

REPORT
August 2020

CRITICAL WILDLIFE HABITAT:

What is it, how should it be implemented, and how is it being pushed through?

Sharachchandra Lele
Neema Pathak Broome
Atul Joshi
Akshay Chettri
Meenal Tatpati
Shruti Mokashi

Centre for Environment &
Development, ATREE



Kalpavriksh



TABLE OF CONTENTS



	Executive Summary.....	3
1.	Background.....	6
2.	The CWH provisions and their core idea.....	7
	2.1. Legal provisions.....	7
	2.2. Core ideas.....	7
3.	Procedure for exploring and identifying CWH areas within PAs.....	9
	3.1. Responsibilities of the Nodal Agency (TDD) and other state agencies.....	9
	3.2. Responsibilities of the CWH Expert Committee for a PA.....	10
	3.3. Remaining responsibilities of the state agencies post-recommendation.....	11
4.	Deviations in the CWH process currently initiated in Maharashtra.....	11
5.	Way Forward.....	14

EXECUTIVE SUMMARY



The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, commonly known as the FRA, is the first legislation to explicitly address the historically ignored rights of forest dwellers in India. It recognizes that forest-dwellers “are integral to the very survival and sustainability of the forest ecosystem” and confers on them (among other rights) community forest resource rights to sustainably manage and conserve forests and the biodiversity therein (CFR rights), and outlines a mechanism for their exercise.

Simultaneously, the FRA also provides a mechanism for addressing any conflicts that may arise between the exercise of these rights and the needs of wildlife within Protected Areas (PAs; i.e., Wildlife Sanctuaries and National Parks). It does so by providing for the possibility of notifying Critical Wildlife Habitats (CWHs) within PAs.

As of mid-2020, no CWHs had been notified in the country. However, triggered by a petition in Mumbai High Court, the Maharashtra Forest Department constituted 54 Expert Committees for identifying CWHs in 54 PAs in the state in 2018-19, and processes towards declaration of a CWH began in Melghat Wildlife Sanctuary in 2019, leading to much controversy and eventually a stay by the Court.

The proper implementation of the CWH provisions is vital for securing a socially just and effective conservation regime in the country. This, however, requires a thorough understanding of the complex provisions and processes involved in identifying and

declaring CWHs—processes that have never before been carried out in India’s conservation landscape. This report seeks to clarify in simple language the core legal provisions relating to CWH, their interpretation, and the processes that would be necessary for their proper implementation on the ground. We also identify where the ongoing process in Maharashtra has deviated from this legally implied process.

The CWH provisions lay down a rigorous process to be followed to resolve any potential tensions around wildlife conservation. A careful reading of the provisions implies a process involving the following steps:

- a. Forest rights be fully recognized first,
- b. An Expert Committee with proper representation to be formed,
- c. This Committee to carry out an open process of consultation,
- d. Scientific & objective criteria to be used on a case by case basis,
- e. The threat of irreversible damage (not just damage) and threat to existence of the wildlife species to be established,
- f. Co-existence and other ‘reasonable options’ (including possible modification of rights or the manner in which they are exercised) to be explored first,

- g. Resettlement to be considered only when it is established that co-existence is absolutely not possible,
- h. If resettlement is required, the resettlement package to follow all laws and regulations and be fully communicated to the community to be resettled, and
- i. Again, if resettlement is required, the community to give its informed consent.

The term ‘inviolate’ used in the definition of CWH (section 2), when interpreted in conjunction with the operative section 4(2), means a situation where there is no “irreversible damage or threat to existence” of wildlife. Thus, declaration of CWH does not necessarily involve resettlement of forest-dwellers, it can also be an area of co-existence after modification of forest rights (if any). And CWHs can only be declared within (legally notified) Wildlife Sanctuaries and National Parks.

Combining the above interpretation of the CWH provisions with the guidelines issued by the central government, we recommend that implementation should happen in the following sequence of steps.

At the state level:

1. The state nodal agency must complete rigorous implementation of all rights provided under the FRA, especially the CFR rights provisions, in all habitations in and around PAs. And these Gram Sabhas must be empowered to prepare their initial CFR management plans.
2. The decision to form an Expert Committee to explore the need for a CWH must be taken after a multi-agency determination that the CFR management plans may be prima facie a threat to the existence of wildlife.
3. The PA-level Expert Committee, to be set up as per the 2018 guidelines, must include qualified experts in life science and social science, ideally should also include representatives of civil society groups working on promoting FRA in the

region. The committee must be adequately oriented and trained in FRA in general and CWH provisions and processes in particular.

The Expert Committee has the challenging task of:

4. Determining whether and where the exercise of forest rights under CFR management plans will lead to irreversible damage and will threaten the existence of particular wildlife species, through a joint process with the Gram Sabhas. This may even require monitoring the impacts of current plans for say a five year period prior to any decision.
5. If a threat is collectively established in any area, then exploring fully the possibility of co-existence through modification of CFR management plans and if necessary the rights therein or the manner in which they are exercised.
6. If co-existence is possible, then identifying a co-management mechanism for the long run.
7. If co-existence is not possible, then proposing a comprehensive resettlement package for the relevant parts of the PA, in full compliance with all existing laws and policies of the government regarding rehabilitation and resettlement, and having the full informed consent of the relevant Gram Sabhas.
8. Recommending appropriate declaration of CWH for those areas identified under steps 6 and/or 7 above.
9. **Subsequently**, as per the 2018 guidelines, the state agencies must get the views of the State Board of Wildlife and central government.
10. Any changes suggested by these agencies must be approved by the Gram Sabhas before CWHs are notified.
11. The state government must also put in place a mechanism to implement the agreements regarding co-management and/or resettlement.

The CWH process in Maharashtra has, unfortunately deviated on many counts from the above. First and foremost, the process of forest rights recognition is far from complete. For 39 PAs that we were able to analyse, there are potentially 1000+ villages whose rights could overlap with the PA boundaries, of which only ~150 villages have received CFR rights. Furthermore, there are many irregularities and errors in the manner in which rights recognition has been carried out so far, including keeping claims pending while forest-dwellers are resettled from PAs. Similarly, the Forest Department has claimed that in 25 PAs, there are no human habitations and hence no forest rights, which is both factually incorrect and ignoring the fact that villages adjoining PAs can also have rights within the PA. Second, the composition of the Expert Committees is inconsistent with the 2018 guidelines and the Terms of Reference given to them violate several provisions in the law. Third, the Committees are functioning without outlining case-specific scientific and objective criteria, and are interpreting the CWH as simply free of humans, without demonstrating actual threat to existence of wildlife.

Although Maharashtra state has been at the forefront of FRA implementation, the above lapses indicate that hasty implementation of the CWH provisions will lead to a repetition of the injustice that the law seeks to redress. Halting the current CWH process and all evictions from PAs, completing rights recognition and Gram Sabha-level planning, and then restarting a revamped process with adequate training and discussion will ensure that the intent of the CWH provisions, i.e., to ensure a rigorous participatory process of resolving tensions between forest rights and wildlife concerns, is achieved. The same approach needs to be adopted in all states that are contemplating using the CWH provisions.

1. Background

In the global forest context, India is a special case, where a relatively small forest area not only holds tremendously high biodiversity, but also coincides with a culturally rich and diverse set of forest-dwelling communities with a long tradition of forest-based life and livelihoods. Conservation of biodiversity is intertwined into these traditions.

In contrast, the modern wildlife conservation movement has promoted the idea that wildlife conservation needs ‘inviolable’ areas, which is interpreted as areas that are completely devoid of humans and human activities. However, many next-generation ecologists, social scientists and the forest-dwellers themselves believe that human-wildlife co-existence is generally possible and must be promoted if we are to have a conservation policy that is effective and meaningful in the long-run.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, commonly known as the FRA, is the first legislation that explicitly addresses and combines these two concerns (forest rights and wildlife conservation). It does so by:

- a. securing the historically unrecognized land rights of forest-dwellers, as well as their forest use rights (CRs),
- b. recognizing their rights to protect, regenerate, manage and conserve forests their community forest resource (CFR) and the biodiversity therein,
- c. providing a mechanism for explicitly reconciling the exercise of forest rights with the needs of wildlife conservation (if there is any conflict between the two) through the Critical Wildlife Habitat (CWH) provisions.

The implementation of the FRA has dragged on for several years. In particular, the implementation of

the community forest resource rights (CFR rights) provision has been mostly incomplete. It is therefore not surprising that, although the central Ministry of Environment, Forests & Climate Change (MOEFCC) issued guidelines in 2018, the Critical Wildlife Habitat provisions have not yet been applied in any Protected Area (PA), i.e., Wildlife Sanctuary or National Park, in the country.

However, triggered by a High Court case, the Maharashtra Forest Department has constituted 54 Expert Committees for identifying CWH in 54 PAs in the state, and implementation activities began in Melghat Wildlife Sanctuary in 2019.

We believe that the proper implementation of CWH provisions is extremely vital for securing a socially just conservation regime in the country, and ensuring long-term conservation success by adequately involving, rather than persecuting, forest-dwelling communities. But proper implementation requires a thorough understanding of the **complex provisions, the ideas underlying them, and therefore the processes that would be involved**—processes that have never before been carried out in India’s conservation landscape.

ATREE and Kalpavriksh are research and advocacy organizations long involved in the questions of conservation, livelihoods, and governance. We felt the need for clarifying in simple language the core legal provisions relating to CWH, their interpretation, and the processes that would be necessary for their proper implementation on the ground. We then review the process as currently implemented in Maharashtra, and point out serious violations of the spirit and letter of the law and the 2018 guidelines. We end with recommendations for some immediate steps to rectify the situation. This analysis is based upon a close reading of the Act and the Rules, the CWH guidelines of January 2018,¹ our experience of ongoing attempts to implement it in Melghat Wildlife Sanctuary, and inputs from legal experts.

¹<https://tribal.nic.in/FRA/declarationsClarifications/CWHGuidelines04012018.pdf>

2. The CWH provisions and their core idea

2.1. Legal provisions

Critical Wildlife Habitat is first defined in section 2(b) of the FRA as (emphasis added):

such areas of National Parks and Sanctuaries where it has been specifically and clearly established, **case by case**, on the basis of **scientific and objective criteria**, that such areas are required to be kept as inviolate for the purposes of wildlife conservation.

The procedure by which this is to be done is partly given in the definition itself, viz., as may be determined and notified by the Central Government in the Ministry of Environment and Forests after **open process of consultation** by an Expert Committee, which includes **experts from the locality** appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4.

Subsequently, section 4 spells out what CWHs may actually involve vis-à-vis the forest rights recognized under the FRA, the preconditions for identifying CWHs, and the post-identification processes:

Section 4(2): The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries **may subsequently be modified or resettled**, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-

- a. the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
- b. it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals

is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;

- c. the State Government has concluded that other reasonable **options, such as, co-existence are not available**;
- d. a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
- e. the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- f. no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

2.2. Core ideas

First, to get at the essence of the CWH provisions, one must begin with the preamble of the FRA, which (among other things) says:

[forest rights] include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and **thereby strengthening the conservation regime of the forests...**

And

[non-recognition of rights resulted in historic injustice to forest dwellers,] **who are integral to the**

very survival and sustainability of the forest ecosystem.

So at the very outset, the FRA is trying to reverse the paradigm of wildlife conservation, by stating that forest-dwellers are not enemies of conservation but are in fact **integral to conservation**. All the sections that follow must be read and interpreted while keeping in mind this position stated in the preamble. In particular, even if the CWH provisions are provided as a contingency for possible tensions between livelihoods of forest-dwellers and wildlife conservation, the Act starts from the premise that there is a synergy.

Second, the CWH provisions primarily lay down a **rigorous process** to be followed to resolve this potential tension where it may arise. It requires that:

- a. Rights be fully recognized first,
- b. That an Expert Committee with proper representation be formed,
- c. That this Committee carry out an open process of consultation,
- d. That scientific & objective criteria be used on a case by case basis,
- e. That the threat of irreversible damage (not just damage) and threat to existence of the wildlife species be established,
- f. That co-existence and other 'reasonable options' be explored first,
- g. That resettlement is considered only when established that co-existence is absolutely not possible,
- h. That, if resettlement is required, the resettlement package follow all laws and regulations and be fully communicated to the community to be resettled, and
- i. That (again, if resettlement is required) the community give its informed consent.

Third, the term 'inviolate' used in the definition (section 2) has to be understood in light of the wording of section 4(2), viz., that CWHs can be created by **either modifying rights or resettling rights-holders**, and the wording of 4(2)(b) about **irreversible damage and threat to existence**. Note that there is no demand for 'pristine-ness' of any kind. **Inviolate simply means a situation where there is no irreversible damage and no threat to existence**, not necessarily a situation where there is no human presence per se. The requirement to explore options such as co-existence further reinforces the interpretation that inviolate does not necessarily mean bereft of human presence. In other words, CWH as envisaged in the **FRA does not necessarily involve resettlement of forest-dwellers. It can also be an area of co-existence after modification of forest rights (if necessary)**.

Fourth, it is also important to remember that the CWH provisions are only applicable in National Parks or Wildlife Sanctuaries (not in their buffer zones or corridors linking PAs). Moreover, National Parks (NPs) and Wildlife Sanctuaries (WLSs) **already** enjoy greater protection than say ordinary Reserve Forests or Protected Forests. So if there is no likelihood of irreversible damage or threat to existence, there is no need to declare any part of the NP/WLS as a CWH.

3. Procedure for exploring and identifying CWH areas within PAs

Following from the above legal provisions and their interpretation, what would be the **correct procedure** for exploring whether, where and what kind of CWH is required in any PA? We believe that the responsibilities are at two levels: the Nodal Agency for the implementation of FRA (and state government in general), and then the Expert Committee of a particular PA.

3.1. Responsibilities of the Nodal Agency (TDD) and other state agencies

Step 1: Recognition of rights under FRA must be complete.

This is the first and foremost requirement. The need for a CWH may arise where the exercise of forest rights might cause 'irreversible damage and threaten the existence' of important wildlife species. So one cannot even talk about CWHs without first forest rights being fully recognized, and in fact the Gram Sabhas having formed Community Forest Resource (CFR) management plans (which will spell out how the exercise of forest rights (and responsibilities) will actually take place)!

- a. The nodal agency, in this case the Tribal Development Department (TDD), must identify all villages/settlements (surveyed and unsurveyed)/forest villages, habitation, etc. in and around the PA that may be customarily living in or using the forest. Note that this list should not be only of settlements inside the PA. Villages **adjacent** to the PA boundary or even a bit further away often have customary forest use rights over parts of the PA. The list can be arrived at in many ways, including using census village boundary maps, forest department data, revenue department maps, and field data. The important thing is to make it exhaustive.²
ATREE-KV team have prepared a preliminary list of villages inside or adjacent to 39 PAs in

Maharashtra that can be used as a starting points.

- b. The nodal agency must then make all these forest-dwellers aware of all their rights under the FRA, including especially community forest (use) rights (CR) (sec 3(1)(b)-(e)) and community forest resource (CFR) rights (sec 3(1)(i)).
- c. The nodal agency must ensure that all these rights are recognized as per the spirit and procedures prescribed in the FRA.
- d. To ensure proper and fair recognition, during this process, **no resettlement activities should be carried out by the** Forest Department in any PA under any pretext or programme.
- e. After recognition of rights, the Gram Sabhas must be enabled to **constitute CFR Management Committees** and form their initial **CFR Management Plans** as laid down in Sections 4(e) and (f) of the FRA Rules, and using simple templates such as the one offered in the Maharashtra government GR of Sept 2017.

Step 2: The decision of whether to form an Expert Committee at all to explore the possible need for and nature of a CWH in a particular PA must be taken after a multi-agency perusal of the CFR Management Plans from Gram Sabhas pertinent to that PA and **prima facie evidence** that there could be some tensions between wildlife conservation and exercise of forest rights.

Step 3: The PA-level Expert Committees must be correctly formed and informed.

If the CWH provisions are to be implemented properly, the composition and training of the Expert Committees must follow the spirit of the CWH provisions, and the Committee members must be fully conversant with the complex task they are being given. This requires that the Committee:

²See CWH Monitoring Committee's Interim Report at <https://sites.google.com/view/cwh-monitoring-committee/home#h.bxlvxw18qvpk>.

- a. Include **experts in life science**, not just wildlife enthusiasts, who are familiar with the specific PA and who are open to evaluating the evidence for tension between exercise of rights and existence of wildlife objectively.
- b. Include **a social scientist**³ who is familiar with the issues of forest rights, forest-dweller (especially tribal) livelihoods and related matters.
- c. (Given the disempowered situation of the forest-dwellers), include representatives of civil society organizations working for promoting the FRA in that region.
- d. Include a representative of the Tribal Department of the state who is familiar with the issues in that particular region.
- e. Be **properly trained** in the provisions of the FRA and the CWH sections in particular and their interpretation. The training will have to be done in the local language, because the Expert Committee includes representatives of the local Gram Panchayats.⁴

3.2. Responsibilities of the CWH Expert Committee for a PA

The task in front of the CWH Expert Committee is extremely challenging and complex, requiring detailed assessment, consultation, adherence to due process and transparency, use of scientific data and inclusion of traditional knowledge, etc. in pursuit of a proper balance between exercise of forest rights and the need to protect wildlife from irreversible damage, keeping in mind the discussion above. This will involve at least the following steps:

Step 4: Determining whether the exercise of forest rights (as proposed in the CFR Management Plans of the relevant Gram Sabhas) will lead to **irreversible damage** and will **threaten the existence** of particular wildlife species, in spite of the fact that the area is already a WLS or NP. It must be noted that past experience is **not a good guide to**

what will happen in the future, because the past behaviour of forest-dwellers took place in the context of not having their customary rights recognized over any specific area and being constantly under the threat of eviction. The CFR Management Plans are built on secure rights over well-defined areas and also responsibilities assigned to them for biodiversity conservation and sustainable use. So the likely effects of the CFR Management Plans must be evaluated afresh. In theory, this would require monitoring the impact of the activities of the Gram Sabhas over (say) a five year period. Note also that this determination must happen in a **joint manner**, including consultations with the Gram Sabhas and the involvement of the Gram Panchayat representatives that are already supposed to be in the Committee.

Step 5: If the threat of irreversible damage is established, then exploring, in full consultation and consent of the local communities, how these threats can be addressed and **ameliorated** in their CFR management plans as mandated in section 4(2) of the FRA, including through **reductions or modifications**⁵ in the exercise of forest rights. Note also that since the focus is the potential threat to wildlife, activities by the Forest Department, including tourism, fire lines, road works, building construction, and any other activities by other agencies will also have to be considered. The goal of this step is to **explore the possibility of co-existence** (section 4(2)(c)) to the fullest extent. If rights have to be modified/attenuated, then identifying what the livelihood impacts will be and what kind of compensatory rights and options can be provided, such as ownership over tourism.

Step 6: If such co-existence is possible, then identifying a co-management mechanism for the long run. Such a mechanism will be required for the implementation of the (possibly) modified CFR Management Plans and overall PA Management plans, so as to make flourishing of wildlife as well as forest-dwellers lives possible in the long term.

³As per MOEFCC Guidelines of 2018. | ⁴As per MOEFCC's CWH Guideline of January 2018.

⁵Examples of such amendments could be changes in grazing practices, declaring certain areas as no-go areas for collecting minor forest produce, reduced forest use during breeding seasons of certain animals in certain areas, shutting out tourist access to certain areas/seasons.

Step 7: Recommending CWH status⁶ with these areas with the corresponding modified rights and management plans, compensatory rights, and co-management mechanisms.

Step 8: If, after attempting step 5 above with all rigour, it is jointly concluded by the Committee and the Gram Sabhas that **co-existence is simply not possible** (in certain parts of the PA), then the Committee may recommend the **resettlement of the communities** in those parts of the PA. In this case, the Committee must prepare the proposed package for which communities are to be resettled and how, including locations, nature and magnitude of compensation, means for secure livelihood in the resettlement area, etc. This package must be in compliance with all existing laws and policies of the government that govern resettlement, especially the LARR⁷ act, must include compensation for individual and community forest rights, must be shown to the Gram Sabhas of the respective hamlets/villages (as per section 4(2)(d)), and their

formal informed consent obtained through an open and democratic process. This portion of the PA may then be recommended for declaration as CWH, along with the agreed upon resettlement package.

3.3. Remaining responsibilities of the state agencies post-recommendation

Step 9: Recommendation for 7 or 8 above will be sent to the State Board for Wildlife (SBWL) for perusal and forwarded by the SBWL to the MoEFCC for their consideration. If the SBWL or MoEFCC suggest some changes, these must again be taken back to the Gram Sabhas for their consent and approval and only after their decision, can this be sent to the MOECC again.

Step 10: The state government must put in place a mechanism to oversee that the agreements made—regarding either co-management or resettlement—are fully and properly implemented.

4. Deviations in the CWH process currently initiated in Maharashtra

As outlined above, the process of identifying a potential area of serious threat to wildlife and then determining how that threat can be addressed through the CWH provisions is a lengthy and complicated one. Unfortunately, the Maharashtra Forest Department has launched this process virtually simultaneously in 54 out of 55 PAs in the state, and implementation activities began in Melghat Wildlife Sanctuary in 2019. In the process, a number of violations of the letter and spirit of the FRA are being or have been committed.

a. First and foremost, the process of forest rights recognition is quite incomplete. This is especially true for Community Forest Rights. Our analysis for 39 of the 55 PAs (for which we were able to obtain boundary details) showed that (as per Census 2011 maps and data) there are more

than 1000 villages (with more than 4 lakh people) located inside or adjacent to these 39 PAs, and therefore likely to have CFR rights that overlap with the PAs. Of these, only ~150 villages have received CFR rights. The Mumbai High Court had (in December 2019) set a 3-month deadline for the completion of the rights recognition process, which was subsequently extended by 2 months. But this process has not even begun in the remaining villages.

b. Furthermore, as the report of the TDD-appointed Monitoring Committee for Melghat shows,⁸ in Melghat WLS alone there are **many errors and irregularities in the way the process of rights recognition has been carried out.**

⁶Although the FRA does not explicitly spell out two kinds of CWHs, it is clear, when the two sections are read together and in light of the preamble of the Act, that CWHs may be of different kinds: with co-existence or requiring resettlement or both.

⁷Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

⁸<https://sites.google.com/view/cwh-monitoring-committee/home>

- i. Several villages had not filed claims, not knowing that the FRA recognises rights even in PAs.
 - ii. Several other CFR claims were rejected incorrectly, citing “Area is Critical Tiger Habitat” as the reason for rejection.
 - iii. A few who were granted CFR rights were granted incomplete rights, i.e., over areas much smaller than for which they had made claims and provided evidence.
 - iv. In the case of several other villages, their CFR claims were kept pending for more than 8 years, and in the meanwhile the eviction-and-resettlement process was continued and some villages already resettled. Needless to say, they were not compensated for their potential CFR rights lost.
- c. Furthermore, in an affidavit filed by the Forest Department in the High Court in March 2020, it is claimed that 25 out of the 54 PAs are **“PAs in which there are no claims whatsoever made under the Forest Rights Act, as there is no human dwelling/habitation in these areas”**. On the basis of this statement by the FD, the High Court was urged to allow immediate declaration of these 25 PAs as CWHs, which the Court appears to have done in its order of March 11, 2020. However, this claim of 25 ‘uninhabited’ PAs ‘with no claims under the FRA’ is completely incorrect because:
- i. All these PAs have villages adjacent to their boundaries, which would have (prima facie) customary forest use extending into the PAs and therefore could claim rights under the FRA. For instance, in the case of Sagreshwar WLS, as per the PA notification itself, the forest land of 10 villages is inside the sanctuary.
 - ii. Many of these PAs do have human habitations inside them. For instance, in Chandoli National Park (NP), from the original 33 villages in the 1985 notification, 4 villages are still inside the park. In Koyna NP, of the original 50 villages, 3 villages are still inside the PA.
- iii. In some cases, the villages/habitations existing geographically inside the PA boundary may have been excluded from the notification, and therefore the PA appears to contain no habitations, when in fact people are living inside them on revenue land. This has been shown in case of Melghat Tiger Reserve (not part of these 25PAs).
 - iv. There are at least a few cases where not only are villages present in the PA, but their CFR rights have also been recognized. For instance, in Karnala Bird Sanctuary the CFRs for at least two villages have already been recognised.
- d. There are several problems with the **way in which the CWH Expert Committees have been constituted**:
- i. The Expert Committees do not contain expert social scientists and representative of civil society organisations familiar with the area and with issues of forest rights and forest-dweller livelihoods, as required by the CWH Guidelines.
 - ii. The experts in life sciences have often sometimes been replaced by local wildlife enthusiasts. Many of the so-called experts do not have a record of high quality scientific publications on wildlife conservation or ecology in the region.
 - iii. In two cases, the committees include someone who has challenged the very constitutionality of the FRA. This is a serious conflict of interest, as a person who does not believe that the FRA is constitutional cannot be expected to participate and implement any of its provisions, especially highly sensitive provisions such as the CWH, with objectivity.

- e. The Terms Of Reference notified for the Expert Committees contain illegalities and incorrect interpretation of the CWH provisions:
- i. The terms 5 & 6 pertain to the question of whether additional area is required in order to hold the wildlife population, when this is simply not within the mandate of the CWH process, which has to be confined to the PA boundary.
 - ii. The term 3 is incorrect, as it asks for the identification of areas considered 'degraded/disturbed on account of human impacts', when in fact the FRA requires identification of areas where proposed exercise of forest rights could cause 'irreversible damage and threat to existence', which are much more severe impacts that have to be proven.
 - iii. The Expert Committee is asked to 'solicit the views of forest rights holders on the proposed notification of CWHs', when in fact the proposal for CWH itself has to be prepared through extensive consultations with the Gram Sabhas and with the participation of the Gram Panchayat representatives in the Committee.
 - iv. No training programmes have been carried out for the Expert Committee members, especially the Gram Panchayat members who are likely to be least aware of all the legal provisions.
- f. The Mumbai High Court had objected to the initiation of the CWH declaration process in Melghat in the absence of 'scientific and objective criteria' having been identified and made public. In response, the FD has invoked a Wildlife Institute of India study that claims that a Tiger Reserve must have at least 20 breeding tigresses, who require 800-1000 sqkm of 'inviolable' area (i.e., area with no human presence). There are several major problems with this criterion. First, there is no agreement within

the wider ecologist community as to the veracity of this claim. No Indian Tiger Reserve actually has 800-1000 sq km of area bereft of human presence, but many are reporting healthy tiger populations. BRT Tiger Reserve boasts of a rising tiger population in spite of the presence of more than 5,000 Soliga Adivasis, several thousand non-Soligas, coffee plantations, and the exercise of CRs and CFR rights by the Soligas since 2010. Second, and more important, the FRA does not ask 'what is the ideal requirement for wildlife conservation'. It asks that scientific criteria be used to determine whether the exercise of forest rights will cause **irreversible damage and threat to existence** to the particular species. This has not been done.

- g. While insisting that 'inviolable' means 'free of human presence' and therefore requires relocation, Forest Department officials in a meeting with civil society groups in October 2019 admitted that they will continue tourism activities in such 'inviolable' areas!
- h. The Expert Committee's manner of conducting public consultations with villagers in Melghat WLS have been video recorded, and they clearly show that the Committee has already made up its mind that the entire WLS has to be declared a CWH, and the 'consultation' was not at all in keeping with the letter or spirit of the FRA, i.e., **jointly determining** whether there is a threat at all, and whether the threat can be ameliorated through modifications to forest rights or management plans, whether co-existence is possible, etc.

5. Way Forward

Maharashtra state has been at the forefront of the recognition of rights of forest-dwellers under the FRA, especially the recognition of CFR rights, which is the most crucial step towards giving forest-dwellers a clear role in forest management and governance. But Maharashtra state has moved too hastily in the implementation of the CWH provisions in the name of wildlife conservation, resulting in multiple deviations and illegalities.

In light of the above serious deviations, there is an urgent need to:

- a. halt the current CWH declaration process in all PAs in Maharashtra,
- b. halt the ongoing eviction and resettlement processes in all PAs across India,
- c. allow and actively enable the process of rights recognition to be thoroughly implemented, and facilitate the creation of CFR Management Plans by the Gram Sabhas in and around PAs across India, and
- d. re-structure and retrain the entire set of CWH Expert Committees formed in Maharashtra and ensure similar processes in other states so that CWH exploration and declaration follows the spirit and letter of the FRA.

An outdated 'fortress conservation' approach has bedevilled Indian wildlife conservation policy since its inception, and has resulted in enormous social dislocation, distress and conflict. The FRA offers an unprecedented opportunity to rethink conservation

as a participatory process along with forest-dwelling communities. The CWH provisions offer a rigorous process for participatorily identifying, examining and ameliorating tensions, if any, between the exercise of forest rights by forest-dwellers and the needs of wildlife conservation. These provisions should not become yet another tool for the eviction of forest-dwellers but be used for creating a meaningful and inclusive conservation paradigm which is the need of the hour.



This study was a collaborative effort between the **Initiative for Community Forest Resource rights in Central India** at the Centre for Environment & Development, ATREE and the **Conservation & Livelihoods Programme** at Kalpavriksh.

Contact person: **Dr. Sharachchandra Lele** (slele@atree.org) and **Neema Pathak Broome** (neema.pb@gmail.com)

Citation: Lele S., Pathak-Broome N., Joshi A., Chettri A., Tatpati M. & Mokashi S. (2020). *Critical Wildlife Habitat: What is it, how should it be implemented, and how is it being pushed through?* Centre for Environment & Development, ATREE, Bengaluru and Conservation & Livelihoods Programme, Kalpavriksh, Pune.

Acknowledgements: The authors would like to thank Adv. Shomona Khanna (Legal Resource Centre), Purnima Upadhyay (KHOJ, Melghat), Geetanjoy Sahu (Tata Institute of Social Sciences), and Tribal Development Department, Maharashtra. Kalpavriksh's contribution is supported by Rohini Nilekani Philanthropies.

Ashoka Trust for Research in Ecology and the Environment is an academic think-tank dedicated to generating rigorous interdisciplinary knowledge for achieving environmental conservation and sustainable development.

ATREE's **Centre for Environment & Development** works in the areas of Forests, Water, and Climate Change. In the forest sector, the Centre's work aims to promote sustainable, equitable and livelihood-enhancing outcomes, and strong democratic processes in forest governance in south Asia, through the analysis of ecological, economic, cultural and institutional factors, and engaging in action research and policy outreach.

Kalpavriksh is a non-profit organization based in India. It has a 40 year engagement with research, networking, education, grassroots work and advocacy in the field of environment, ecology, development, and alternatives to mainstream development.

Centre for Environment &
Development, ATREE



www.atree.org/ced

Kalpavriksh



www.kalpavriksh.org