

# Survival



Secretary  
Odisha Human Rights Commission,  
Toshali Bhawan (2nd Floor), Satyanagar,  
PO: Satyanagar,  
Bhubaneswar-751007  
ODISHA

email: [ohrc@nic.in](mailto:ohrc@nic.in)

Date: 9<sup>th</sup> October 2014

## **A: COMPLAINANT'S DETAILS**

Mr Stephen Corry, Director

Survival International  
6 Charterhouse Buildings  
London, EC1M 7ET  
United Kingdom

[director@survivalinternational.org](mailto:director@survivalinternational.org)

## **B: INCIDENT DETAILS**

Location: Jamunagarh Village, Similipal Tiger Reserve, Mayurbhanj District, Odisha

Period of incidence: 19<sup>th</sup> September 2014 and ongoing.

## **C: VICTIM DETAILS**

Kol and Munda (Scheduled Tribe) families in the village of Jamunagarh, within the Similipal Tiger Reserve.

## **D: BRIEF SUMMARY OF FACTS/ALLEGATIONS OF HUMAN RIGHTS INVOLVED**

Members of the Jamungarh community have informed Survival that:

1. On 19<sup>th</sup> of September, 2014 a Palli Sabha was held in Jamunagarh in the core area of the Similipal Tiger Reserve (“the STR”). The villagers were told that the meeting would be in order for members of the Odisha Forest Department (“the OFD”) to hand over the Community Forest Rights entitlements to villagers, which they had applied for under the Forest Rights Act 2006. The villagers received their Community Forest Rights and one villager was also given individual forest rights.
2. The District Forest Officer (“DFO”) then told the community about the OFD’s plan to relocate the village. Those at the meeting were asked to sign a document, although it was not clear to many what the document said. Only after the document was signed did the OFD tell the villagers that it had not yet found land for the community. The OFD officer reportedly told the villagers that there were only 4 decimals of land available for them, and not the 5 acres of cultivable land that they had originally been promised.
3. Survival has received testimony from individuals present at the meeting who signed the document but, as they cannot read or write in Oriya, they did not know what the document contained. Others signed the document because at the point they signed they had not yet been told that no land was available. One man told Survival, ‘Unknowingly I gave my signature, I didn’t know what was in the paper, other people near me signed so I signed it too. I cannot read or write but can only sign my name’. Another said, ‘We signed the document with the belief that it’s about the Palli Sabha. Later we knew that it was the resolution in agreement for relocation’.
4. Survival has been told by members of the community that they had been threatened with false cases if they did not support the resolution. One man told Survival, ‘The Forest department is pressuring us to go – they are giving a lot of threats to us, like ‘If you like to stay we will make a lot of police cases against you and we will say that you are Maoists and we’ll arrest you...All of us have had the same threats. We are threatened, so please tell us, how can our rights be protected? How can we be safe from these false cases?’ Another added, ‘They (the Tahsildar and forest officials) threaten us to relocate or to face dire consequences.’
5. Given the climate of fear being generated by such threats it is clear that the villagers have not given their free, prior and informed consent to be relocated from the STR. Survival has received testimony stating, ‘Really, most people signed out of fear, but people have been threatened and harassed and they agreed to go to escape from this trauma. They don’t know what life will be like there. They agreed to sign because they were frightened’.
6. There is a clearly a severe risk that the Families will be relocated without their free, prior and informed consent, and without reference to the legal safeguards

put in place to protect Scheduled Tribes and other forest dwellers. This will result in a serious violation of their fundamental human rights.

7. The Commission is urged to intervene as a matter of urgency, before the village of Jamunagarh is illegally relocated without the free, prior and informed consent of the whole community. Otherwise, any relief it is able to offer is likely to be too late to be of any practical use.
8. In 2013 over a hundred members of the Khadia tribe were moved from the STR core to live in makeshift tents in Asan Kudar resettlement village. They have not been provided with sufficient land, animals or essential services. They had to live through the heat of April and the deluge of the monsoon under plastic sheeting. They have received only a fraction of the Rs 10 lakh they were promised.
9. Families in Jamunagarh are afraid that if they agree to leave their homes they will not be treated any better. A Munda elder from Jamunagarh, for example, has said that:

“We should be rehabilitated in the same village where we are now. We will protect the wildlife and get benefit of all government programs. We should stay there and protect – we promise. Don’t displace us! Rehabilitate us in the same place we are now ... We have been there [to Asan Kudar]. Seeing their condition made my heart cry. Please don’t displace us. Please rehabilitate us in the same village where we are now.’

1. The Families have not been advised of their legal rights to remain in the core of the STR if they wish to do so, or of the legal procedures which have to be followed before they can be moved, or of what will await them if and when they are moved. The Families cannot therefore have given their free, prior or informed consent to their relocation. As things stand, their removal from the core will constitute an illegal eviction.
2. As members of Scheduled Tribes whose traditional land is central to their way of life, culture and identity, this will have a profound effect on the Families. It was in recognition of their unique attachment to the land that Parliament decided to protect them against relocation unless and until it can be shown both that this is genuinely necessary and that they have truly consented to be moved.
3. Parliament has done this through the enactment of:
  - (1) section 4(2) of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act 2006 (“the FRA”); and
  - (2) section 38V(5) of the Wildlife Protection Act.
4. In breach of these provisions the OFD threatens to resettle the Families before:
  - (1) the Gram Sabha has given its informed consent to their removal, free from intimidation and threats.

- (2) the State of Odisha has explored whether there is any reasonable alternative to their removal from the core of the STR.
- (3) the State has provided the facilities and allocated the land that are essential to a successful resettlement.
5. Each of these measures is required by both section 4(2) and section 38V(5), which are intended to provide crucial support to an extremely vulnerable section of the population and to protect them against arbitrary or unnecessary eviction.
6. That evictions can also place state authorities in breach of their obligations under international human rights law has been repeatedly confirmed by UN Special Rapporteurs.
7. The Special Rapporteur on the Rights of Indigenous Peoples, for example, has said that international human rights law “includes the right of indigenous peoples to their traditional lands, and their right not to be removed from them without their prior informed consent. These rights are unique to indigenous peoples, reflecting the unique relationship that they bear to their land and territories. Unless their consent is obtained at all stages of the project life cycle, indigenous peoples will be effectively denied their more conventional human rights as individuals.” [The source of this and all other citations will be provided on request].
8. In his report on a POSCO steel plant under construction in another part of Odisha, the UN Special Rapporteur on adequate housing stated that “forced evictions constitute gross violations of human rights, and may only be carried out in exceptional circumstances and in a manner consistent with human rights law, including after a genuine consultation.” In the same report the UN Special Rapporteur on the right to food warned that the forcible removal of people from their lands could be tantamount to depriving them of their means of subsistence.”
9. These observations apply with particular force to the STR. The unlawful removal of the Families will infringe their rights to internal self-determination under Article 1(1) of the Civil and Political Rights Covenant; not to be deprived of their own means of subsistence under Article 1(2); not to be subjected to arbitrary or unlawful interference with their homes under Article 17(1); to freedom of religion under Article 18(1); and to enjoy their own culture in community with other members of their group under Article 27.
10. The UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights have held that a State which unilaterally extinguishes tribal peoples' rights to lands and resources contravenes their right to self-determination. The Human Rights Committee has also decided that the test is “whether the members of the community in question have had the opportunity to

participate in the decision-making process in relation to [their removal from their lands] and whether they will continue to benefit from their traditional economy”.

11. The same Committee went on to say that “participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community” [emphasis added]. The UN Expert Mechanism on the Rights of Indigenous Peoples has also said that “the duties to consult with indigenous peoples and to obtain their free, prior and informed consent are crucial elements of the right to self determination.”
12. The Human Rights Committee has also ruled that Article 27 of the CPR Covenant confers the right to “a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”
13. Parliament clearly agrees, because in section 4(2) of the Forest Rights Act 2006 and section 38V(5) of the Wildlife Protection Act it has enacted “positive legal measures of protection.”
14. It is possible that the OFD believes that it is not obliged to comply with these measures if the Families agree to leave the core of the STR. This is simply not the case, for the reasons explained above.
15. It is equally possible, unfortunately, that the OFD believes that it can ignore sections 4(2) and 38V(5) with impunity. Either way, the Commission is uniquely placed to inform the OFD of its duties and to ensure that it complies with the law.

#### **E: WHETHER COMPLAINT IS AGAINST MEMBERS OF ARMED FORCES/ PARA-MILITARY**

No.

#### **F: WHETHER SIMILAR COMPLAINT HAS BEEN FILED BEFORE ANY COURT / STATE HUMAN RIGHTS COMMISSION**

Yes. Mr Stephen Corry, Director, Survival International submitted a similar complaint to the Odisha Human Rights Commission on 20<sup>th</sup> May, 2014. He has not yet received a response from the Commission and as there have been further developments (the meeting in Jamunagarh Village in which villagers signed a resolution without their free prior and informed consent) he is submitting this updated complaint.

**G: NAME, DESIGNATION & ADDRESS OF THE PUBLIC SERVANT AGAINST WHOM COMPLAINT IS BEING MADE.**

Dr Anup Kumar Nayak, IFS  
Regional Chief Conservator of Forests & Field Director  
Similipal Tiger Reserve,  
Bhanjpur, Baripada-757002  
Dist.- Mayurbhanj,  
Odisha

**H: NAME, DESIGNATION & ADDRESS OF THE AUTHORITY/OFFICIALS TO WHOM THE PUBLIC SERVANT IS ANSWERABLE**

Shri Janardan Diwakar Sharma  
Principal Chief Conservator of Forests (PCCF)  
Prakruti Bhavan, Neelakantha Nagar,  
Nayapalli, Bhubaneswar-751012  
Odisha

**I: RELIEF PRAYED FOR**

The Commission should invite or require the OFD

- (1) to demonstrate to the Commission's reasonable satisfaction either
  - (i) that section 4(2) of the Forest Rights Act and section 38V(5) of the Wildlife Protection Act do not apply to the relocation of the Families outside the core of the STR; or
  - (ii) that it will satisfy each of the requirements of these sections, and inform the Families of the existence of these sections and of the protection which they confer, before it directly or indirectly causes or induces the resettlement of any Family outside the core of the STR;
- (2) to suspend any attempt to cause or induce any Family to resettle outside the core of the STR until it has complied with relief (1)
- (3) to investigate the reports of threats of false cases being filed against those who resist relocation from the STR; to ensure such threats are withdrawn and action is taken against those responsible for them
- (4) to withdraw the resolution signed at the Jamunagarh Palli Sabha on 19<sup>th</sup> of September and ensure that any future Palli Sabha regarding relocation from the STR is undertaken without threats and intimidation and with the full free, prior and informed consent of the Families.

