



Call for Action !

Note of Objections

Shared by Tushar Dash and Swathi Seshadri

EQUATIONS

22 September 2012

Dear Dr Rajesh Gopal and members of the committee,

This has reference to our earlier communications to you (Tushar Dash through an email dated 18th September 2012, in response to email from Dr Rajesh Gopal sharing the final draft of the guidelines for tourism in tiger reserve, and Swathi Seshadri in the meeting).

In our communications we had pointed out that the guidelines have retained sections which are problematic with respect to specific provisions of the Forest Rights Act and Wildlife Protection (Amendment) Act 2006 and we had conveyed our disagreement on the final guidelines. However we have not received any response on the issues and points raised in our communications which has prompted us to file this note of objections. For information of the committee we would like to put on record the following points shared in our earlier submissions to the committee in the meeting on 14th September 2012 and later through email in response to revisions in guidelines shared with members of the committee and communications during the meetings on September 17th and 18th.

In summary our objections are as follows:

- The guidelines assume that the identification of "core" and "buffer" areas in the tiger reserves is complete, when the NTCA itself states that it neither has any overall guidelines for this purpose, nor can it certify that this was done in accordance with law. There are serious objections to the demarcation of these areas in all tiger reserves. Hence we had suggested that the guidelines should include a clear statement that tourism is subject to compliance with all procedural and rights related aspects on demarcation of tiger reserves (i.e. section 38V). Not only has this been left out; in fact point 2.2.4 now does the opposite and refers to cores, territories etc as if these are final. Though the terms of reference of the committee explicitly included this issue at point (ii), the final report makes no mention of the question of demarcation and treats the matter as settled. We take serious objection to this effective endorsement of prior illegal actions, which have led to illegal harassment, evictions of local communities and violation of the Forest Rights Act along with ensuing conflicts.
- The final guidelines provide for identification and mechanisms to secure "corridor connectivity / important wildlife habitats." Such identification is outside the scope of these guidelines and indeed is not even provided for in the Wild Life Protection Act.
- Point 2.2.5 gives Field Directors "unified control" over restoration of buffer zones. This is not in keeping with either the Forest Rights Act or the Wild Life Act and will lead to violations of both.
- The tourism industry has unjustifiably been given a special role in allocation of funds collected from tourism facilities (para 2.1.7).

In more detail, our objections are as follows:

About the final guidelines shared on 18th September 2012:

Point 2.2 (Page 6 and 7) of the guidelines provides for developing tourism plan by the state government and mentions that "The plan should inter alia include identification of corridor connectivity/important wildlife habitats and mechanisms to secure them. This site-specific tourism Plan forming part of the Tiger Conservation Plan would be

approved as per the provisions of the Wildlife (Protection) Act, 1972". It further mentions that the plan should i) Identify (*using landscape ecological principles and tools*) and monitor the ecologically sensitive areas surrounding Tiger Reserves, in order to ensure the ecological integrity of corridor/buffer areas, and prevent corridor encroachment.

1. It should be noted that such identification of corridor connectivity and mechanisms to secure them has got no legal basis under WLPA. The Tiger Reserve administration has no power over any area outside the tiger reserve. Further, in our comments to the above points we have pointed out that there is absolutely no need of suggesting identification of corridor connectivity...and mechanisms to secure them as the mandate of the committee is primarily to prepare a guideline for tourism plan and not to prepare a tiger conservation plan. There are suggestions like identification of ecologically sensitive areas....prevent corridor encroachment etc which may be part of the larger tiger conservation plan. In addition to creating chaos, this would also make it easier to evade the WLPA's stringent legal requirement that any measure for tiger conservation cannot infringe on people's rights. These points need to be deleted as it would again lead to a situation where identification of corridor connectivity and securing them would lead to further expansion of tiger reserves and in turn to encroachment on land and forests accessed by local communities which could be in violation of the Forest Rights Act akin to what has happened in the case of notification of buffer areas following the Supreme Court's order.
2. Points in 2.2.4 (Page 7 and 8) especially the concepts on core, territories etc do not have any legal and policy basis. There is no comprehensive guideline developed by NTCA/MOEF on operation of section 38 V dealing with core/buffer zonation, rights and co-existence etc. In the absence of such comprehensive guideline, incorporating these concepts and criteria in the tourism guidelines is not proper and the committee is not mandated to do this. Further the point 'Current tourism zones where only tourist visits are permitted and there are no consumptive uses, tigers density and recruitment does not seem to be impacted' does not have any basis and borders on suggesting that tourism can be permitted in tiger reserve, but not use of these habitats by local communities. This also seems to differentially treat the rights of local communities guaranteed under WLPA and FRA vis-à-vis tourism, which is not a legal right at all. This point needs redrafting and the portions mentioned above need to be deleted
3. In point 2.2.5 it is mentioned that "Restoration of buffer forest areas should be done through its unified control under the respective Field Directors of tiger reserves vis-à-vis the Guidelines of Project Tiger / National Tiger Conservation Authority".

This point is not in conformity with the Forest Rights Act. Forests and landscapes in tiger reserves on which local communities have rights come under FRA which vests power and authorities in gram sabhas and local communities to manage and protect forests which include tiger reserves. Restoration of buffer areas therefore can not solely come under the unified control of field directors as powers for decision making related to management are vested with the gram sabhas. This point either needs to be deleted or if mentioned then the above point with regard to authority of gram sabhs be mentioned.

In point 2.1.7 it is proposed that funds collected from tourism facilities should be administered by the Tiger Conservation Foundations with *the Tourism Industry having a say in how and where this fund is utilized*. Tushar Dash had pointed out that there is no need of suggesting separately that tourism industry will specifically have a say on utilization of the funds. Utilization of the funds should be the collective decision of the members of Tiger Conservation Foundation which is an authority set up under WLPA. Suggesting that a specific group will have a say in decision making in utilization of the would lead to undue influence on the decision of the Tiger Conservation Foundation and also utilization of funds. Swathi Seshadri had raised the issue of the composition of the Tiger Conservation Foundation and was informed that all stakeholders including representatives from the tourism industry and Gram Sabhas were included. If this is not the case currently, representatives from Gram Sabhas and tourism industry should be included.

Retaining the above points in the guidelines is likely to allow tourism in tiger reserves with a greater say of tourism industry in development and implementation of the plan (and through this promotion of high end tourism), while encouraging further expansion of the tiger reserves areas into land and forests accessed by communities and is likely to result in conflict with the objectives and provisions of both WLPA and FRA. This in turn would lead to repetition of illegalities committed in notification of recent buffer areas and of the critical tiger habitats notified earlier.

Other issues on the guidelines and on the issue of declaration of buffer areas (shared in the 14th September meeting):

Following issues and points were shared in the meeting on 14th September.

- Mixing of the two issues of tourism and declaration of buffers has resulted in the notification of buffers in a hasty manner without following the due process under Wildlife Protection Act read with Forest Rights Act.
- Operation of section 38 (O) 1 (c), which is the key mandate of the committee, is subject to section 38 (V) which provides for notification of tiger reserves (core and buffer) following a process of scientific and objective criteria, ensuring recognition of forest rights (as per FRA), co-existence etc. The tiger conservation plan under WLPA is expected to address all of the above issues and also covers tourism as part of the tiger conservation plan. The tiger conservation plan should follow a landscape approach covering all the aspects of zoning, rights of local communities, conservation, co-existence, tourism and other uses in an integrated manner and guidelines mandating such plan for the landscape be developed through full participation/consent and the use of all forms of knowledge.
- Currently there is no comprehensive set of guidelines for implementation of the provisions under section 38 (V) dealing with the entire procedure for delineation of cores and buffers of tiger reserves (following scientific and objective criteria), recognition of forest rights (as per FRA), co-existence and ensuring that relocation from core areas is only done in accordance with the conditions specified in WLPA and the FRA. In the absence of such guidelines, mixing the two issues and treating core/buffer under section 38 (V) as a subset of section 38 (O) 1 (c) related to tourism has resulted in bypassing the central provisions of the WLPA (read with FRA) which represent the intent and spirit of these legislations.
- This has compounded the problems already created by the similarly hasty notification of the critical tiger habitats of tiger reserves without following the knowledge based (scientific and objective criteria) and democratic process (consultation with the gram sabhas) mandated by the law (the WLPA does not provide for independent notification of cores) during which buffers of earlier tiger reserves were also classified as critical tiger habitats of the tiger reserves. It is because of this that today new, often densely inhabited areas, are being identified as buffers of the expanded cores leading to conflicts and protests which is ultimately defeating the purpose of tiger conservation. In view of the above issues the following was recommended:
 - The present guidelines should only limit their scope to section 38 (O) 1. (c) and should not include other provisions of section 38 (V) implementation of which requires wider consultations and developing comprehensive guidelines which are not in place.
 - The eco-tourism guidelines and declaration of buffers have happened in a situation where the process for recognition of rights under FRA has not been initiated in most of the protected areas and tiger reserves. In many tiger reserves, as a consequence of declaration of core and buffer, villages are being relocated without recognition of forest rights or establishing the impact of the presence of scheduled tribes and other traditional forest dwellers on wildlife or exploring the possibility of coexistence .
 - The recent notification of buffer areas, following the Supreme Court order, has led to restrictions on the land use, collection of MFP and entry by local communities in the notified buffer areas of many tiger reserves despite these areas not being protected areas under the WLPA. This is ironical since the very aim of creating buffer zones as per section 38 (V) is aimed at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of local people. It may be noted that communities living in tiger reserves and other PAs have for long faced illegal curtailment and/or non recognition of their rights. This has continued even after implementation of Forest Rights Act as the process for recognition of rights in most TRs and PAs is not being permitted or has not been initiated. In this context, the initial notification of critical tiger habitats/core areas (without following the due process under WLPA), relocations thereafter without recognition of forest rights or meeting the other mandatory conditions to be met prior to any relocation, combined with the recent notification of buffer zones (with further restrictions on the livelihoods and other rights of communities) have aggravated the situation. This has created conflicts and confusion and an increasing antagonism against

creation of Tiger Reserves or other tiger conservation measures. The purpose of the amended WLPA of putting in place a more democratic process for tiger conservation stands defeated in the whole process.

Dr. Rajesh Gopal had recorded the issues and concerns for discussion. He had further informed that in view of the complaints of violation of WLPA and FRA in the process of notification of buffer areas the NTCA has filed an affidavit in the court wherein it has requested the court to allow NTCA to review the process followed to notify buffer zones in tiger reserves across India.

In our communications to Dr Rajesh Gopal and committee members we had requested to put on record the issues regarding notification of buffer and earlier core in the committee's report for submission in the court and for follow up actions at the NTCA. However these issues have not been recorded and the minutes shared have not reflected the discussions on these issues.

Since the above points with regard to the guidelines and with regard to the issues of core and buffer declaration in tiger reserves have not been taken into account we believe the committee has not fulfilled its commitment as per the mandate mentioned in the terms of reference and therefore we would like to register our objection. We had suggested that those contentious points, on which there is disagreement and which are not resolved, should be submitted to the Supreme Court along with the guidelines finalized by this committee.

During the meeting we had also suggested that a separate report/note be prepared by the committee to submit to the Supreme Court on the above mentioned issues. However, this has not been done. We therefore send this to you asking that it be submitted along with the guidelines finalized by this Committee to the Supreme Court.

With Regards,

Tushar Dash,

Swathi Seshadri

Committee members