

COMMENTS ON THE REVISED GUIDELINES ON THE CRITICAL WILDLIFE HABITAT

**(Based on a consultation held on 27th May 2011 at Bhubaneswar and
inputs from civil society organizations)**

The draft protocol released by the Ministry of Environment & Forests for implementation of the provision for identification and notification of CWHs in the sanctuaries and national parks improve upon the guidelines issued earlier on CWH. Particularly the draft protocol has provided for a procedure which stresses upon compliance of the Forest Rights Act with focus on co-existence and participatory management of the critical wildlife habitats. However still some of the provisions require modification to bring greater clarity in the procedure and to ensure conformity with the Forest Rights Act in letter and spirit.

Comments on the proposed modification of the protocol and suggestion for its better implementation are shared here. The comments are prepared with inputs from civil society groups and organizations working on issues of conservation and forest rights in the state of Odisha. The list of organizations who have prepared the comments is given at the end of the note.

Sections of the Draft protocol	Proposed protocol	Comments and suggestion
2. Objective:	Para 2.1. The purpose of this Protocol is to give effect to the provisions of the FRA, 2006, which <i>envisages the creation of inviolate CWH</i> within National Parks and Wildlife Sanctuaries, so as to ensure the conservation of, and the prevention of damage to, wildlife and its habitat within the determined area.	The objectives give a sense that the CWH envisaged is a human free or rights free area and the term inviolate appear to be used in that sense. It is necessary to define inviolate as areas where there is possibility of co-existence with rights which is what is the objective of the provision of CWH under FRA.
3. RELEVANT PROVISIONS OF THE FRA, 2006 FOR DETERMINATION OF THE CRITICAL WILDLIFE HABITAT		In this section there is no reference to the requirement for monitoring by the state level monitoring committee (SLMC) constituted under the Forest Rights Act. As provided in Rule 10 (e) of FRA the SLMC should monitor the process of resettlement under section 4 (2) of FRA. This provision should be inserted in this section.

		<p>The provisions under FRA, section 4 (2), which provide for co-existence need to be explained in the protocol. It should be explained that under what conditions the state govt. can conclude that coexistence is not feasible. Unless that is specified, the state govt. can arbitrarily conclude that option of coexistence is not available or feasible.</p>
<p>4. COMMITTEES FOR THE PROCESS OF DETERMINING CRITICAL WILDLIFE HABITAT:</p>	<p>4.1.1. National Steering Committee: As per Section 2(b) of the Forest Rights Act, 2006, the Critical Wildlife Habitats are to be notified by the Central Government in the Ministry of Environment and Forests. For scientific and objective evaluation of the proposals received from State Governments, a National Steering Committee (NSC) will be constituted under the Chairmanship of the Addl. Director General of Forests (WL), comprising eminent ecologists, conservationists, social scientists, and representatives of Ministry of Tribal Affairs and Ministry of Environment and Forests. The composition and Terms of Reference of the National Steering Committee are given in the annexure.</p>	<p>The composition of the National Steering Committee should include member of the National Board of Wildlife, Anthropologists, academic institutions and civil society organizations working on conservation and forest rights issues.</p>
	<p>4.1.2. Expert Committee: Section 2 (b) of the Act provides that Critical Wildlife Habitat should be determined after an open process of consultation by an Expert Committee (EC), which would include relevant experts and representative of the Ministry of Tribal Affairs. The committee will carry out extensive consultation with the Gram Sabha so as to incorporate genuine views and requirements of the people. The EC is proposed to be constituted at the range level, and depending on requirement, a number of ECs may be formed. The State/Union territory may</p>	<p>The composition of the expert committee should change and should include the following members.</p> <ul style="list-style-type: none"> • Two members (one man and one woman) of the gram sabhas of the villages in the PA. • Local NGOs • EC members should know the local language <p>The chairman of the expert committee should be a PRI member preferably a member of the district level Panchayat.</p> <p>Gram Sabha needs to be defined as gram</p>

	co-opt additional experts as members, if needed. The selection of non ex-officio members will be done by the Collector in consultation with the officer in charge of the National Park or Wildlife Sanctuary. Keeping this in view, the following basic composition of the Expert Committee is proposed.	sabha under FRA. The gram sabha should be held as per the procedure laid down in the rules of the FRA and should have at least two third quorum with adequate representation of women members.
5. PROCESS OF DETERMINATION OF CRITICAL WILDLIFE HABITATS:	5.1. Constitution of Expert Committee: Every Conservator of Forests (WL) after due authorization from the State Government shall within 60 days from the issuance of this Protocol, notify an Expert Committee, as per the procedure specified in Para 4.1.2 of this Protocol for the purpose of identification of CWH in his/her jurisdiction.	Information regarding constitution of EC should be shared widely through public notice (in local news paper, GP office, villages in the PA) so that objections, if any, can be made.
5.2. Identification of CWH:	5.2.1. Each Expert Committee shall identify areas within National Parks and Sanctuaries required to be kept inviolate for the purpose of wildlife conservation. The identification of CWH shall be the joint responsibility of the qualified scientific institution, qualified ecologists, and other wildlife experts on the Expert Committee. These members should conduct necessary field visits and undertake identification of CWH, based on scientific and objective criteria.	The identification of CWH should not only be the responsibility of the qualified scientific institution, qualified ecologists, and other wildlife experts on the Expert Committee , but should also include anthropologists/sociologists, selected members of the gram sabhas having knowledge on the area.
	5.2.2. Identification of CWH should be based on parameters decided by the National Level Committee, based on the inputs of its scientific members. Additional site-specific ecological criteria decided by the Expert Committee should be clearly elaborated in the final proposal.	Broad parameters for identification of CWH should be provided in the protocol itself rather than leaving them to be decided by the NSC. Any additional ecological criteria must be properly recorded and shared in public domain.
	5.2.3. Since a proposal for CWH relates to a decision that the area <i>should</i> be kept inviolate for wildlife	Inviolate needs to be explained here.

	<p>conservation, information on resource utilization by local communities, as well as human-wildlife conflict is also extremely relevant and must be taken into account.</p>	
	<p>5.2.5. In cases where the record of rights is available: The EC shall take into account the rights of forest dwellers, and current and expected levels of forest use, and recommend co-existence with modified rights, or resettlement, on a site-specific basis. This complete proposal will be forwarded to the Chief Wildlife Warden, as per the requirements of 5.3 below, within the stipulated period of 6 months of the constitution of the EC.</p>	<p>Record of rights here refer to forest rights under the FRA, but clarification is needed on the issue of settlement of other rights on revenue lands, rights of people in revenue villages existing in the proposed CWH area.</p>
	<p>5.2.8. Open Consultation by the Expert Committee After obtaining the details of rights within the identified CWH, the Expert Committee shall hold extensive, open consultations with the forest rights holders, in their local precincts, with a one-third quorum of the Gram Sabha concerned, to solicit their views on the proposed notification of CWH. In particular, the Expert Committee shall:</p> <p>a) Explain the initial proposal for CWH to the affected people and communities so that they may give their informed opinion on the proposal to the committee.</p> <p>b) Explain the need for the declaration of the areas as CWH.</p> <p>c) Solicit opinion of the forest dwellers regarding the boundaries of the CWH. Genuine and scientifically relevant, traditional knowledge should be incorporated for deciding the boundaries of the CWH.</p> <p>d) Inform the affected individuals and communities that the determination and notification of the area as CWH will not in any way affect their rights, and that any modification or</p>	<p>Necessary steps for the open consultation should be,</p> <ul style="list-style-type: none"> • The EC should initiate awareness on the CWH provisions and process much before the date of consultation is fixed with the help of the PRI members, civil society groups and local NGOs. • Public notices in local languages should be issued, broadcast on the radio, posted on the web, and all appropriate publicity methods should be used at least thirty days prior to the open consultation. The public notice should be shared with the affected villages, and concerned GP offices. • The gram sabha for the open consultation in the affected villages should have 2/3rd quorum as required under FRA. • Video recording of the entire process of consultation should be carried out. Recording of views of the community should be done in the most transparent manner. • The proposal for CWH should be translated into local language and shared with the gram sabhas well in

	<p>resettlement of their rights can be effected only with the written consent of the Gram Sabha.</p> <p>e) Inform the affected individuals and communities of the complete details of all options under the resettlement and rehabilitation schemes that are currently being offered by the Government.</p> <p>f) Solicit the opinions of the affected individuals and communities on resettlement, and any particular demands and claims that they may have in this regard, or which would get them to consider resettlement favourably.</p> <p>g) Solicit the opinions of the affected individuals and communities on any rights or permitted activities which they are willing to forgo in the interest of wildlife conservation, and the compensation and reparation that they are prepared to accept in lieu of these rights or activities.</p> <p>h) Discuss the issues of human-wildlife conflict, and decreasing viability of land holdings with increasing family size, since no additional rights will be provided after this settlement.</p>	<p>advance (at least 30 days prior to the date of consultation) so that the affected communities and the gram sabhas can get opportunity for <i>informed participation</i>.</p> <ul style="list-style-type: none"> • The gram sabha should have the option of inviting additional experts to be present and participate in the open consultation. • Proceeding of the consultation should be recorded at the end of the meeting in the village itself and should be read out in the gram sabha for approval. All the gram sabhas should have copies of the resolutions passed in the consultations.
<p>5.4. Notification of CWH</p>	<p>5.4.4. The Ministry of Environment and Forests shall, on receipt of the final proposal of determination of the CWH along with the State Government's recommendation thereon, forward it to the National Steering Committee within a period of 15 days for its consideration. The National Steering Committee shall evaluate the proposal and, if required, verify records, conduct field visits, seek technical review from the Scientific Task Force or hold discussions with the Expert Committee.</p>	<p>There is a reference to a Scientific Task Force which is not explained anywhere. The details of the Scientific Task Force and its role should be given here.</p>

	<p>5.4.3. The State Government, after scrutiny and clarifications, if needed, should forward the proposal within a time period of 15 days from the date of its receipt from the Chief Wildlife Warden, to the Ministry of Environment and Forests for issuance of the final notification.</p>	<p>The state government after receiving the proposal from CWLW should send it to the SLMC and the SLMC should examine if FRA process is complied. After receiving report from SLMC the state government should forward to the MOEF.</p> <p>There is no process for objections/appeals on the proposal and it should be provided in the protocol. The NSC after finalizing the proposal should share the report and recommendation with the ECs and concerned gram sabhas and should give a time of 30 days for any comments or objections. After this the NSC should finalize the report and send it to the MOEF for final notification.</p>
<p>5.5.4. The determination and notification of CWH should lead to the implementation of the recommendations of the EC.</p>	<p>5.5.4(a) In case of recommendations of co-existence with modified rights by the Expert Committee: On receipt of the notification of the CWH from the MoEF, the State Government shall set in motion the due process of implementing the recommendations of the Expert Committee, with the overall objective of making the CWH inviolate. The EC should discuss with the communities the potentially detrimental impact of their activities on wildlife conservation and discuss the necessary modification of rights. Modification of rights will require the final approval of the Gram Sabha. In areas where co-existence has been agreed upon, the Forest Department, with the forest-dwelling communities, should prepare a joint management plan for the CWH, in the light of the modified rights. This should also include scientific inputs by appropriately qualified ecologists and social scientists to balance the dual objectives of livelihood security and wildlife conservation.</p>	<p>Inviolate needs to be explained here to mean areas of compatible use. The plan for management of CWH should be developed by the gram sabha as per section 3 (1)(i) and section 5 of the FRA which provides the rights and empowered authorities to the gram sabhas to conserve and manage forests and biodiversity. Gram Sabhas while preparing the management plan can take the help of forest department and civil society organizations.</p>

	<p>5.5.4(b) In case of recommendation of resettlement by the Expert Committee: On receipt of the notification of the CWH from the MoEF, the State Government should initiate the due process of implementing the steps necessary to facilitate re-settlement of forest dwellers. This should follow the provisions of the FRA, 2006. Collector and the Park Manager in consultation with the Gram Sabha and civil society shall prepare a resettlement package acceptable to the forest dwellers residing within the area of the CWH. After obtaining written consent of the Gram Sabha, for acceptance of this package, the resettlement process should be initiated and completed within a reasonable time frame. Civil society representatives and the Forest Department should ensure appropriate dispensation of the resettlement package and adherence of the forest dwellers to the agreed terms and conditions of the package.</p>	<p>Details of the resettlement package such as the basis (whether under the resettlement and rehabilitation policy of the state government) and options are not provided in the protocol. The protocol should clearly provide the details of the resettlement package and the available options. The resettlement package should include land and compensation for rights over common resources. It should take into account loss of land, commons, social and cultural impact and accordingly develop the plan for rehabilitation which can minimize the socio-economic and cultural losses to the best possible.</p>
<p>6. CLARIFICATIONS AND GENERAL PRINCIPLES:</p>	<p>6.1. For a CWH to be really inviolate, it will be essential that an objective assessment of the current pressures and future demands on forest resource for a variety of uses is made. Present and future levels of human-wildlife conflict will also need to be factored in and discussed with the local communities to evaluate the long term viability of residing and earning livelihood within the area of the CWH.</p>	<p>Sentence used here like “<i>Present and future levels of human-wildlife conflict will also need to be factored in and discussed with the local communities to evaluate the long term viability of residing and earning livelihood within the area of the CWH</i>” is inducing in nature and could lead to misuse by the FD during the consultative process to influence relocation. Hence it should be deleted from the clarification.</p>

In state like Odisha already numbers of proposals for CWHs have been prepared and are under consideration at various stages. The protocol should clarify that the process of identification of CWH in all the PAs should start afresh according to the procedure suggested in the new protocol and proposals should be accordingly developed.

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