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राष्ट्रीय अनुसूचित जन जाति आयोग

National Commission for Scheduled Tribes

(A Constitutional Body set up under Art. 338A of the Constitution of India)

File No. PC/1/2017/MENV1/SEOTH/RU-IV

Dated: 30.10.2018

To

1. The Secretary,
Ministry of Environment,
Forest and Climate Change,
Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi - 110 003
2. The Secretary,
Ministry of Tribal Affairs,
Shastri Bhawan,
New Delhi.
3. The Secretary,
Department of Land Resources,
Ministry of Rural Development,
Room No.-611, 6th Floor, Block-11, CGO
Complex, Lodhi Road, New Delhi, Delhi 110003
4. Shri S.C. Mahapatra,
Additional Chief Secretary,
Forest & Environment Department,
Government of Odisha,
Bhubaneswar.
5. The Member Secretary,
National Tiger Conservation Authority
B-1 Wing, 7th Floor,
Pt. Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110 003.

Subject: Press clipping dated 12.04.2017 published in the Mint, Delhi edition caption "no forest rights for tribals in critical tiger habitats".

Sir/Madam ,

I am directed to enclose herewith a copy of the Minutes of the Meeting held on 27.09.2018 under the Chairmanship of Shri Nand Kumar Sai, Hon'ble Chairperson, National Commission for Scheduled Tribes on the subject cited above, for necessary action.

It is therefore, requested to send an action taken report on the Commission's recommendation at the earliest for placing the same before the Hon'ble Commission.

Yours faithfully,

(Y.K. Bansal)

Research Officer

✓ Copy to: - I. SAS, NIC, NCST.

NATIONAL COMMISSION FOR SCHEDULED TRIBES

PC/1/2017/MENV1/SEOTH/RU-IV

REPORT AND RECOMMENDATIONS OF NATIONAL COMMISSION FOR SCHEDULED TRIBES UNDER ARTICLE 338A (5) (E) OF THE CONSTITUTION ON THE MATTER OF "NO FOREST RIGHT FOR TRIBALS IN CRITICAL TIGER HABITATS".

Date of Meeting: 27.09.2018

List of officers present in meeting is Annexed.

This is regarding utilization of Compensatory Afforestation Fund (CAMPA) for voluntary relocation of tribals from Critical Wildlife Areas and Critical Tiger Habitats and preparation of rules for implementation of the Act by the M/o Environment, Forest and Climate Change. (M/o EF & CC). The Commission is concerned about the news item captioned "No forest rights for STs in critical tiger habitats".

2. Earlier the issue of confirming Rights of Scheduled tribes inhabited in wildlife range areas and other traditional forest areas and also restraining to displace the members belonging to Scheduled Tribes from the Tiger range areas in context with National Tiger Conservation Projects was discussed in the meeting held on 02.01.2018 under the Chairmanship of Hon'ble Chairperson, NCST in the Commission.
3. During the meeting, the Commission had recommended that the compensation amount for voluntary village relocation from Tiger Reserves should be enhanced and a Task Group under the Chairmanship of Shri Suresh Chandra Mahapatra, Additional Chief Secretary, Forest and Environment Department, Govt. of Odisha and other officers from the Ministry concerned and State Government concerned be constituted to study the issue of transfer or settlement of Forest Rights and prepare the modalities and amount of compensation to be given to Scheduled Tribes with submission of report to the Commission.
4. In compliance with the Commission's recommendations, a Task Group Committee under the Chairmanship of Shri Suresh Chandra Mahapatra, Additional Chief Secretary, Department of Forest & Environment, Odisha has examined the matter and submitted a report along with recommendations.
5. The Task Group in its report suggested enhancement of financial assistance from Rs. 10 lakhs to Rs. 15 lakhs per Scheduled Tribe family after relocation. In addition, the Committee has suggested to purchase of 10 decimal homestead land and handholding supports like free ration, transportation, NGO expenses transit houses, solar lights and essential contingents for infrastructure at rehabilitation site like approach road, drainage, electricity, drinking water, community centres etc. along with simplification/streamline the diversion of forest land in accordance with existing forest diversion procedure followed by Ministry of Environment and Forest notification dated 15.02.2018 and other measures as per Government Rules.



Nand Kumer Sai
Chairperson
National Commission for Scheduled Tribes
Govt. of India
New Delhi

6. The Commission reviewed the report of the Task Group regarding the revised compensation package proposed for voluntarily relocation of villagers from tiger reserves. The Commission is of clear view that the recommendation of the Task Group is not in consonance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (LARRA) and the compensation package proposed at Rs. 15.00 lakh is too less. It may be mentioned that as per Section 2(1) (f) of the LARRA Act, the persons displaced or affected by the implementation of any scheme undertaken by the Government should be provided for compensation package as per the provisions for the new Act of 2013. Therefore, all proposals for villages relocation should be prepared as per the provisions of the LARRA Act.

7. Further, the Commission observed that the displaced as well as affected families are entitled for compensation for market value of their land as well as solatium as per the First Schedule of the Act. Similarly, the displaced persons and affected families are also entitled to 11 entitlements such as provision for one housing unit, land for land, Rs. 5.00 lakh compensation towards loss of livelihood, subsistence grant of Rs. 25,000/- per month for one year, transportation cost of Rs. 50,000/- compensation for cattle shed, etc. amounting to a minimum of Rs. 25,000/- one time grant of Rs. 25,000/- and one time resettlement allowance of Rs. 50,000/- and protection of their forests as well as fishing rights under Second Schedule of the Act.

8. In addition to the above the relocated village must have all the 25 infrastructure amenities such as roads, drainage, drinking water, electricity, grazing land, burial ground, play ground for children, place of worships. Further, Government must provide Panchayat Ghar, Fair Price Shop, Post Office, Anganwadi Centre, Primary School, Sub-health Centre, Community Centre and veterinary service centre, etc. before the tribals are relocated.

9. Recently, the Secretary, NCST has written a D.O. letter to Secretary, Ministry of Environment and Forests on 6th September, 2018 and categorically advised for withdrawal of directions issued by National Tiger Conservation Authority (NTCA) on 28th March, 2017. The Commission would like to know what action has been taken by the Ministry of Environment and Forest on this issue.

10. The Commission is happy to note that relocation of villages from wildlife area has been made an admissible item of expenditure under the new CAMPA FUND Rules.

11. The Commission would like to hear views of the Department of Land Resources, followed by Ministry of Tribal Affairs and finally the Ministry of Environment and Forest on the issue.

12. The Joint Secretary, Department of Land Resources, Ministry of Rural Development, the Joint Secretary, Ministry of Tribal Affairs, DG (Forest), Ministry of Environment and Forest, DIG (NTCA), Ministry of Environment and Forest and Additional Chief Secretary, Environment and Forest, Government of Odisha attended the Meeting.



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13. The Secretary, NCST initiated the discussion and asked the Officers who appeared to present their Ministry's views in the matter. The Joint Secretary, Department of Land Resources informed the Commission that LARR Act, 2013 is strong Act in the interest of the Scheduled Tribes. The provisions of the Act is applicable to the all ST persons in the Scheduled Areas as well as outside of the Scheduled Areas. He made it very clear that the financial compensation is applicable to those Scheduled Tribes who re-allocated either by tiger reserves, mining or any other way under LARR Act. In addition, if any Scheduled Tribe habitant are re-allocated, then he will be entitled to get financial compensation in his new place along with his old place under Forest Right Act and he will not be deprived from any benefits.

14. The representative from the Ministry of Environment & Forest stated that the Ministry has not finalized the financial package for re-allocation of tribal habitants under Forest Right Act. The recommendation of the Mahapatra Task Group is also under consideration.

15. The matter was discussed in detail. The Commission observed that current financial compensation package of Rs. 10 lakhs per household is not adequate and there is no provision to provide atleast 2.5 acre of land to displaced tribal households. In addition, the Commission has taken serious note of the issuance of National Tiger Conservation Authority (NTCA) letter dated 28.03.2017 addressed to all Chief Wildlife Warden(s), All Tiger Range States directing that in absence guidelines for notification of official wildlife habitats, no right shall be conferred in Critical Tiger Habitats which is duly notified under section 38 V (4) (i) of the Wildlife (protection) Act, 1972 under the Scheduled Tribes and other traditional Forest Dwellers (Recognition of Rights) Act, 2006.

16. The Commission strongly feels that the above letter of NTCA is in complete violation of two important laws viz. the Wild Life Protection (Amendment) Act, 2006 (WLPA) and the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). The letters dated 28.03.2017, 04.01.2018 and 12.03.2018 have created hindrance to the statutory provisions in the Forest Rights Act. Thus, all these NTCA letter should be withdrawn immediately.


17. After detailed discussion, the Commission recommends the following:

- The policy for compensation payable to Scheduled Tribe families for their voluntary relocation from Tiger Reserves should be revised immediately so as to make it in compliance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (RFCTLARR).
- The Commission recommends that the minimum compensation for land, entitlements for rehabilitation and resettlements and provisions of infrastructural amenities in the resettled area should be as per compensation package mentioned in the Annexure of this minutes.



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- The Ministry of Environment, Forests and Climate Change should issue a clear letter withdrawing NTCA letter No.1-7/93-PT(Vol) dated 28.3.2017, Wildlife Division letter No.1-23/2014-WL dated 4.1.2018 and NTCA letter No.1-7/93-PT (Vol.) dated 12.3.2018.
- The Forest Rights of Scheduled Tribe persons in the Tiger Reserves should be dealt with according to the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 and Section 3(r)(ii) read with 42(3) of the RFCTLARR Act, 2013.
- The Ministry of Environment, Forests and Climate Change should simplify the procedure for diversion of forest land for rehabilitation/resettlement of Scheduled Tribe persons from Tiger Reserves in the same manner followed for critical public utility in LWE districts vide Ministry of Environment, Forests and Climate Change Notification No.11-09/1998-FC (LWE) dated 15.2.2018.
- The Ministry of Environment, Forests and Climate Change should allow change of legal status of rehabilitated land from forest to revenue for enabling modifications in the Record of Rights (ROR) for the Scheduled Tribe persons and facilitating development programmes for them in resettled area.
- The concerned District Collector in consultation with the Commissioner for Tribal Development and Commissioner for Rehabilitation and Resettlement should designate a Senior Officer for supervising proper implementation of the relocation. The officer should continue for at least three years following relocation of the ST persons to look after their grievances after relocation.
- The same compensation packages (Annexure) should also be extended to the villages situated in the buffer areas of the Tiger Reserves and Corridor and Internal linking areas that have contiguity with other affected areas and other Tiger Reserves.
- The State from their own funds/resources should relocate the villages from Protected Areas other than Tiger Reserves as per the above recommended guidelines.
- The Secretary, Ministry of Environment, Forests and Climate Change should submit an Action Taken Report before the Commission within one month of receipt of the recommendations.


29-10-18

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B: REHABILITATION, RESETTLEMENT ENTITLEMENT FOR ALL THE AFFECTED FAMILIES (BOTH LAND OWNERS AND THE FAMILIES WHOSE LIVELIHOOD IS PRIMARILY DEPENDENT ON FORESTS IN TIGER RESERVE AREA


Serial number	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/provision
(1)	(2)	(3)
1.	Provision of Housing Unit.	(1) One Housing Unit per affected family as per the Indira Awas Yojana specifications. (2) The benefits listed above shall be extended to any affected family which is without homestead land and which has been residing in the Tiger Reserve Area continuously for a period of not less than three years preceding the date of physical relocation.
2.	Land for land	Developed Land equivalent to land of ST person or two and a one-half acre, whichever is lower.
3.	Employment or Livelihoods	(a) to at least one member per affected family, where jobs are created through the Tiger Reserve Development Project, after providing suitable training and skill development in the required field; or (b) One-time payment of Rs. 5.00 lakh (five lakh rupees) per affected family; or (c) Rs. 5000/- (Five thousand rupees) per month per family for twenty years with appropriate indexation to the Consumer Price Index for Agricultural Labourers Which is to be decided by the affected person



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ANNEXURE

4.	Subsistence Grant	(i) Rs. 5000/- per month to each affected family for a period of one year from the date of relocation; plus (ii) Rs. 50,000/- one-time grant As far possible, the affected families shall be relocated in a similar ecological zone, so as to preserve the economic opportunities, language, culture and community life of the tribal communities.
5.	Transportation cost for displaced families.	Rs. 50,000/- (Fifty-thousand rupees) as transportation cost for shifting of the family, building materials, belongings and cattle.
6.	Cattle shed/petty shops cost.	Rs. 50,000/- (Fifty-thousand rupees) for construction of cattle shed or petty shop as the case may be.
7.	One-time grant to artisan, small traders and certain others.	Rs. 50,000/- (Fifty-thousand rupees) to each affected family of an artisan, small trader or self-employed person or an affected family.
8.	One-time Resettlement Allowance.	Rs. 50,000/- (Fifty-thousand rupees) to each affected family
9.	Stamp duty and registration fee.	(1) The stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the Requiring Body. (2) The land for house allotted to the affected families shall be free from all encumbrances. The land or house allotted may be in the joint names of wife and husband of the affected family.


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C: PROVISION OF INFRASTRUCTURAL AMENITIES

Sl. No.	Component of infrastructure amenities provided/proposed to be provided by the acquirer of land.
(1)	(2)
1.	Roads within the resettled villages and an all-weather road link to the nearest pucca road, passage and easement rights for all the resettled families be adequately arranged.
2.	Proper drainage as well as sanitation plans executed before physical resettlement.
3.	One or more assured sources of safe drinking water for each family as per the norms prescribed by the Government of India.
4.	Provision of drinking water for cattle.
5.	Grazing land as per proportion acceptable in the State.
6.	A reasonable number of Fair Price Shops.
7.	Panchayat Ghars as appropriate.
8.	Village level Post Offices, as appropriate, with facilities for opening saving accounts.
9.	Appropriate seed-cum-fertilizer storage facility, if needed.
10.	Efforts must be made to provide basic irrigation facilities to the agricultural land allocated to the resettled families if not from the irrigation project, then by developing a cooperative or under some Government scheme or special assistance.
11.	All new villages established for resettlement of the displaced persons shall be provided with suitable transport facility which must include public transport facilities through local bus services with the nearby growth centres/urban localities.
12.	Burial or cremation ground, depending on the caste communities at the site and their practices.
13.	Facilities for sanitation, including individual toilet points.
14.	Individual single electric connection (or connection through non-conventional sources of energy like solar energy), for each household and for public lighting.
15.	Anganwadis providing child and mother supplemental nutritional services.
16.	School as per the provisions of the Right of Children to Free and Compulsory Education Act 2009 (35 of 2009).
17.	Sub-Health Centre as prescribed by the Government of India.
18.	Primary Health Centre as prescribed by the Government of India.
19.	Playground for children.
20.	One community centre for every hundred families.
21.	Places of worship and chowpal/tree platform for every fifty families for community assembly, of numbers and dimensions consonant with the affected area.
22.	Separate land must be earmarked for traditional tribal institutions.
23.	The forest dweller families must be provided, where possible, with their forest rights on non-timber forest produce and common property resources, if available close to the new place of settlement and, in case any such family can continue their access or entry to such forest or common property in the area close to the place of eviction, they must continue to enjoy their earlier rights to the aforesaid sources of livelihood.
24.	Appropriate security arrangements must be provided for the settlement, if needed.
25.	Veterinary service centres as per norms.