



Environmental Social
Justice
&
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Shri. Jairam Ramesh
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Union Ministry of Environment and Forests
Paryavaran Bhavan, CGO Complex
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New Delhi

29 May 2010

Reg.: Amendments proposed by Ministry of Environment and Forests (MoEF) during 2010 to the Coastal Regulation Zone Notification, 1991

Dear Shri Ramesh,

In this letter we offer our comments and criticisms on various proposals made by the Ministry to amend legislations relating to coastal zone regulation in India. In particular we refer to the 25th February 2010 draft Notification proposing a niche legislation for Andaman and Nicobar and Lakshadweep Islands Protection and the April 2010 pre-draft of a Notification to comprehensively amend Coastal Regulation Zone Notification 1991 along with a discussion paper inviting comments by 30 May 2010.

In highlighting our concerns and offering our criticisms, we acknowledge the following consultation mechanisms on the issue of coastal management and regulation:

1. The Expert Committee headed by Dr. M. S. Swaminathan to review effectiveness of implementation of Coastal Regulation Zone Notification, 1991, culminating in the submission of its report in 2005.
2. The draft Coastal Zone Management Notification, 2008
3. The recommendations of Parliamentary Standing Committee on Science, Technology, Environment and Forests in 2008 not to implement the CZM Notification 2008, based on an exhaustive series of meetings and site visits to various coastal areas.
4. Report of an Expert Committee headed by Dr. Swaminathan on the CZM Notification, recommending the draft notification be allowed to lapse.
5. Your initiative to drop the CZM Notification and thereafter hold unprecedented public consultations across the country towards evolving an appropriate legislation for Coastal Zone Regulation and Management
6. The release of the Report of the Public Consultation with fisherfolks and community to strengthen Coastal Regulation Zone Notification, 1991.

These initiatives clearly indicate that there has been widespread and deep debate and engagement across the country on the issue of coastal zone regulation and management, and at various levels. A primary objective of such engagements have been to identify key reasons why India's coastal areas are poorly regulated and managed.

Speaking for almost everyone, the Parliamentary Standing Committee in its report identifies that “(i)t is more the absence of firm resolve and strong will-power to enforce the regulation that has failed the notification rather than the notification itself – as is the case with most of the environmental legislation. CRZ rules are being observed more in the breach rather in adherence and this had the tacit support of the administration – Central or State or both.”

Consequently, in the report of the consultations held by you, it is acknowledged that there have been 25 amendments to the original CRZ Notification 1991 most of which are dilutions, and invariably introduced without due debate. In this context it is pertinent to highlight the summary of the report that “coastal communities, fishers in particular, appreciated the decision of MoEF to allow the draft CMZ Notification, 2008 to lapse and to reintroduce CRZ 1991 with improvements. All agree that sustainable development of coastal

areas is important. *However, they have reinforced their views that protection of coastal ecology, and basic rights and livelihood of fishers should be central to coastal zone planning. Participants have stressed that the actual drafting process of improved CRZ notification should ensure the involvement of representatives from fisher communities for achieving the desired outcome.*” (emphasis added)

Even as communities, State Governments and various other agencies were focussed on building a deeper understanding of the strengths and weaknesses and successes and failures of CRZ 1991, based on the outcomes of the consultation, the Draft Islands Notification was proposed by the Ministry. This initiative appears to be a rather hasty and poorly thought through effort and raises a variety of problematic issues including:

- 1) The CRZ Notification is now being split into various components, islands, mainland coasts, etc., the rationale for which is hardly established.
- 2) Nowhere in the nation-wide consultations was the view expressed that a separate Islands Notification was required. In case such a proposal existed, it would have been fair if the Ministry made it public during the process of consultations so that people could have debated its consequences.
- 3) Such a move belies the widespread expectation that any strengthening of the existing CRZ 1991 legislation or the promotion of a new legislation would only be done by engaging with fishing and coastal communities in the “actual drafting stage”.
- 4) Conservation of Island habitats is promoted as a technocratic exercise, with land use plans and schemes being evolved exclusively by unaccountable parastatal administrative agencies with no public involvement whatsoever, and a ritualistic public consultations are proposed to be held only after the plan is formulated – as opposed to progressive understanding that land use plans must be formulated with peoples' involvement at all stages.
- 5) The Notification attacks the fundamental need for harmoniously interpreting land use development planning in existing statutes such the Town and Country Planning Acts, district planning procedures as required by the Panchayat Raj and Nagarpalika Acts and legislations governing forests and access and utilisation of forest resources.

On the footsets of this problematic subordinate legislative initiative for Islands, we now have the pre-draft Notification to comprehensively amend CRZ 1991 – minus the islands. We are deeply concerned that this major legislative initiative is being promoted side-stepping assurances made during the consultations that a new law would be evolved based on deep and widespread debate on its form and content and that by involving communities in the “actual process of drafting”. In the instant case, a pre-draft (the legality of which is open to question) has been promoted by the Ministry even as communities are still discussing the consultation and its outcomes. The discussion paper does not rationalise the need for such a legislative exercise, especially the rush with which it is being proposed, and thus does no more justice than merely explain the legalese in the pre-draft.¹ Another alarming aspect of this pre-draft Notification is that it promotes that very type of development on the coast which was the subject of heated debate and controversy when the Ministry attempted to promote the Draft CMZ Notification.

A deeper worry is that the current move to come out with a series of Notifications for coastal regulation and management undoes substantially, and possibly permanently, the potential for coming out with a comprehensive and independent Act on Coastal Zone Regulation and Management (or whatever else we prefer to call it). Here we wish to draw your attention to the first two view points highlighted in the report on the consultations held by you. These are:

“1. All participants have strongly expressed their views to consider CRZ 1991 **without the amendments** as the base document to further strengthen the CRZ.

2. **Instead of notification, Act on CRZ will help putting a stop to frequent amendments.** However, in the absence of an ‘ Act’ , a clause must be introduced in the existing CRZ 91 notification so that any amendment to CRZ can only be done through public consultation process with the local fishers and other coastal communities. Notification and other policy documents related to coastal regulation should be made available in coastal state languages.” (emphasis added)

Other recommendations include,

¹We do acknowledge that the translation of this pre-draft and the discussion paper is a welcome move and meets with the long held demand that all Central policies and statutory initiatives must be undertaken only on the basis of active dissemination of information involved in national and regional languages, and not merely through websites.

“5. Fishing communities feel it necessary to recognize the important role of the local administration along with the active participation of coastal communities in the implementation of CRZ ; for instance in coastal mapping, in the preparation of coastal zone management plans, monitoring of violations, coastal conservation and risk reduction activities. Their functions should be well defined in CRZ. Capacity building at all levels, particularly at local administration and community level, in all these aspects is needed for the effective implementation of coastal zone regulation. **The provisions of the 72rd, 73th, 74th amendments of the constitution (which empowers Panchayats) should be made as a part of the improved / new CRZ.**

6. Fishers are of the view that related Acts and Bills which directly have bearing on CRZ like Wetland Conservation Act, SEZ norms, Marine Fisheries and Regulation bill, Forest Protection Act , Wildlife Act - impact coastal communities. Hence, these acts / bills need to be discussed and integrated in the context of CRZ to avoid controversies. There is a need to integrate all the related policies on marine and coastal areas through consultation processes under one nodal agency like MoEF.” (emphasis added)

If the purpose of the Consultation mechanism was to elicit wide public opinion to assist the Ministry in the task of conservation of coastal ecosystems, protection of traditional rights of coastal communities, and to allow only such developments on the coast that were considered acceptable in view of the Principle of Intergenerational Equity, Doctrine of Public Trust, Rio Declaration and Convention on Biological Diversity, and of course to harmoniously integrate the working of coastal regulatory framework with with Indian laws and Constitutional mandates, then the result should not have been the pre-draft as now proposed.

As it stands this pre-draft seems nothing short of a veiled attempt to resurrect proposals made in the CMZ Draft that was rejected last year, in particular, relating to promotion of Special Economic Zones for tourism, IT, and related sectors, development of airports starting with Navi Mumbai proposal, promotion of coastal nuclear power plants (such as Koodankulam that comprehensively violates CRZ 91), and thus slowly open up the coast for a variety of environmentally destructive and culturally unacceptable developments.

We beg to understand why the Consultations were held at all, if all that the Ministry intended was to expose India's coastline to all sorts of developments on the claim that these facilities needed to be in CRZ areas? Thus betraying hopes that hundreds of fisher and coastal communities had invested in their engagement with you expecting a progressive coastal regulation law that would support conservation, protect traditional rights and ensure regulation and management of India's coast would be on the basis of participatory and democratic processes of decision making. Duly acknowledging, of course, the need for harmoniously integrating traditional wisdom of coastal communities with evolving scientific understanding of dynamics of coastal ecosystems in the context of climate change and its impacts.

There are many problems with this Notification not least of which is the indication that Hazard Mapping would be undertaken. But without awaiting the enactment of this legislative proposal for such mapping you have signed a Rs. 125 crores project for mapping a Hazard line, on 12 May 2010! What then is the purpose of a pre-draft that promotes this intent, which in any case is acted upon as the nation debates the proposal? If this were the fate of this planning effort, what would be the result of other intentions as demonstrated in the pre-draft are also acted upon, such as promoting SEZ's and nuclear power plants along the coastline in a hurry?

All these factors considered, we wish to appeal to you to carefully and systematically undertake changes in law governing our coast lines. We feel such a deliberate and considered approach will have a long lasting value, and could well be the progressive footprint you would leave of the legacy of your efforts in the Ministry. If anything, legislative proposals by you should not end up in controversy, as has been the case with repetitive and lobby induced amendments to the CRZ 91 Notification.

In this context, we strongly urge you to ensure that when promoting changes to land use laws, which coastal regulation laws essentially are, the need for conformance with Constitutional requirements is not overlooked. In particular there is an acute need to conform with Articles 243 ZD and ZE of the Constitutional 74th Amendment (Nagarpalika) Act, relating to district and metropolitan planning keeping in view **“matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation”**. (emphasis added)

On the basis of these submissions, we present the following for your active consideration:

1. Abandon the exercise of the draft Islands Notification and the pre-draft resulting in a Draft Notification to comprehensively amend the CRZ Notification 91.
2. Authorise the formulation of a discussion paper on the nature of legislative changes essential in coastal laws, acknowledging strengths and weaknesses of CRZ 91 and lessons learnt from the various consultation initiatives. This discussion paper could be translated in all national and regional languages and a 3 months period could be fixed for eliciting comments from local, regional and union government agencies, from communities across India and from a variety of interest groups and networks. Special discussions may be organised in all coastal districts to ensure fishing and coastal communities appreciate the details of the changes proposed and submit their comments and suggestions.
3. The Ministry could request a Joint Committee of Parliamentarians to oversee the process of formulating an independent comprehensive Coastal Regulation and Management Bill, including for Islands, and subject this for thorough debate in all coastal States, across India and in the Parliament. The Bill could ensure harmonious integration of decision making and institutional provisions as endowed by existing statutory and constitutional provisions and also be guided by progressive national policies and international treaties.

We suggest such a deliberate process of formulating a coastal law so that we do not end up in a few years having to debate why CRZ Notification 2010 has failed us. Even if this exercise were to take upto a year, or more, to complete, the possibility is very high of prudently engaging people's time and energy, and also official time and resources in such complex legislative initiatives.

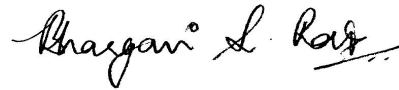
We believe that an independent Act on Coastal Regulation and Management is the correct step forward, reminded as we are by the fact that 25 amendments in 19 years of CRZ Notification 91 is a shameful outcome of relying on subordinate legislations to govern our traditional rights, coastal ecology and environment, is a clearly avoidable risk. For such subordinate legislations are highly susceptible to manipulation by lobby induced pressures and bureaucratic subterfuge as there is no Parliamentary oversight in the current scheme of law.

Thank you for your cooperation and support.

Yours sincerely,



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