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Comments on the Critical Wildlife Habitat Guidelines¹

The draft Guidelines on Critical Wildlife Habitats (CWH) issued by the Ministry of Environment, Forests and Climate Change (MoEFCC). We appreciate that the MoEFCC and MoTA have finally taken up this initiative which was long awaited. However, we are concerned that although the guidelines clearly specify the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA) under which these are to be formulated, yet they are in clear violation of some of the provisions.

1. Undermining the legally mandated role of the gram sabhas

The Guidelines consistently undermine and bypass the authority of the *Gram Sabhas* in the democratic management of their community forest resources (CFR) under S.5, FRA, and fail to comply with the mandatory conditions for the declaration of CWH contained in S.4(2)(a) to (f) of FRA.

3.4 of the Guidelines—mentions provisions of section 4(2)(a) to (f) of the FRA need to be complied with, which include:

- (a) the process of recognition and vesting of rights is complete
- (e) the free informed consent of Gram Sabha has been obtained in writing to the proposed resettlement and the package

Comment: The guidelines do not propose or specify any role for Gram Sabha in the procedure for identifying CWH. Whereas, prior to the process of identifying and notifying CWH, Gram Sabha must resolve formally that it is satisfied that the process of recognition and vesting of rights is complete and no claims lie pending or have been rejected without adequate explanation in writing and all appeals have been adequately handled. CWHs cannot be identified or notified without first ensuring that the due legal process of rights recognition and vesting is complete, which in turn requires Gram Sabha's resolution to the effect with the full and unrestricted participation of women.

Also, the guidelines do not mention how the free informed consent of Gram Sabha would be obtained as to resettlement/ modification of rights that creation of any CWH might entail. Whereas the procedure should have provided for due participation of Gram Sabha in the CWH identification process and took cognizance of Gram Sabha's decisive role in

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it according to law, the guidelines exclude Gram Sabha altogether. It has not been stated whether the expert committee will engage with Gram Sabha and whether such engagement will mandatory as par of their term of reference (ToR).

6 & 7: Identification of CWH, Consultation by the Expert Committee:

The guidelines appear to consistently undermine the role of Gram Sabha. It is stated in 6.2 that “the expert committee shall adopt an open process of consultations with, the forest rights holders...to solicit their views ’’, without mentioning that what is needed in law is ‘the free informed consent of Gram Sabha...in writing’ and not merely ‘views’ by a host of unspecified ‘forest rights holders’. Again, in 7.6 it is stated that “the expert committee shall carry out extensive and open consultation and public hearing with all the stakeholders”, and that (in 7.7) “the proceedings of the open consultation shall be documented appropriately...specifically recording objections, if any”. Guideline 6.2 mentions that the consultation with the communities will be carried out in local precincts but does not specify what it means? How many places and how many times will this be carried out? Will there be a single consultation for the entire PA or a minimum distance within which this consultation will be carried out. Thus the legal requirement of is replaced by consultation with an unspecified ‘stakeholders’, and the statutory requirement of ‘the free informed consent of Gram Sabha’ is bypassed through ‘recording objections, if any’.

Such consultations are legally required to be carried out at the level of each gram sabha that will be affected directly and indirectly by the CWH. Additional efforts must be made that within the gram sabha all rights holders (including women) to be present. A meaningful discussion on what are the critical wildlife habitats in the area and how best to protect them using multiple strategies (ranging from no use to multiple use areas) can be best carried out at the level of the individual gram sabhas (particularly the women and men rights holders) in relation to their own CFRs.

2. Comments on the ‘Clarifications and General Principles’

In addition to the clarifications and principles already mentioned in the guidelines the following two must be involved:

- a. The criteria for identification of CWH in addition to ecological parameters (as also mentioned in specific comments below), must also include cultural parameters. The decision about identification of CWH as also the strategies towards its governance and management must take into account human communities which are socio-culturally and demographically vulnerable such as Particularly Vulnerable Tribal Communities (PVTGs). In the last few years there have been many incidents of forced relocation of such communities, including PVTGs from protected areas even when CWH guidelines

didn't exist. CWH guidelines should not become the justification of relocation or atrocities on such tribes and communities.

- b. CWH should not become co-terminus with "relocation", in fact developing co-existence strategies based on Section 5 and Rule 4 (1) e & f of FRA, should be an important and integral part of identification, governance and governance of CWH. The plans thus prepared by the gram sabhas after such consultations would reflect any modifications of the rights, regulations, and no go zones, if any.

Specific comments

1. Guideline 2. 1. states the objective of the guidelines as “creation of inviolate spaces (CWH) within national parks and sanctuaries.....”
In this context the definition of ‘Inviolate areas’ can be defined as “those within which there will be either no human activity allowed, or minimal human activity is allowed that is not a threat to species or ecological communities. Such minimal activities could include resource use/management with an understanding that some form of regulated biomass extraction and human use may be compatible with the conservation objectives in a particular CWH.” Thus the guidelines need to clearly specify that relocation of communities may not be necessary from all CWH and hence is not a must.
2. In appreciation of Guideline 3.5, the NTCA should immediately withdraw its Order of 28.03.2017 about not implementing FRA in Critical Tiger Habitats. The guidelines should also clearly specify that full and effective implementation of FRA in all National Parks, Wildlife Sanctuaries, and Tiger Reserves is carried out before starting the processes towards creation of CWH. These rights should include all individual rights, community rights, and community forest resource rights (CFRs).
3. Guideline 5 on Constitution of Expert Committee – Since MoTA is the overall implementing agency for the FRA, we believe that the MoTA representative should be one of the office bearers namely either the Chairperson or Member Secretary of the Expert Committee.
4. Guideline 6.1 mentions criteria that would be developed for identification of CWH. We would like to share with you again criteria that were suggested by a group of conservation organisations in [2007](#) when CWH guidelines were first discussed. Apart from ecological parameters such as “conservation value of the site based on criterion such as irreplaceability of the site, complementarity, rarity and endemism of the biodiversity as well as ecological and biological conservation considerations of maintaining viable meta-populations that requires ecological and genetic connectivity and resilience in the larger landscape”; these suggested that “the decision should also be based on what is feasible given socio-economic factors and the process of relocating *bona fide* rights holders under the Act. This second criteria is especially (but not only) relevant where the number of people affected is large, or the human communities involved are especially vulnerable.”

We would like to highlight the fact that CWH guidelines must take into account the socio-cultural and demographic vulnerability of the communities while deciding on relocation and modification of rights in CWH. CWH guidelines should not become the justification of relocation or atrocities on such tribes and communities, including PVTGs, as also mentioned in point 2 (a) above.

5. All the proceedings mentioned in guideline 6.3 should be maintained in writing as well as through video recordings and copies of the same must be given to all concerned gram sabhas.
6. Guideline 7.3, should also mention what co-existence strategies have been discussed and agreed with the gram sabhas
7. Guideline 7.6, talks about seeking views of the participants in the public hearings, for this please see point 1 mentioned above on gram sabha consultations. Also no where do the the guidelines specify how these 'public opinions' would be taken into account in the process of notifying CWH?
8. Guideline 8 talks about Quorum of the meetings of the Expert Committee but the guidelines do not specify the quorum for the local people. Any public hearing whether being organised at the level of the gram sabha or a cluster of gram sabhas must ensure 50% quorum for the SCs, STs and other traditional forest dwellers with full and unrestricted participation of women from all these groups.