

**Comments on “Implementation Protocol for Determination and Notification of Critical Wildlife Habitats in National Parks and Sanctuaries (4 May 2011)”**

by

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on behalf of

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**General comments:**

This draft protocol is a significant improvement over MoEF’s earlier (2007/2011) guidelines, including in its greater emphasis on public consultations and on acknowledging the possibility of co-existence within Critical Wildlife Habitats (as mandated by the Forest Rights Act). However, on a number of counts it needs modification or additional text, which are suggested below. With the incorporation of these, the protocol would be very helpful in furthering the cause of wildlife conservation by respecting people’s livelihood rights and generating their support and stake.

It should also be specified by MoEF to states, that where CWH processes are ongoing, they will need to be initiated afresh or modified to meet the requirements of this protocol.

At the meeting in February at MoEF, the Minister had also stated that before the CWH Guidelines are finalized, a national workshop would be organised. We urge that MoEF hold such a workshop.

**Specific comments:**

<b>Sections of the Draft protocol</b>	<b>Current text</b>	<b>FoCN comments</b>	<b>Suggested wording/additions/changes</b>
<b>Preamble and section 2.1</b>	<i>“This involves determining and notifying such areas that are to be kept as inviolate to ensure the conservation of wild flora and fauna.”</i>	<p>It needs to be made clear from the beginning, that the term ‘inviolate’ does not necessarily mean ‘human-free’ and therefore inevitable relocation, and that the co-existence option is also available (as given later in the Protocol). A definition of ‘inviolate’ at the beginning will help reduce arbitrary use of the term.</p> <p>By not restricting the term ‘inviolate’ to mean only ‘no-use’ or ‘human-free’, and by including ‘compatible uses’ that do not violate conservation objectives, it would help in the conservation of a larger area of wildlife habitat, given that in the Indian context, no-use areas would necessarily be few and mostly isolated fragments. Such a definition has been recommended by two national workshops on CWH, as also by the majority members of the MoEF-MoTA Committee on FRA.</p>	Suggested additional text: “For the purposes of this protocol, the term ‘inviolate’ means “‘no use’ <u>or</u> ‘minimal use’ including compatible uses that do not violate conservation objectives.”
<b>3.5</b>		<p>Rule 10 (e) of the FRA require the state level monitoring committee (SLMC) to monitor the resettlement under Section 4 (2) of the Act. This is not mentioned in the provision part of the protocol.</p>	Rule 10(e) of the FRA should be inserted as a new 3.6, and the existing 3.6 and 3.7 renumbered accordingly.

4.1.1	<i>National Steering Committee....The composition and Terms of reference of the NSC are given in the Annexure.</i>	These are not given, it is important to elaborate these TOR and put them into the protocol. The TOR should include a number of activities involving civil society and reviews of implementation of the CWH provisions and this protocol.	A full TOR should be included here. This should include, inter alia: 1. regularly seek civil society inputs to the work of the Committee; 2. carry out and commission independent reviews of the progress of CWHs in the country, and the implementation of this protocol; 3. report once in two years to the public on such progress and implementation; 4. convene an annual conference on CWHs, open to civil society, communities, and government officials. 5. provide inputs to state level monitoring committees in their function under Rule 10(e) of the FRA
4.1.2	<i>The Expert committee has Chairperson and member Secretary from the Forest Department</i>	The balance of power in this committee is heavily with the Forest Department. The chair, co-chair, and member-secy should each be from different sectors/agencies: Forest Dept, Tribal Welfare Dept, and a PRI at an appropriate level. Also, it has only one member of panchayat, and it is not clear what happens if there are more than one panchayat. There is no explicitly mentioned local community expert. Finally, the word ‘genuine’ in “incorporate genuine views” is insulting and patronizing; if it is not used for the views of any other sector, there is no reason to use it for communities.	The following changes are suggested: 1. The positions of Chair, Co-Chair, and Memb-Secy are shared by the Forest Dept, Tribal Welfare Dept, and a Panchayat Raj Institution. 2. Where there are several gram sabhas/panchayats involved, membership should be greater than one, and both men and women should be represented. 3. A position of local community expert should be added. 4. The word ‘genuine’ should be deleted.
5.2.1.	<i>The identification of CWH shall be the joint responsibility of the qualified scientific</i>	There is no reason to single out only these members for the identification of CWH, as it leaves out other members who may have equally valid contributions. Identification of	Suggested rewording: “The identificaton of CWH shall be the resonsibility of the full Expert Committee, and should include the local and traditional knowledge of local communities.”

	<i>institution, qualified ecologists, and other wildlife experts on the Expert Committee.</i>	CWH needs to include both modern and traditional knowledge; the inclusion of the latter should happen from the start.	
<b>5.2.2</b>	<i>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.</i>	The National Committee should take into account the parameters given by several conservation and social action groups on the basis of two national level workshops on CWH, the recommendations of which are with MoEF.	(additional line at end of section): “The National Level Committee shall take on board the recommendations of conservation and social action groups as brought out in the guidance notes and workshop reports produced by the Future of Conservation Network.”  Ideally, though, some broad parameters such as the ones given as an annex to this note (recommended by a national workshop organised by CES/IISc, FoC, and Karnataka Forest Dept) should be mentioned in the Protocol.
<b>5.2.3</b>	<i>Since a proposal for CWH relates to a decision that the area should be kept inviolate for wildlife conservation, information on resource utilization by local communities, as well as human-wildlife conflict is also extremely relevant and must be taken into account.</i>	These are not the only parameters that need to be considered for making an area ‘inviolate’, for they assume that local people must only be having impacts that go against such an objective. Community activities with a positive impact on conservation need also to be taken into account.	Suggested rewording: “.... Information on resource utilization by local communities, traditions, practices and customs leading to conservation, as well as human-wildlife conflict and co-existence must be taken into account.”
<b>5.2.4</b>	<i>Parallel to scientific identification of the CWH by the scientific experts in the EC, the EC will obtain from the Gram Sabha, the</i>	Recognition of rights under FRA is not complete in many areas. Particularly CFR rights are not recognized and it’s still a problem in PAs. Record of rights’ should be understood to mean after full completion of FRA process, as	Suggested rewording of the sections: “Parallel to scientific identification of the CWH, the EC will obtain from the Gram Sabha a letter certifying that the process of recognition and vesting of forest rights (both individual and community) is

	<p><i>record of the rights vested in the forest dwellers living within national parks and wildlife sanctuaries as have been finally approved by the District Level Committee under sub-section (5) of section 6 of the FRA, 2006. This will enable the EC to examine and take an informed view on coexistence with modified rights, or on resettlement, taking into account the deliberations of the consultative process.</i></p>	<p>also any other rights under other laws (including revenue). Record of rights or completion of process under FRA means recognition of both individual and community forest rights.</p> <p>In addition to referring the record of forest rights the EC should look at other means like research studies, govt documents, etc to arrive at a conclusion on the possibility of co-existence.</p>	<p>complete, the record of rights vested in the forest-dwellers living within or dependent on the national parks and wildlife sanctuaries as approved by the District Level Committee under sub-section (5) of section 6 of the FRA 2006, and any other record of rights including those related to other forest, wildlife, or revenue laws. The EC should also examine other relevant government documents, research reports, and other documents relevant to understanding the situation regarding rights and activities within the proposed CWH, and possibilities of co-existence.”</p>
5.2.5.	<p><b><i>In cases where the record of rights is available:</i></b> ... 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>There could be a misunderstanding that the proposal can be sent at this stage, before taking steps under 5.2.8.</p>	<p>Suggested rewording and additional text (after “as per the requirements of 5.3 below”: “, and after having taken the steps specified in 5.2.8, within the stipulated period of one year of the constitution of the EC.” (Note: regarding the time period for completion of proposal, see 5.2.8 below)</p>
5.2.8	<p><i>... the Expert Committee shall hold extensive, open consultations with the forest rights holders, in their local</i></p>	<p>One third quorum of the Gram Sabha is not as per FRA as the Rules require the quorum to be 2/3<sup>rd</sup> for determination of rights and the same should apply to the procedures for consultation</p>	<p>Suggested change: instead of ‘one-third quorum’, it should be ‘two-thirds quorum’.</p>

	<i>precincts, with a one-third quorum of the Gram Sabha concerned, to solicit their views on the proposed notification of CWH.</i>	for CWH. This is of course also linked with the suggestion that is before MoTA, to specify that the gram sabha must be at the level of the individual settlement, and not at the level of the panchayat that may include several settlements.	
<b>5.2.8 (c)</b>	<i>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.</i>	Traditional knowledge need not be proved “scientifically” as defined by certain experts, and the term ‘genuine’ is insulting since it is not used for non-traditional knowledge (is all ‘modern’ knowledge ‘genuine’?). The traditional knowledge must be taken into account through a due procedure where communities can identify areas of critical importance. Wherever communities have taken such initiative, their plans must be incorporated in the proposal.	Suggested rewording: “Solicit opinion of the forest-dwellers regarding the location, extent and boundaries of the CWH, incorporate relevant traditional knowledge on these aspects, and take on board any identification and mapping that forest-dwellers themselves may have carried out as part of the CFR process under FRA. Inputs from these and from gram sabha meetings should be used in final decisions regarding the boundaries of the CWH.”
<b>5.2.8 (d&amp;e)</b>	<i>Inform the affected individuals and communities that the determination and notification of the area as a CWH will not in any way affect their rights, and that any modification or resettlement of their rights can only be affected with the written consent of the Gram Sabha.</i>  <i>Inform the affected individuals and communities of the complete details of all</i>	This does not clearly explain to the forest-dwellers that the CWH <i>could</i> lead to modification or resettlement of rights, and that they have the option of staying on inside the proposed CWH, with strategies for co-existence that may involve negotiated modification of rights if felt necessary for conservation purposes, and with full rights as mandated for them under the FRA.	Suggested rewording: “ “Inform the affected individuals and communities that the determination and notification of the area as a CWH will not necessarily affect their rights, that they have the option of staying on inside the CWH in the form of co-existence and with the rights mandated for them under the FRA for which certain modification of rights may or may not be necessary, as laid out in 5.5.4(a), and that any modification or resettlement of their rights can only be affected with the written consent of the Gram Sabha. Where the EC in consultation with the forest-dwellers has concluded that co-existence is not possible even with modification of rights, options for relocation as would be discussed are given below, but again

	<i>options under the R&amp;R schemes that are currently being offered by the govt.</i>		specifying that this can only be with the consent of the Gram Sabha.”
<b>5.2.8(h)</b>	<i>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.</i>	The source of livelihood of families is diverse: agriculture, handicrafts, NTFPs, ecotourism, employment in the PA, etc. Moreover, many of their practices may actually be contributing to conservation. Talking only about conflicts and land-holding size would present a one-sided, biased picture, and seems aimed at inducing them to relocate. Discussions must be about the entire nature of community history, use and occupation, including both positive and negative impacts, possibilities of change, entitlements under various laws and programmes, etc. One-sided discussions create threats in the mind of the communities that they will be relocated which should not be the purpose of creation of CWH. Discussions on human-wildlife conflicts should include possibilities of mitigating this conflict within and around PAs, including through appropriate measures under the CWH plans, as part of the co-existence and/or relocation plans.	Suggested rewording: “Discuss the various issues relating to their occupation and use of the area’s resources, including positive and negative impacts, cultural and historical links, possible changes to reduce/eliminate negative impacts and enhance positive impacts, current and possible scenarios of human-wildlife conflicts and complementarities, entitlements under various laws and programmes, and future scenarios including possibilities of co-existence using local practices that ensure both conservation and sustainable livelihoods, or possibilities of relocation if it is mutually agreed that such co-existence is not possible.”
<b>5.2.8 (last para)</b>	<i>Processes outlined in subparagraph 5.2 shall be completed within a period of 6 months from the date of the constitution of the EC.</i>	6 months for committee to prepare full plan may not be enough, given that it needs collection of relevant information, analysis, and consultations with gram sabhas.	Suggested rewording: ‘One year’ instead of ‘6 months’.
<b>5.3</b>	<i>The proposal should</i>	Specifically gram sabha resolutions for each of	Suggested changes: “The proposal should enclose

	<i>also be supported by the documentation relating to the consultation process, i.e., details and records of the consultations held, the views and opinions expressed by the affected individuals and communities, etc.</i>	the stages (identification of CWH and discussion of proposal, completion of FRA process, consent for modification of rights and relocation) have to be attached with the proposal.	the details and records of consultations held, the area and boundaries of CWH finally agreed to by the EC and relevant Gram Sabhas, the Gram Sabha resolution on the process of identification of CWH by EC and consultations held, Gram Sabha resolution certifying that the process of recognition and vesting of FRA (individual and community forest rights) is complete, and consent to the proposed modification or rights or relocation in the form of Gram Sabha resolutions. For all these purposes, a Gram Sabha resolution would be considered valid if passed in a 2/3rds quorum.”
<b>5.3 / 5.4</b>		It is important for the proposal to be in the public domain even after its submission to the CF(WL) till notification, enabling appeals or further public inputs that higher authorities could take into consideration. Also the notification process does not have provision for objections or appeals related to the CWH proposal from any affected families or gram sabhas, or wildlife experts.	Suggested additional text: “5.3.3. The proposal shall remain in the public domain, including on relevant websites and in hard copies at local forest and administrative offices, and all higher authorities dealing with the proposal under 5.4 shall take into consideration any further public inputs and appeals made to them till the stage of notification.”
<b>5.5.4 (a)</b>	<i>In case of recommendations of co-existence with modified rights by the Expert Committee....</i>	Joint management planning by the FD and communities is a very positive step forward. However, this would also require a joint management institution to implement the plan. Additionally the new reality of CFR rights including those of management and protection to gram sabhas, has to be taken into account. Strategies for co-existence and co-management have been suggested in detail in the proposed guidelines and national workshop recommendations of the Future of Conservation	(a) The word ‘with modified rights’ should be deleted. (b) Suggested additional words (at end of current text): “For the implementation and monitoring of the joint management plan, the concerned gram sabhas in the CWH area would prepare plan for management of CWH under section 3 (1)(i) and section 5 of FRA, through committees formed under Rule 4 (e). Such committees can form a federation for management of larger landscapes. A joint management body will be set up with a

		<p>Network, endorsed by the MoEF-MoTA Committee on FRA.</p> <p>Secondly, co-existence does not necessarily need modification of rights, where existing rights are not in violation of conservation objectives; there is therefore no need to specify modification of rights every time co-existence is mentioned.</p>	<p>equitably balanced membership of the Forest Department, local communities including from gram sabha committees, and locally knowledgeable civil society organizations. The planning process should be based on a combination of plans developed by gram sabhas for areas under their management (as per Sections 3(1)i and 5 of FRA), processes of the Forest Department, and other expert inputs. Management should also aim to be adaptive, involving regular monitoring and feedback, and changes in strategies based on this. Further guidance on co-management should be developed by the National Committee, based on recommendations by the MoEF-MoTA Committee on FRA and relevant civil society inputs.”</p>
<b>6.1</b>	<p><i>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.</i></p>	<p>Given that the Protocol provides for both co-existence within, and relocation from, CWHs, it is important that the assessment is also about the positive potential of changes in rights regimes, governance, and behaviour changes in future. Secondly, the term ‘really inviolate’ is unnecessary and confusing here, since by definition a CWH is oriented towards being inviolate, as defined above; what is important is that be properly managed to meet its objectives.</p>	<p>Suggested changed text: “ For a CWH to be properly managed to meet its objectives, it will be essential that an objective assessment of the current pressures and future demands on forest resources for a variety of uses, and the potential for conservation from changes in rights regimes, governance, and behaviour of relevant actors, is made.”</p>

Annex: Suggested broad criteria for identification of Critical Wildlife Habitats

(from: ***Recommendations of the National Workshop on Critical Tiger Habitats and Critical Wildlife Habitats, 8-9 May, 2008, held at the Indian Institute of Science, Bangalore;***

*organized by Centre for Ecological Sciences, Karnataka State Forest Department and the Future of Conservation Network)*

**Ecological and biological criteria would include sites that are unique or crucial for:**

1. Exclusive representation of a Biome
2. Rare and/or restricted range species
3. Endemic species
4. Key wintering or stepping stone sites for migratory species
5. Species richness (relative to biogeographic context)
6. Status of a particular species or habitat using established importance/threat criteria, e.g. IUCN Red List, Ramsar Sites, World Heritage Sites.
7. Ecosystem service providers i.e. pollinators, seed dispersers
8. Key habitats for ecosystem integrity e.g. riparian forest in arid area, catchment areas for watersheds
9. Unique geomorphologic features and scientific archives of evolutionary processes or climate change e.g. fossiliferous rocks and peat bogs
10. Wild relatives of important crops/domesticated animals
11. Current roosting, breeding and display sites e.g. lekking sites for floricans
12. Species range during periods of stress, e.g. severe drought years and including adaptation to climate change
13. Regeneration sites for endangered plants or plants that are characteristic of that PA, e.g. regeneration of shola trees within shola-*Acacia* plantation matrix
14. Areas with relatively high densities of wild animals and relatively low human densities

Given that the above criteria could be interpreted to include or exclude nearly all parts of the country, an additional factor of feasibility of protection could be considered. Areas that are of high biodiversity value and low human use, would be high on the priority list, but those with high biodiversity value and intense human use would also need to be considered.