rights Act. However, none of this should affect the right of the community to protect, conserve and manage their community forest resources under the Act (s. 3(1)(i) of the FRA).
- The draft Guidelines do not identify the specific authority in the State government responsible for its functions under the guidelines. In accordance with the scheme of the FRA, the State Level Monitoring Committee (SLMC) should play this function, and should receive proposals for CWHs/relocation and be responsible for verifying and forwarding them as envisioned in the guidelines.
- The question of inviting civil society organisations or others to assist in the process should be left to the gram sabhas to decide (para 5.5.1).

Source:

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