

Shri Jairam Ramesh
Minister of State for Environment and Forests
New Delhi

7 July 2009

Sub: Serious livelihoods deprivation due to erroneous MoEF interpretation of Supreme Court circulars

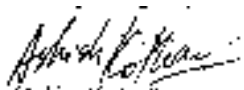
Dear Shri Ramesh,

As a specific example of the issues pertaining to wildlife conservation and livelihood rights in India, we would like to bring to your attention the serious situation of livelihoods deprivation within protected areas that has come up in the last few years due to government orders and interpretations of court orders and the Wild Life Act.

Given the volatile nature of the situation, we would request urgent intervention by MoEF, specifically to clarify previous orders and interpretations. Details of this are given in the attached note. This was earlier sent to Ms. Meena Gupta also, with a similar plea.

We would be grateful for a response on what steps MoEF proposes to take on this,

Thank you,
Sincerely,



(Ashish Kothari)
on behalf of Kalpavriksh and Vasundhara

Encl: Note on the Ban on NTFP Collection in Protected Areas (with annexures)

Ms. Meena Gupta
Secretary, MoEF
New Delhi

10 August 2007

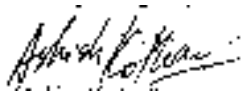
Dear Ms. Gupta,

As briefly discussed in your office, I am attaching a note regarding the serious situation of livelihoods deprivation within protected areas that has come up in the last few years due to government orders and interpretations of court orders and the Wild Life Act.

Given the volatile nature of the situation, we would request urgent intervention by MoEF, specifically to clarify previous orders and interpretations. Details of this are given in the attached note.

We would be grateful for a response on what steps MoEF proposes to take on this,

Thank you,
Sincerely,



(Ashish Kothari)
on behalf of Kalpavriksh and Vasundhara

Encl: Note on the Ban on NTFP Collection in Protected Areas (with annexures)

NOTE ON THE BAN ON NON-TIMBER FOREST PRODUCE COLLECTION IN PROTECTED AREAS

**Kalpavriksh, Pune/Delhi
Vasundhara, Bhubaneswar**

This note pertains to the serious situation of livelihood deprivation amongst poor forest-dwelling communities inside protected areas (PAs), that has emerged in the last few years (since 2000 in some areas, more recently in others). This situation has arisen due to three processes:

1. Interpretation of a Supreme Court order dated 14.2.2000 pertaining to the removal of dead, dry and fallen timber etc from PAs.
2. Interpretation of Section 29 of the Wild Life (Protection) Act 2003, specifying that removal of forest produce from within PAs shall not be for “commercial” purposes.
3. Immediate curtailment of rights after preliminary notification of a PA without providing any alternatives till rights are settled (as mandated in Section 18(A)2 of the Wild Life Act).

All the three are explained below, and suggestions are given to resolve the problems these have created.

1. Supreme Court order and its interpretation

In response to an application filed through the Amicus Curiae, praying for clarification that the order dated 12th December, 1996 contained a ban against the removal of any fallen trees or removal of any diseased or dry standing trees from the areas notified under Section 18 or 35 of the Wildlife Protection Act, 1972, the Supreme Court passed the following Order on 14.02.2000:

“Issue notice to all the respondents. In the meantime, we restrain respondent No. 2 to 32¹ from ordering the removal of dead, diseased, dying or wind fallen trees, drift wood and grasses, etc from any National Park or Game Sanctuary or forest. If any order to the contrary has been passed by any of the respondent states, the operation of the same shall stand stayed”

Subsequent to this, on 28.02.2000, the Court clarified that the Order would not apply to forests, but only to National Parks and Sanctuaries.

On 20.10.2003, the Ministry of Environment and Forest (MoEF) issued a circular to all state governments, with the following paragraph:

“Para 1.2 (iii), now clarifies that rights and concessions cannot be enjoyed in the Protected Areas (PAs) in view of the orders of the Supreme Court dated 14.02.2000, restraining removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary.”

¹ Mainly state forest departments.

It should be noted that this circular has been issued under the Forest Conservation Act with no bearing on the matter and is a violation of the Wild Life Act itself, which in Section 24(2)(c) allows for the continuation of rights in consultation with the Chief Wildlife Warden. A number of states in their settlement of rights prior to final notification have accepted the continuation of a variety of such rights within PAs. It is also ironic that whereas the IA in the Court was intended to restrain the Karnataka Forest Department from continued extraction of timber from PAs under the guise of it comprising dead, diseased and fallen trees, the MoEF order converted it into a ban on the exercise of rights by communities living within PAs.

Then, on 2.07.2004, the Central Empowered Committee issued a circular to all state governments with the following passage:

“ a number of instances have come to the notice of the central empowered committee where felling of trees / bamboo, digging of canals, mining, underground mining, collection of sand / boulders laying of transmission lines / optical fiber cable / pipelines, cutting of grass, collection of minor forest produce, grazing, construction / widening of roads etc. have been allowed to be undertaken in the protected areas without obtaining permission from the hon'ble supreme court on the plea that these activities are part of the management plans.

You are requested to ensure strict compliance of the hon'ble supreme court's order so that none of the above prohibited activities are allowed to be under taken in the protected areas. If, for better management of the protected area any of the above prohibited activities are required to be undertaken either by the project authorities or the forest department, prior permission of the hon'ble supreme court shall be obtained before undertaking them.”

The combination of the above circulars has led many state governments to stop all or most traditional resource use activities within PAs, and in some cases even deny access to government social welfare schemes that require officials of other departments going into villages inside PAs. For instance in several PAs of Orissa, the harvesting and transporting of NTFP for sale traditionally undertaken by local communities living within them, has been stopped.² (Pl. see reports on this, at Annex 1).

² A number of other restrictions in PAs are adding to this, though not necessarily an outcome of the Supreme Court/MoEF orders. In some PAs such as Sunabeda Sanctuary in Orissa, even PDS supplies were stopped till the Collector was able to get the concerned DFO (WL) to withdraw the order under instructions from higher authorities. Delivery of construction material in a number of PAs, required for schemes such as Indira Awaas Yojana, NREGS, and others, has been stopped or curtailed, with forest staff often not permitting the entry of even the staff and vehicles of relevant line department officials from going in. In Sunabeda WLS, the staff of an NGO designated as 'mother NGO' for implementing an RCH scheme for unserved areas, has been denied entry to villages of the Chuktia Bhunjia PTG living inside the sanctuary despite letters of authority being issued by the CMO. Last year, cases were filed even against the staff of the Chuktia Bhunjia Development Agency carrying out local development works under a central govt scheme besides arresting some of the villagers. The DFO incharge of Baisipalli WLS has apparently written a letter to the local BDO that no development works can be carried out by the Panchayats within the WLS (We are trying to obtain a copy of the letter under RTI). This also raises the critical issue of whether the constitutional mandate of Panchayats falling within PAs can be violated in this manner.

2. Prohibition of “commercial” removal of forest produce

Section 29 of the Wild Life (Protection) Act 2003 states that:

“No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wildlife Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wild Life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorizes the issue of such permit....Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bona fide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose”.

The term “commercial” has not been defined in the Act or in any subsequent rules/guidelines. Many states are interpreting this to include any kind of sale of forest produce. This has resulted in even traditional small-scale sale of NTFP by forest-dwellers residing inside PAs, even though such sale has been a critical source of survival income for them since decades, to be stopped.

In Biligiri Rangaswamy Temple Sanctuary, Karnataka, for instance, the traditional activity of the Soligas to collect produce such as amla, honey, and lichens, has been stopped since 2006, despite systematic monitoring by ATREE and others for several years indicating that the level of extraction is sustainable (pl. see report at Annexure 2). Interestingly, a former Dy. Conservator of Forests in charge of this Sanctuary had urged the Karnataka government to exclude such traditional resource use activities from the purview of the term “commercial”, as it essentially caters to ‘bonafide needs’. (letter attached as Annex IX within Annexure 2).

3. Immediate curtailment of rights after preliminary notification of a PA

Amended section 18 A (2) of the WLPA provides that “Till such time as the rights of affected persons are finally settled under sections 19 to 24 (both inclusive), the State Government shall make alternative arrangements required for making available fuel, fodder and other forest produce to the persons affected, in terms of their rights as per the Government records”.

This is a highly problematic provision as calculating alternatives for recorded rights is neither easy nor quick. Yet, in many PAs all exercise of rights is being curtailed without providing any alternatives to the affected people. This section will now require further clarification in view of the upcoming recognition of rights, which were never recorded in the past, under the STs and OTFDs (Recognition of Forest Rights) Act, 2006. Further, although the WLPA requires that proceedings for the settlement of rights shall be completed within 2 years of the notification of a WLS, this has not taken place with prolonged deprivation of rights of the affected communities. In the words of the Tiger Task Force report, “In the name of conservation, what has been carried out is a completely illegal and unconstitutional land acquisition programme” (Page 105).

4. Resolving the conflicts

Urgent intervention is needed in the above matters, before they lead to the escalation of tensions and conflicts which would be detrimental to both local people and to wildlife conservation.

Already the situation is very tense, and in some PAs is forcing people to continue extraction for survival income, but now having to do so on the sly, or indulge in illegal activities or to become non-cooperative towards the PA authorities (the report at Annexure 2 provides one example of this).

We urge the MoEF to:

- 1. Issue a clarification regarding its 20.10.2003 circular, to the effect that the WLPA's provisions regarding the settlement of rights (which could also include continuation of rights) should prevail, and that the SC order is *not* tantamount to a denial of all rights. In any case, the upcoming recognition of rights under the STs and OTFDs (Recognition of Forest Rights) Act, 2006, should be taken into consideration.**
- 2. Issue a circular defining "commercial" in the WLPA as excluding the small-scale, traditional livelihood activities of local, pre-dominantly tribal, communities. Some safeguards to this can be mentioned, such as not allowing the entry of large commercial enterprises or industries from outside the PAs, working out 'sustainable' extraction limits jointly by the communities and ecological researchers and PA authorities, and others.**
- 3. Issue a clarification that till a reasonable estimation of curtailed rights can be undertaken under section 18A(2) of the amended WLPA, and arrangements made for providing alternatives till the settlement of rights can be completed, customary livelihood uses and activities should not be banned .**
- 4. Direct State Governments to constitute Advisory Committees for all wildlife sanctuaries in their states, under section 33B of the amended WLPA, with guidelines for their constitution, conduct, and regular meetings, and with the specific mandate to jointly plan for each PA and resolve conflicts when they arise.**

Contact details:

Ashish Kothari, **Kalpavriksh**, Apt. 5 Shree Dutta Krupa, 908 Deccan Gymkhana, Pune 411004
Ph/fax: 020-25654239

Y. Giri Rao, **Vasundhara**, 15- Saheed Nagar, Bhubaneswar
Ph: 0674-2542011/12/28