

COMMENTS ON THE REVISED GUIDELINES ON CRITICAL WILDLIFE HABITAT ISSUED BY THE MINISTRY OF ENVIRONMENT AND FORESTS

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Guidelines for the declaration of Critical Wildlife Habitats, as provided for under the Forest Rights Act (FRA) were first issued by the Ministry of Environment and Forests (MoEF) in 2007. In February 2011, the MoEF issued a fresh set of guidelines, replacing the earlier ones. The Future of Conservation (FOC)¹ network believes that these guidelines are flawed for the reasons elaborated below. The FOC had submitted comments on the earlier guidelines, as also a detailed set of alternative guidelines based on inputs from several conservation and social action groups and forest officials, which have been ignored.

The revised MoEF guidelines:

- **Do not clearly state why the earlier guidelines are being replaced;**
- **Violate the spirit and letter of the Forest Rights Act;**
- **Do not require a proper scientific, knowledge-based approach to determining critical wildlife habitats;**
- **Do not give space for public consultation or democratic approaches to determining such habitats.**

These guidelines must be immediately withdrawn and replaced by rules under the FRA, devised after widespread consultation with communities, conservation and social action groups, and others, building on what has already been submitted by FoC and others.

Specific problems with the revised guidelines are as follows.

1. Basis of revision of guidelines not explained

Point 4.1 of the revised guidelines mention that the state governments are yet to take concrete actions for the identification of CWHs; the reason given is practical difficulties faced by the respective State/Union Territory government in adopting the guidelines (issued in 2007) for implementation. But nowhere do these revised guidelines specify *what* are the practical problems faced by the governments; this would have been important to then devise guidelines to help address these problems. The reasons for issuing the new guidelines are not clearly mentioned.

From the changes made in the revised guidelines, as explained below, one could infer that states may have expressed problems in carrying out extensive consultations with and consent from gram sabhas to be affected by the CWH notification. Unfortunately, rather than suggesting ways of facilitating such consultation processes, MoEF appears to be doing away with them almost completely in the new guidelines. ***The new guidelines therefore help states avoid undertaking a robust, knowledge-based, democratic process.***

¹ The Future of Conservation in India (FoC) is a network of ecological and social organizations and individuals committed to effective and equitable conservation of biodiversity. FoC 's objective is to foster dialogue and engagement in complex conservation issues, and help tackle the increasing threats that both biodiversity and people's livelihoods face. This includes joint action on areas of agreement, and attempts at evolving common understanding on issues where there are differences.

FoC is not an organization, but a forum where organizations and individuals can meet, dialogue, and take joint actions. Its present core constituents are Ashoka Trust for Research in Ecology and the Environment, Foundation for Ecological Security, Himal Prakriti, Kalpavriksh, Samrakshan Trust, SHODH, Vasundhara, Wildlife Conservation Trust-Rajkot, and WWF-India.

2. Interference in the authority of the nodal agency

Point 1.2 of the revised guidelines mention that while the nodal ministry for FRA is the Ministry of Tribal Affairs (MoTA), but that with respect to Section 2 (b) and Section 4, the MoEF is the nodal Ministry. This is incorrect; sections 2 (b) and 4 (2) do provide certain role for the MoEF in the process for declaration of CWH, but do not mandate the MoEF to be the nodal agency. This point is not merely semantic, but could lead to the impression that MoEF is free to act on its own with regard to these sections of the Act. In fact section 2 (b) provides that the determination and notification of CWH by MoEF is to be carried out after open process of consultation by an Expert committee, which includes experts from the locality appointed by that Government wherein a representative of the MoTA shall also be included. So the determination and notification of CWH involve MoEF, an Expert committee appointed by the state government with a representative of MoTA, and gram sabha/local communities. Further Rule 10 under FRA provides that the SLMC shall monitor resettlement under sub-section (2) of section 4 of the Act. The 2007 guidelines also mentioned in point no 1 (a) that the state government shall initiate the process for notification of a critical wildlife habitat by submitting an application on a case by case basis, to the MoEF, under intimation to the nodal agency under the said Act.

3. Ambiguity and confusion in terms used; doing away with consultation during identification/determination of CWH

The revised guidelines read along with press release issued by the MoEF on 14th February 2011 use terms which are not mentioned in the Act, and create confusion. While section 2 (b) of the Act mentions *determination and notification* (the 2007 guidelines also used notification), the revised guidelines use the terms *identification and declaration*. ***Whereas the Act clearly requires consultation for the determination (mentioned in the 2007 guidelines as identification), the revised guidelines have done away with this.*** The revised guidelines read along with the Minister's clarification provide for two separate procedures for the process of identification and the process of notification.

The identification of CWHs is now to be carried out by the Park Manager/DFO in consultation with the local scientific institution in a time bound manner. ***This process does not involve consultations with local communities, which was mandated in the 2007 guidelines.*** Only once the proposal for CWH has gone from the DFO to the Chief Wildlife Warden, will the Expert Committee hold consultations. The guidelines do not prescribe the terms of reference for the expert committee and consultation and leave it to the State/UT government to prescribe such terms (see 5.6.4) which could lead to widely varying practices by states. ***Most important, it leaves no space for the gram sabhas and local communities to be involved in the process of determination of CWH, and leaves no scope for including local knowledge on forest and wildlife while determining the CWH.*** Moreover it is in contradiction of the objective of the FRA which recognizes and empowers the authority of the gram sabhas/local communities.

4. Recognition of forest rights is compromised

Recognition of forest rights, once again, is not stressed upon in the guidelines, but is fleetingly mentioned as footnote in annexure 2. The revised guidelines and the clarifications issued by the Minister confuse and contradict the requirement of completion of recognition of

rights . This problem is exacerbated by the requirement for CWHs to be identified and proposals sent by the DFO to the Chief Wildlife Warden within 75 days of the guidelines being communicated. In almost all protected areas, the process of FRA has hardly begun, much less nearing completion, as reported recently by the MoEF-MoTA Committee on the FRA (see <https://sites.google.com/site/fracommittee/>). This is especially so with regard to Community Forest Resource rights, which take time to map, claim, and vest. Inevitably, in many PAs, this will lead to the FRA process being undermined or short-circuited, as state governments will scramble to try to finish it. It is very likely that state governments will give completion certificates to MoEF if asked, but given widespread experience with how such certificates are readily given without the required basis, there is no guarantee whatsoever that they will be genuine. Nor does MoEF have the wherewithal to check their authenticity, as is evident from the way in which ‘development’ projects have been given forest clearance even in areas where the FRA process has not been completed, simply on the basis of state government statements.

5. Space for co-existence is artificially constrained

Point 2.4 of the revised guidelines stresses upon the requirement for establishing that activities or impact of the presence of holders of rights upon wild animals or wildlife habitats is sufficient to cause irreversible damage and threaten the species/habitats.

Point 2.5 refers to section 4 (2)(c) of the Act, requiring State governments to satisfy themselves that other reasonable options, such as co-existence are not available. It is to be noted that whereas section 4 (2)(c) of the FRA mentions “*the state govt has concluded*”, the explanation in the guidelines states “*the state govt satisfies itself*”. This explanation is incorrect and limits the scope of the provision. The former means the state government has to mandatorily follow a process to determine the availability of other reasonable options, such as coexistence; the latter gives the meaning that it is just a routine administrative procedure to be ensured by the state government.

6. Identification of Critical Wildlife Habitats is unscientific and ad hoc

In point 5 of the revised guidelines, the suggested procedure for identification of CWHs has a number of additional gaps or improprieties, for example, it suggests an impractical timeline ignoring the fact that such scientific and objective assessments, on a case by case basis, demand quality time and information. Importantly the requirement of scientific basis is missing in the new guidelines, and no methods for scientific identification or determination are prescribed. In any case, six months is a completely arbitrary and unrealistic time frame, in the case of most PAs where crucial baseline information on most species is not available or weak, where DFOs are already burdened with existing responsibilities, and in situations where independent expertise is rarely accessed by the Forest Department. The revised guidelines once again reflect the ad hoc approach adopted by the MoEF in implementing the FRA particularly in case of the protected areas. In fact the provisions for determination and identification of CWH under FRA seek to correct the ad hoc-ism and arbitrariness that has characterised wildlife management, but the revised guidelines are not in consonance with these objectives.

7. Consultations and relocation issues

Points 5.6 and 5.7 of the revised guidelines provide for consultation and rehabilitation procedure. 5.6.2 mandates the CWLW to direct the Expert Committees to initiate the consultation process, while he/she forwards the CWH proposal to the MoEF. Point 5.7.1/2 mentions that the expert committee during the consultation would explicitly explain the 2 options presently being followed by the MoEF for rehabilitation (i.e. payment of entire package or carrying out relocation).

The 2007 guidelines specified the consultation process to include hearings, public notice, scope for gram sabha to invite additional experts, and sharing of descriptions, details, data provided in the application to MoEF which was to include information on the status of FRA. However the present guidelines mention that the consultation process would require the expert committee to only share the details of the rehabilitation package, and sensitization on the benefits of the rehabilitation package.

From this it appears that the objective of the consultation is not to inform local communities about the facts regarding CWH and FRA, but to sensitize the affected communities about the rehabilitation package. So the guideline is weighed heavily towards relocation, and does not give equal weightage to the recognition of rights and the possibilities of co-existence, which is required by the law.

Regarding the proposal for relocation the revised guidelines requires park managers to prepare a financial outlay plan based on options “as agreed to by the families. *The proposals may also be forwarded even if only a few families accept the proposal for rehabilitation.*” (emphasis added)

This legitimizes an unfortunate ground reality in many cases, where similar proposals in case of relocation from tiger reserves are opposed by the majority of the village community and the gram sabha, yet are carried out. There are instances where gram sabha’s decisions are ignored and relocations have been forced on the families.

The reports of the MoEF-MoTA Committee on the FRA, from its field visits to Simlipal Tiger Reserve in Odisha and Sariska Tiger Reserve in Rajasthan, observe that relocation of villages has taken place without recognition of forest rights and has not been on voluntary terms, but carried out under coercion of threat by the authorities. Similar reports have been sent to MoEF from other reserves also.

8. Clarification issued by the Minister creates more confusion

Point 2 of the Minister’s clarification note states that identification of the CWHs is only after settling the rights of tribals and OTFDs, *but the revised guidelines do not mention this.* Point 3 states that consultation means consent, which is confusing, because it can be interpreted to mean that any form of consultation carried out would automatically mean that consent has been obtained. Point 4 mentions that the CWHs be declared only with the voluntary consent of the affected people, but if the aforementioned interpretation is taken, this could mean mere consultation. If the Minister intended it differently, he should have worded the clarification more clearly, explicitly stating that ‘consultation’ *requires* the consent of the gram sabha.

9. Possible implications of the revised guidelines

The guidelines in the most part violate the spirit and objective of the FRA, and particularly of the provisions for CWHs, that aim at a rational, knowledge-based and democratic approach for wildlife conservation. Instead of providing practical possibilities the guidelines create more confusion with regard to the mandatory requirements of recognition of rights, declaration of CWH on scientific and objective criteria, open consultation, co-existence and informed consent of the gram sabha. The focus seems to be completely on relocation and rehabilitation rather than rights, coexistence and democratic determination of CWH with involvement of the gram sabhas and local communities. Already there are widespread violations of FRA in the protected areas and in tiger reserves from where relocations are taking place. The guidelines in this form will lead to more arbitrary and undemocratic action by the forest department and possibly lead to forceful relocations and deprivation of forest communities. It is also going to defeat the purpose of wildlife conservation by excluding local communities and their rights, community conservation and traditional knowledge, the possibilities of co-existence and creating more conflicts in and around the PAs.

10. Conclusion and recommendations

In view of the concerns discussed here, the guidelines should be immediately withdrawn. There is need for a wider discussion on the CWH process and approach.

The MoEF also has been repeatedly advised about more rational, scientific and democratic procedures by several conservation and social action groups, which it continues to ignore. This includes two sets of guidelines (on critical tiger habitats and critical wildlife habitats) given to it by the Future of Conservation Network, which have also been recommended for consideration in the report of the MoEF-MoTA Committee on the FRA. This report in fact contains a full chapter with analysis and recommendations on protected areas and CWH, which the MoEF does not seem to have considered.

It is unfortunate that MoEF continues to ignore both ground reality, and the considered inputs of several organizations that have worked on conservation issues for decades ... not to mention a committee it has itself set up.

Instead of guidelines, rules should be framed under FRA to prescribe the basic procedures and principles for declaration of critical wildlife habitats. Such rules should be framed by technical committee constituted by jointly by MoTA and MoEF, following a process of wider public consultation especially with communities in protected areas, and independent conservation and social action groups, and building on the guidance already given by such groups to MoEF.

(for the Future of Conservation Network)

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