

# ENVIRONMENTAL GOVERNANCE REFORMS

## Rephrasing the reform process

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### Introduction

As generally understood, environmental governance is presumably the State's broad approach to safeguarding the natural resources vested with it, from the problems of environmental degradation and the loss of biodiversity, while ensuring equity in benefits accruing from natural resources. The environmental governance 'regime' as it were, therefore explains the State's perception of natural resources and its conservation. The shape that environmental governance assumes in India shows that governance begins (and almost ends, as this paper shows) with promulgating a system of official, formalised laws and policies. A look at the recent 'green' and 'brown' environmental histories of the country shows that the fragile status of specific environments and ecosystems, and the impacts of specific activities have driven and defined environmental legislation. Examples are the 'Ecologically Fragile Area' of Dahanu *taluka* in Maharashtra<sup>1</sup> or the Coastal Regulation Zone Notification<sup>2</sup> (issued to check unregulated development on the coast). Central to these legislations is the government's duty of regulating these activities and monitoring sensitive or protected ecosystems. The 'environmental clearance' procedures and associated laws therefore become very critical to this analysis of governance and the reform process executed by the Ministry of Environment and Forests (MoEF) with funding from the World Bank. This paper relies on a range of carefully deliberated opinions from civil society groups<sup>3</sup> addressing the governance reform processes and in doing so highlights the problems entrenched in the process.

The reform process does not refer to one particular project or a specific event, and therefore has no clear start date. However, simply from a chronological view, the World Bank assisted Environment Management Capacity Building (EMCB) Technical Assistance Project, appears to have precipitated a number of government actions that point in the direction of governance reform<sup>4</sup>. Another important catalyst appears to have been the Govindarajan Committee Report on Investment Reforms, which identified several hurdles in the environmental clearance process. The table below provides a chronology of actions that compose environmental governance reform. In order to arrive at some understanding about the direction and intent of this reform process, a few of these changes and recent civil society actions are examined here. Among these reform actions, we examine the National Environment Policy (NEP), the process of 'reengineering' environmental clearances, the changes made to important legislations such as the Environment Impact Assessment Notification, 1994 and the Coastal Regulation Zone Notification, 1991. The reform process is also understood by aspects on which there has also been no action, and we examine some of these as well. The Wildlife Protection Act, 1972 is examined to understand the advances made in promoting ecological science-based assessments. All these point to interesting times ahead for the environmental movement in the country.

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<sup>1</sup> Declared by official gazette dated 20<sup>th</sup> June 1991.

<sup>2</sup> Notification S.O 114(E) declared issued on 19<sup>th</sup> February 1991.

<sup>3</sup> This study relies on the impressive list of reviews and critiques that were already undertaken by civil society groups in the reform process, namely the various Open Letter sent between 2004 and 2006, discussions on e-groups, the various campaign letters and press releases issued by the Campaign for Environmental Justice in India and many more civil society analyses which are references in this document.

<sup>4</sup> The MoEF note titled '*Reforms in the Grant of Environmental Clearances*' states, 'In order to further improve the EC process and to make it more effective and time-bound, the MoEF had undertaken a comprehensive review of the existing EC process as a sub-component of the World Bank assisted Environment Management Capacity Building (EMCB)' (Anon, 2004).

*Table: Chronology of actions for environmental governance reforms in India*

<b>Changes related to environmental governance</b>	<b>Date</b>
World Bank assisted EMCB	2001 to 30 <sup>th</sup> June 2004
Govindarajan Committee Report - ' <i>Reforming Investment Approval and Implementation Procedures</i> '	November 2002
ERM report on environmental clearances released for comment	May 2003
NEERI's EIA manuals	Produced in 2003
New Environment Policy (NEP) – Draft uploaded on the MoEF website	15 <sup>th</sup> August 2004
MoEF's documented titled ' <i>Reforms to Grant of Environment Clearance</i> ' shared with select civil society representatives	November 2004
MoEF meeting with select NGOs to discuss Reforms in Environmental Clearances	29 <sup>th</sup> November 2004
Open Letter titled ' <i>Will the Draft National Environment Policy really Safeguard India's Environment</i> ' signed by 92 organisations sent to MoEF	29 <sup>th</sup> November 2004
1 <sup>st</sup> Deadline to receive comments on the NEP	30 <sup>th</sup> October 2004
MoEF meeting with select NGOs to discuss the NEP	30 <sup>th</sup> November 2004
2 <sup>nd</sup> deadline for public comments on the NEP	15 <sup>th</sup> December 2004
NGOs petition the National Advisory Council (NAC) on their concerns with the NEP	November-December 2004
3 <sup>rd</sup> deadline for public comments on the NEP	31 <sup>st</sup> December 2004
Meeting with NAC, select NGOs and the MoEF on the NEP	8 <sup>th</sup> April 2005
Swaminathan Committee constituted for review of the CRZ Notification	19 <sup>th</sup> July 2004
Swaminathan Committee Report submitted	February 2005
'Secret' version of NEP uncovered by civil society	July 2005
Over 70 organisations send an Open Letter titled ' <i>Please Make the National Environment Policy Public Before Finalisation</i> '	26 <sup>th</sup> August 2005
Draft EIA Notification	15 <sup>th</sup> September 2005
Coastal Management Zone document	May 2006
Revised version of the draft EIA Notification shared with industry associations and central government ministries	May 2006
Over 2600 post cards sent as a campaign highlighting poor public participation in drafting the NEP	April 2006
National Environment Policy – Approved by Union Cabinet	May 2006
New EIA Notification, 2006 issued by MoEF	14 <sup>th</sup> September 2006

## ***I. THE BUILD-UP TO THE REFORM AGENDA***

The discussion below is structured into examining the substance and the process of the reform agenda. The paper looks at common trends between all the outcomes of the reform process, examining certain commonalities that are advocated, the space for participation and how well these actually facilitate industrial growth and public access to information. The NEP itself states that governance involves transparency, participation, equity and so on. Hence the analysis hinges on this.

### ***1. The EMCB and environmental reforms***

Among the various components of the World Bank driven environmental capacity building (under the EMCB project), the MoEF awarded a contract to the National Environmental Engineering Research Institute (NEERI), Nagpur to produce a National Guidance Manual on EIA Practice with support manuals

on select development projects 'to enhance the quality and effectiveness of Indian EIAs' (NEERI, 2003). The NEERI manuals do not deal with the problems associated with the overall clearance processes, but aim only to assist project proponents with well done EIA reports. Even as only EIA guidance manuals, NEERI's exercise was not without flaws. The NEERI manuals do not require project proponents to provide information regarding 'options assessments' or a 'least cost (social / environmental) plan'. On the contrary it has been alleged that the NEERI manual provides a format that encourages the mere application of mitigation or restorative measures to redeem development activity even where negative impacts are clear (Manju Menon, *pers. comm.*). It is not known what the status of the NEERI manuals currently is and whether they are being adopted as part of the environmental clearance protocols.

India's environmental governance history, particularly its Environment Impact Assessment (EIA) programme, is informed by a steady body of analysis from citizen groups all across the country on various aspects such as public participation, the quality of assessment reports, the overall clearance procedures and so on (Lockhart, W. *unpublished data*). At the final stages of the World Bank's EMCB project, the Indian branch of the world-wide consultancy group Environmental Resources Management (ERM) prepared and submitted to the MoEF, a report on environmental clearances which it described as a review of procedures and practices of environmental clearance in India to identify problems, bottlenecks and constraints and recommended measures for making the EIA process more effective (ERM, 2003). Much of the information on the governance process in the country has been pieced together from various notes and documents that civil society groups have been able to gather. Much of the account provided in this paper is also constructed from discussions on e-groups and information shared at official meetings with the MoEF.

Both ERM and NEERI organised workshops on their respective outputs. However, invitation to these meetings was exclusive and not advertised, nor was there enough time to allow for studied inputs on these processes from the public. Each of the meetings however provided further insights into the steps towards the ostensible reform process. Environmental groups mention the links between subsequent reform actions and the World Bank's EMCB project. Notwithstanding the fuzziness in the paper trail leading from the EMCB project to the National Environment Policy or the new EIA notification, the build-up to the same is perhaps much too obvious to require any further substantiation.

## *2. Role of the Govindarajan Report in reform of environmental clearances*

On 29<sup>th</sup> November 2004, the MoEF organised a meeting to discuss reforms to the environmental clearance (EC) process. At this meeting, the MoEF circulated a note to the few NGOs who attended it titled '*Reforms in the Grant of Environmental Clearances*'. The note states that the Govindarajan Committee identified certain problems with the environmental regulation framework, which inhibited investment in the country. Specifically, the note mentions that existing environmental regulations are a) Time consuming and require undue effort, b) Entail a cumbersome process, where disproportionate details are sought with EC applications, delays take place in appraisal meetings, c) Technical issues are reopened at various stages of appraisal, d) EIA studies are of a poor quality leading to suboptimal regulation, e) there are delays by other concerned agencies. The MoEF note concludes somewhat superfluously '*these delays / hassles do not add to improvement in the EC process*'.

The note also clearly states that consultations were held with representatives of industry, Central Ministries and State Governments and that international best practices were also studied in putting together the document. The note mentions that the Draft Report prepared by the (ERM) consultant was '*reviewed intensively by the MoEF in light of the recommendations of the Govindarajan Committee*<sup>5</sup> set

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<sup>5</sup> The Govindarajan Committee was set up by the Cabinet Secretariat in September 2001 to recast the government's investment approvals and regulations framework by examining extant procedures for investment approvals and implementation of projects and suggest measures to simplify and expedite the process of both public and private projects.

*up by the Central Government for reforming regulatory approval procedures for investment in developmental activities*'. This is not the last time the Govindarajan Committee is mentioned in the entire reforms process. The note was therefore a significantly modified version of the recommendations that ERM proposed in its draft. The note called for major revisions in the EC process including a revised categorisation of industries, a revised screening and scoping process, public consultations and participation, revised decision-making agencies. This has been reviewed in detail in Kohli and Menon, 2005. A group of citizens signed another Open Letter addressed to the Prime Minister with their critiques on the environmental clearance process ( Open Letter, 2005b). This note on environmental clearance reforms finally took the shape of the draft EIA Notification.

At the first meeting of the Swaminathan Committee constituted to review coastal legislation, the Secretary, MoEF stated that the review of the CRZ Notification was included in the draft NEP (Anon, 2004a). The Terms of Reference of the Swaminathan Committee states that the committee was to suggest suitable amendments to the CRZ notification based on established scientific principles of coastal zone management (Anon, 2005).

### ***Outcomes of the Environmental Reform by the MoEF***

#### ***1. The National Environment Policy***

Introduced in 2004, and approved by the Union Cabinet on 18<sup>th</sup> May 2006, the National Environment Policy (NEP) has been under fire from the start. After the initial discussions on the ERM drafts and so on, NGOs chanced upon the National Environment Policy. Between the time it was initially opened for comment and its finalisation, there has been a fair amount of scrutiny of this document by civil society groups and very poor discussion in response, from the MoEF. The MoEF did not respond to any of the Open Letters send by organisations outlining concerns with the NEP (See Table showing Chronology of actions for environmental governance reforms in India).

In its current form, the NEP outlines a set of Objectives (including inspiring topics such as Inter and Intra Generational Equity and Integration of Environmental Concerns in Economic and Social Development and Environmental Governance) and Principles based on which future legislations would be developed. It also outlines a set of Strategies and Actions, which would operationalise the objectives and principles. Under this section, Regulatory Reform 5.1 is perhaps the most explicit. It calls for revisiting the policy and legislative framework. Under Process Related Reforms 5.2, there is reference to the Govindarajan Committee recommendations that identify delays in obtaining forest and environment clearance as the biggest obstacle to development / investments.

The process followed in producing the NEP has met with strong disapproval from civil society groups. The haste and defensiveness with which the NEP was introduced prompted several groups to question what was driving the NEP. As several groups have pointed out, although there were many critiques and suggestion made earlier on the environmental policies of the government, the NEP does not deal with any of these. There are several critiques that state that the content of the Preamble which introduces the scope and intent of the NEP are largely unconnected to most of what lies between its impressive covers (Kothari, 2004b; Open Letter, 2004; Upadhyay, 2004a; CSS, 2004; TBS, 2004a; TBS, 2004b; TBS 2004c; Ghotge, 2004; Lele and Menon, 2005;). It has been one of the most controversial policies to be introduced and has seen one of the most strident opposition from citizen groups.

#### ***2. Environment Impact Assessment Notification, 2006***

The EIA Notification was introduced in 1994 as the only method to assess environmental and social impacts of development projects. The performance of the EIA Notification is one of the important ways of sizing up environmental governance. The EIA notification had several faults with it which have also been well documented in NGO reports and other publications (Kothari, 1998; WCD, 2000; Saldanha,

2002; Menon et al, 2003; Vaghlikar and Moghe, 2003; Lockhart, 2004; Chaturvedi, 2004; Panini, 2005; Kohli and Menon, 2005;). These critiques have dealt in great detail with the problems with faulty EIA reports, non-functional public hearings, violations of the provisions of the EIA Notification, and problems in the content of the EIA Notification itself and its various amendments. These suggest inherent problems in environmental governance beyond mere delays and cumbersome regulatory requirements, namely that of corruption, lack of transparency and poor accountability of regulatory authorities.

Drawing inspiration from the 'reengineering EC' process outlined in the MoEF note on reform EC processes, a reengineered EIA Notification was issued for public comment on the 15<sup>th</sup> September 2005. This new EIA was introduced at a time when various citizens groups were still actively petitioning the MoEF and the National Advisory Council on the NEP and the EC process. There are strident appraisals of the new EIA notification and these have been communicated to the MoEF (Open Letter, 2005b; Open Letter 2006; ESG, 2006; Lockhart, 2006).

### *3. Swaminathan Committee Report and the Coastal Regulation Zone (CRZ) Notification, 1991*

In July 2004, the Ministry of Environment and Forests (MoEF) set up an Expert Committee headed by Prof. M.S. Swaminathan to carry out a comprehensive review of the CRZ Notification. Its stated objective was to enable the MoEF base coastal regulations on strong scientific principles and to devise regulations that would meet the urgent need for coastal conservation and development / livelihood needs. The Swaminathan Committee submitted its report in February 2005, a month after the Indian Ocean tsunami.

The Swaminathan Committee was constituted in the backdrop of the environmental reforms process. The Secretary of the Ministry of Environment and Forests, Dr. Pradipto Ghosh stated in the first meeting of the Swaminathan Committee that the draft NEP included revisiting the CRZ notification which led to the constitution of the Swaminathan Committee. He is also quoted in the minutes as stating that the NEP recommended to the extent possible decentralization and exempting activities from the purview of the regulation which do not cause significant environmental impacts (Anon, 2004a).

The United Nations Development Programme (UNDP) commissioned a Review of the Swaminathan Committee Report after the latter was released (Sridhar et al. 2005). The reviewers provide an exhaustive analysis of this report and sum up their assessment of the report as a scientific document stating: *Much of the Swaminathan Report is built around advocating for change from mere regulation to Integrated Coastal Zone Management (ICZM). Chapters 3 and 4 of the Report provide the ideological basis for the new changes in legislation recommended by the Swaminathan Report. Principally, the reviewers highlight that the final chapter and the annexes outlining the structure and mechanism for implementing the National Coastal Zone Management Action Plan were completely unrelated to the analysis and recommendations of the earlier chapters.*

In May 2006, a document was obtained by the Goa Foundation and circulated among civil society groups, titled 'Coastal Management Zone'. This document is identical to the annexure contained in the Swaminathan Committee Report which is a design for the new coastal regulation framework. As stated by the reviewers of the Swaminathan Report, the annexure was not based on any scientific principles and was in fact completely contrary to the positive elements contained in the first few chapters of the Swaminathan Report. Although the Review of the Swaminathan Committee Report contains several constructive measures to take forward the concept of Integrated Coastal Zone Management advocated in the report, the MoEF has not responded to these suggestions till date. Instead there is information that the MoEF is currently exploring ways to implement the suggestions of the Swaminathan Committee and has already drafted a notification based on the report, despite its serious shortfalls (Sridhar, A. *pers. observation.*)

Many fisherfolk unions, coastal community groups, environmentalists and researchers have voiced their concern with the new CMZ which appears to be a draft of the new coastal regulation notification (Anon,

2006b; Anon, 2006c; NFF, 2006). The MoEF however claims this to be a preferable option than CRZ (MoEF, 2006b).

## **II. THE PROCESS OF REFORM**

### *a. National Environment Policy*

The objective of 'Environmental Governance' that is outlined in the NEP aims '*To apply the principles of good governance (transparency, rationality, accountability, reduction in time and costs, participation, and regulatory independence) to the management and regulation of use of environmental resources.*' At the very outset, the NEP claims to have been prepared through a process of extensive consultation with experts, as well as with diverse stakeholders, and that the process was well documented. NGOs have commented that there is no evidence to corroborate the same.

The New Environment Policy (NEP) was drafted by the MoEF and put on its website in August 2004. Despite being a policy that essentially set the tone for environmental governance and therefore having far reaching consequences on future legislation and practice, there was no public consultation in its drafting. Several civil society groups across the country stated their serious objection to this drafting process (Open Letter, 2004a). Leo Saldanha of the Environment Support Group states that there was no intimation of this promulgation in any of the leading newspapers, a procedure which even the Planning Commission and the Law Commission follow. Several groups have termed this process undemocratic (Open Letter, 2004; Sharma, 2004).

Videh Upadhyay a senior lawyer in the Supreme Court criticises the single option exercised by the MoEF of providing a pre-prepared draft as a policy making-methodology. He provides a range of options that include translations of drafts, taking conferences and consultations outside New Delhi, preceding conferences with adequate advertisement in the local media, actively involving citizens and 'citizen experts', open, transparent and video recorded proceedings at conferences, publicly available proceeding copies to parliamentarians, local elected representatives, experts, counter experts and NGOs (Upadhyay, 2004b). He argues that the environmental policy formulation process should not have been reduced to an editing exercise and that the text should instead evolve from pre-identified points that set the framework for deliberations.

In response to the heavy criticism of the 'undemocratic process followed in drafting the NEP, the MoEF organised a one day consultation in New Delhi (29th November 2004) on the NEP. Despite there being atleast 92 signatories to the Open Letter sent to the MoEF on the Draft New Environment Policy, only a handful of NGOs were invited (Kohli and Menon, 2005). The MoEF subsequently put a notice (on its website once again) extending the last date for receiving suggestions from the public to 15th December 2004. Several groups petitioned the National Advisory Council (NAC) about their concerns with the NEP. At the NAC's behest, another consultation was organised by the MoEF on 15th February 2005. At this meeting, NGOs once again fuelled the concerns with the substance and process of the NEP. Officials at this meeting were unable to provide satisfactory responses to several points that NGOs raised. One of the main issues with the NEP is that existing critiques and reviews of environmental policies were simply absent from the purview of the NEP and not even referred to in its text. In response to these criticisms, the MoEF officials have unimpressively argued out a range of inanities such as 'policy documents cannot have references' and so on (Kothari, 2004a). Ironically, the NEP instinctively highlights the recommendations of the Govindarajan Committee repeatedly. The firm reference to these recommendations in the entire reform process sets the tone for all the 'reformatory' actions of the State. In July 2005 a few individuals chanced upon a revised copy of the NEP which was marked as 'secret' on every page. NGOs once again recorded their consternation at this step, with the MoEF in the form of an Open Letter to the Prime Minister of India urging that the NEP be widely circulated and discussed using the vast machinery of the State Pollution Control Boards, the Forest Departments and the State Departments of Environments (Open Letter, 2005c).

### *b. Swaminathan Committee Report and the proposed CMZ Notification*

With the Swaminathan Committee, the MoEF chose a slightly different strategy. The MoEF announced the constitution of the Committee on its website. By its own admission, no workshops were held to deliberate on the recommendations of the Swaminathan Committee (MoEF, 2006c). The Minutes also state clearly that State governments were also not consulted for the report. Even after the report was made public, the MoEF did not solicit comments or suggestions from the public although they might publish an amendment in future based on the Swaminathan Report. The Report also does not append any of the suggestions that were made in the only two meetings that the Swaminathan Committee had with select NGOs (Sridhar et al, 2005). The CMZ draft has not yet been circulated formally to either state governments or citizen groups across the country. Various environmental NGOs, community groups and trade unions have protested against the CMZ and the Swaminathan Committee Report, but the MoEF has issued no formal response to these.

### *c. New EIA Notification, 2006*

Consultations on the draft notification were held only with representatives of industry and central government agencies, as per the Ministry's own submission. State governments, Panchayats and municipalities, NGOs, trade unions and local community groups were partially or completely kept out of the process. The EIA notification, 2006 was re-drafted after being uploaded on the MoEF website for public comments. However this version was not shared with the civil society groups, before the final notification was issued in September.

A letter from the MoEF in response to an application for Right to Information on the process of consultation followed in drafting the EIA Notification, clearly states that the MoEF held meetings with apex industry associations, namely CII, FICCI, ASHOCHAM, and CREDAI. It also mentions that the comments of the apex industry associations were under review, but fails to even acknowledge the range of comments sent by civil society groups (MoEF, 2006a). This inherent bias of the Ministry to negotiate with industry on what an environment regulation should be, is clear from the text of the notification as well. The MoEF admitted that it was on the direction of the Prime Minister's Office that meetings were organised with Apex Industry Associations, and that a revised draft notification was shared with industry (Open Letter, 2006; Kohli & Menon, 2006; MoEF, 2006a.).

With the EIA notification, the Campaign for Environmental Justice in India, a citizens' initiative, lobbied with several parliamentarians and even got the parliamentary standing committee to write to the PM to put the EIA notification on hold. Several parliamentarians (including members of the CPI (M), the CPI, INC, the SP, All India Forward Bloc, AIADMK, and the PMK) supported the Open Letter from citizens raising concerns about the lack of a transparent and consultative process undertaken by the MoEF to draft and finalise the new 2006 notification (Open Letter, 2006).

## **III. BROAD CONCERNS WITH THE REFORM PROGRAMME**

### ***1. Decentralisation as a reformatory step***

The NEP and the EIA notification and the new CMZ draft advocate decentralisation without giving any real thought to the existing capacities with the agencies at the state and local levels. A serious concern with the unbridled decentralisation espoused in the reforms process is the reluctance of state agencies to implement environmental regulations themselves. The implementation of the CRZ notification is a good example of the complete neglect of the law exhibited by the state governments. Besides various NGO reports that outline this, even the Swaminathan Committee Report acknowledges this. At the very first meeting of the Swaminathan Committee, it was observed that the coastal states had failed to prepare the Coastal Zone Management Plans for nearly 12 years, despite being ordered to do so by the Supreme Court of India. The Committee has also noted that there are rampant violations of the CRZ notification in every

coastal state (Anonymous, 2004). As further evidence, there are several press reports articulating the state government's refrain on 'relaxing' the CRZ's norms (NST, 2002; Kumar, 2003). Coastal spaces are increasingly being coveted for developmental purposes. The CRZ notification was introduced in the first place to check the rampant development on the coast. The demands on the coastal ecosystems today have only intensified. Far from being a reformatory step, it would be considered reckless and irresponsible, were the MoEF to completely hand over its duty of ensuring the implementation of the CRZ notification to state governments.

Similarly, the new EIA Notification, 2006 arbitrarily hands over the function of clearing certain categories of industries to the state governments, without any mention of what the clearance process at the state level should comprise of. Here state governments have also been given the powers to decide which of these projects require public hearings and which do not. Given the political climate in the country which is geared towards lifting all regulatory 'hurdles', this will give rise to unregulated development across the landscape.

Civil society groups have pointed out the attempt to obfuscate the true intent behind the decentralisation move. They state that the concept of decentralisation is not the mere handing over of powers from the Centre to the state. It is about devolving powers to people. In the environmental reform process, there are several areas where this true definition of decentralisation finds a necessity. These are areas of devolving information to people about projects, building capacities of people and local government bodies to understand and appreciate environmental issues (Manju Menon, *pers.comm.*)

## ***2. Industry-friendly aspects of the environmental reforms***

The concerns highlighted here are drawn from the numerous petitions, letters, and analyses undertaken by various civil society groups across the country. Only select analyses are presented here, which serve to illustrate the argument made in this paper on the nature of the reform process.

### *a. National Environment Policy*

- The NEP states at the outset that other policies have attempted dealing with the question of sustainable development and have formulated specific strategies to deal with these. Although it purports to extend the coverage and fill in gaps that exist in existing policies in light of the present knowledge and accumulated experience. It claims not to displace but build on the earlier policies (MoEF, 2006). At a meetings that the MoEF held with the National Advisory Council and NGOs certain questions were raised but unsatisfactory answered by the MoEF (Lele, 2004, *pers.comm.*):
  - a) What is the reason to produce an NEP when there are existing sectoral policies (forest, water, biodiversity, pollution)?
  - b) Even so, what is the reason for doing this with particularly tight deadlines?
  - c) Does the NEP, when finalised, automatically replace the sectoral policies?
- The citizen action around the NEP has been most timely and well documented. There are a detailed set of critiques of the NEP which contain detailed analyses of its content and process (See Section I on Build up to the Reforms Process on page 4). Lele and Menon identify many problems with the muddled language used in the NEP. Anthra of Hyderabad have stated in their review "*While at first glance the Policy appears to be a comprehensive document covering a wide range of issues, at closer reading it is evident that the policy content and approach take their cue from the myriad International agreements India is a party to, and does not in anyway stem from a genuine interest to protect the interests of the poorest sections of Indian society who are most dependent on the environment for their livelihood and survival*" (Anthra, 2004). It is incorrect to assume that all the criticism from citizen groups has not been constructive. There are many suggestions from civil society groups on how the process can be taken forward.
- T. Mohan, an advocate from Chennai specialising on environmental public interest litigation, comments about the NEP: "*a) the draft speaks of the precautionary approach, which is a step down*

*from the precautionary principle. b) the draft in the section on polluter pays while speaking of strict liability (where liability can be avoided on some grounds) does not speak of absolute liability (the no exceptions rule). Both the precautionary principle and the absolute liability principle (for hazardous industry) are part of regulatory jurisprudence thanks to the Oleum Gas Leak case, the Vellore Tanneries case, the Bicchri case and the M.V. Nayudu case. So as a restatement of the law, the NEP falls short of reflecting current trends' (T. Mohan, pers.comm.).*

*b. EIA Notification, 2006*

- Based on how much area the project impacts, some projects will only need clearance at the State level- but out of these projects, the State government has total discretion on whether to require an environmental impact study or a public consultation at all. No criteria are given for deciding which projects need impact studies / public consultations – so every project at this level could be exempted.
- Construction projects are exempt from any study of environmental impact and any public consultation in all cases. Power plant projects of less than 500 MW, cement plants of less than 1 MTPA capacity, real estate projects affecting less than 20,000 sq m are among a large number of project classes that are granted complete exemption from the notification itself.
- The new EIA Notification imposes extremely short time limits on the assessment process, where a project application is deemed accepted if government agencies do not respond within the specified time limit. This encouraging collusion between government officials and project proponents. In contrast, however, the validity of clearances has been extended to ten years (instead of five).
- The new EIA Notification contains no provision whereby the government has a responsibility for ensuring compliance through environmental monitoring – the only requirement is a six monthly compliance report by the project management themselves.

*c. Proposed CMZ notification, 2006*

There are a number of problems with the new CMZ Notification, which was initially annexed in the Swaminathan Report.

- The most serious concern identified by several groups is that the earlier there is no clarity on the issue of violations that are yet to be booked and penalized under the 1991 notification. The recommendations of the Swaminathan Committee do not anywhere state that violations committed under the 1991 notification must be dealt with before any new notification is considered.
- In its letter to the MoEF, the NFF states that the zonation proposed by the MS Swaminathan Committee, particularly CMZ II, is not acceptable, given that it is likely to pave the way for unsustainable developmental activities in large areas of the coastal zone that can be classified as CMZ-II (NFF, 2006).
- It has been felt that the change terminology from 'regulation' to 'management' as suggested by the Swaminathan Report is a cosmetic one, designed to deflect attention from the actual industry friendly options of the new notification.
- There is also no definition of what would constitute a 'vulnerability line' and whether this would mean the same thing as a 'setback' line. In the event of that, there is further fogging on the rights of fishing communities.
- Special Economic Zones (SEZ) have been permitted in the CMZ – II areas ignoring the overarching concern that SEZs allow an easy justification for industries on the coast.

**3. Access to information and public participation in the reforms**

*a. EIA Notification, 2006*

- Public hearings now need not be held when the government feels "conditions are not conducive", in practice meaning any controversial project will escape a public hearing. Only the draft EIA report

needs to be made available before the hearing. The right to attend public hearings or give comments is only for those who have a “plausible stake in the environmental aspects of the project”, providing discretion to the government to exclude anyone it deems as not having a “stake.”

- The notification also reduces access to the EIA document from a mandatory one to that of being made available upon written request. This clearly violates the order of the Supreme Court of India which mandates that access to public records with the environment protection authorities should be freely allowed. Clearly such a direction is inconsistent with the requirement of written requests.

#### *b. Swaminathan Committee Report and CMZ*

- While the Swaminathan Report provides an alternative structure for coastal management, it does not really tackle the problems with the existing notification, which is presently in force.
- While discussing the implementation strategy of the CRZ and the requisite institutional infrastructure there is no mention in the Report of state departments of planning, municipal offices and other local bodies, panchayats and their roles in either the old or new management framework.
- Part I (e) of the new CMZ document defines ‘Public Consultation’ as the term notified in the Environment Impact Assessment Notification, 1994 as amended. Considering the problems with public consultations in the EIA Notification, 2006 there is no meaning in making it a reference point for CMZ (Anon, 2006).

#### **4. Environmental reforms and research**

It has been the lament of the entire reform agenda that current regulations are not science based (Anon, 2004a; MoEF, 2006). Several regions of ecological importance in India, such as the North East, where large development projects are proposed or already underway, are dreadfully under-studied. Therefore, it may not even be possible to estimate biodiversity losses in these regions (Menon et al, 2003).

Baseline information on ecosystems, species and environmental parameters is critical to assessments of development projects. Despite the presence of a number of scientific institutions in the country, there is still a great dearth of information on the health of critical ecosystems and endangered species. Bawa comments ‘...the rapid degradation of habitats in the hotspots makes it imperative that science be pursued vigorously in these habitats so that we can devise adequate measures to curtail rapidly diminishing biodiversity and protect unique biotas from the onslaught of humanity’ (Bawa, 2006). The reforms process does not even touch upon this aspect of improving baseline information or scientific research and management as a means to enhance environment protection in the country. Although even the Govindarajan Committee recognised that EIAs were being shoddily drafted, the problem of poor baselines and hurdles to scientific research has not been addressed at all.

The Wild Life Protection Act, 1972, is one of the central laws governing areas of biological diversity designated as Protected Areas, comprising of Wildlife Sanctuaries, National Parks and more recently, Community Reserves and Conservation Reserves<sup>6</sup>. Research in these critical ecosystems and on species that are listed on the WLPA’s Schedules require the permission of the Forest Departments.

In a recent article in Current Science, Madhusudan et al state ‘At a time when there is a pressing need to advance our knowledge about nature and its interaction with society, the very bureaucracy that is supposed to encourage, facilitate and nurture scientific inquiry has been increasingly placing hurdles in the conduct of scientific research in our wildlife reserves. Scientists from a variety of disciplines and across a range of institutions are being arbitrarily denied access to wildlife reserves for research, or offered restricted access by forest departments’ (Madhusudan et al, 2006).

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<sup>6</sup> The WLPA was amended in 2002 to include these.

The authors identify problems with the Wildlife Protection Act, 1972 which they state does not have a policy framework which facilitates scientific research in protected areas. They state that the provisions related to permitting research activity are dealt with in the same manner as hunting is, since both subjects are located in the same provisions of the WLPA. The decision-making powers here lie with the Forest Department, historically vested with policing powers and experience in wildlife management that does not extend beyond this duty. Researchers have spoken out on the problems they have been facing in conducting ecological research particularly on sensitive habitats and species since they deal with a bureaucracy that neither has the expertise to decide on these matters nor the perspective that sees a value in science based management (Bagla, 2006).

It is indeed ironic that the governance process turns a blind eye to the problems inherent in the other laws, such as that of gaps in information and poor access to available information. Dr. Kartik Shanker, of the Centre for Ecological Studies comments on the paradox of the way the precautionary principle functions, *'On the one hand the WLPA's provisions are so stringent that local inhabitants such as tribal groups living in and around PAs and researchers need to prove that they do not cause ecological impacts. On a completely different plane, the changes to the EIA Notification almost squarely place the onus on the conservationist to prove that there will be a negative impact from development project, even if both these take place in the same area.'* (Kartik Shanker, *pers.comm.*).

## **V. CONCLUSION**

The environmental governance regime was fraught with problems to begin with. Did the reform process set right the wrongs of the past? Was 'reform' the result of the various actions the MoEF initiated with the endorsement of the World Bank? The discussion above and the careful examination of the entire process and substance of reform makes certain things clear. The environmental governance reform process has been true to its objectives. It was driven by the recommendations of the Govindarajan Committee and has dutifully adhered to these.

The new governance regime is centred on the established and (an assumed) indisputable need to facilitate India's economic development. The NEP and its operational notifications also work under the assumption that the nature of this development need not be contested. The new EIA Notification does not facilitate more public hearings while allowing for relaxations in environment clearance process. It is not seen as necessary for the public to have access to the final EIA report prepared by the project consultant. Post-clearance monitoring by the government does not even find mention in the text of the new EIA Notification, which imprudently relies on the goodwill of project proponents to ensure compliance. Not to be outdone, the CMZ document purges itself of any reference to public participation in its text, despite its source document, the Swaminathan Committee Report itself confessing poor public participation in the present CRZ notification.

In an uncomplicated reflection of the clearance experience, we see that public scrutiny can expose faulty EIAs, expose problems with the social, environmental and even economic viability of development projects, can require fresh studies and public hearings or an eventual return to the start of the clearance process. In straightforward terms, in case public opposition is strong, 'development' projects can be delayed or even stopped, jeopardising investments. The Govindarajan Committee warned against this scenario, and the MoEF has responded to this clarion call to safeguard investments, through the above described process of environmental governance reform.

The NEP, the new EIA Notification, 2006 and the CMZ document all espouse the mantra of governance and development through decentralisation. This argument for decentralisation is a mischievous one because it neglects the volumes of data presented to the MoEF by civil society groups over the last decade on problems it entails. The experience so far has been one where state governments have not been able to appreciate / respect or even deliver on environmental governance. Many of these agencies do not have the

capacities to understand or even make environmental decisions (Open Letter, 2005a). The new EIA Notification for example does not even outline the expert committees that will clear Category B projects. The decentralisation programme ignores the influence of market forces on the political and bureaucratic machinery in a socio-political context fuelled by corruption. As in the case of the Kudremukh Iron Ore Company Limited, in Karnataka, state governments elsewhere have even sought rescinding of judicial orders that mandate environmental restrictions.

There are several environmental laws and regulations in the country that apply to anthropogenic activities, particularly to industries and infrastructure projects. However the environmental clearance reform focus is limited so far to changing firstly the EIA Notification and then the CRZ Notification. Other environmental laws (such as the Wildlife Protection Act, 1972 or the Air Act and Water Act) have received no attention in this reforms exercise. The biggest problem with the environmental governance reform process that the MoEF as initiated is the lack of consistency and the yawning gap between what is espoused and what gets delivery. The reforms process spawned a number of paradoxical situations like the NEPs statements on participation and the absence of any in its own creation. The civil society response on these governance changes has been phenomenal and was deserving of some attention at the very least. The above paper 'rephrases' the reform process in that it piece together a scenario from opinions that have largely be unattended to thus far. An examination of the civil society responses, and the comparison of the verbalisations and actions of the reforms process, reveal why a situation of conflict brews in the country over the matters of environmental governance. Ignoring the wrongs of the reform process and pressing forward would only fuel further conflict.

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