

Coastal Land Rights of Fishing Communities

# Claims for survival



**Citation:** Rodriguez, S. 2010. *Claims for Survival: Coastal Land Rights of Fishing Communities*. Dakshin Foundation, Bangalore, p42.

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**Funding support:** The Duleep Mathai Nature Conservation Trust supported the research and production of this report.

**Design and edits:** Aarthi Sridhar

**Cover photograph:** Fishing village of Gopalpur competes for space with tourist facilities, South Orissa. Aarthi Sridhar, 2010

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## Abbreviations

CEE	Centre for Environment Education
CMFRI	Central Marine Fisheries Research Institute
CMZ	Coastal Management Zone
CRZ	Coastal Regulation Zone
MoEF	Ministry of Environment and Forest
NDZ	No Development Zone
NFF	National Fishworkers' Forum
OTFWU	Orissa Traditional Fish Workers' Union

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## Acknowledgements

The author would like to thank the following people for making this report possible:

The late Harekrishna Debnath, Former Chairperson National Fishworkers' Forum (NFF) for patiently spending time and giving his inputs, guidance for the study and most importantly for sharing his vast life-long experience of the Indian coast and its fishing communities.

Gomathy Balasubramanian, Tata Institute of Social Science and colleagues Shiny M.P, D. Mohanambigai and P. Jaiprakash who were part of the team of the United Nations Development Programme Project - Post Tsunami Environment Initiative (PTEI) implemented by the Coastal and Marine Programme of Ashoka Trust for Research in Ecology and the Environment, which studied fishing community governance, community perceptions of resources, policy and development.

V. Vivekanandan, South Indian Federation of Fishermen Societies (SIFFS), who took time out for detailed feedback and inputs to the report.

John Kurien, who despite being in the process of wrapping up and moving out of Aceh, sent his valuable comments and feedback.

Raja Swamy who was jointly involved with data collection and mapping for the beach space study walking and motor-biking along the beaches of Nagapattinam in the peak of summer.

Ossie Fernandes, Coastal Action Network (CAN) and Jesu Retinam, SNEHA who provided their invaluable information, support, ideas, thoughts and feedback.

The team at the International Collective in Support of Fishworkers (ICSF) for their support and access to their invaluable documentation centre and resource material.

Colleagues at Dakshin, Kartik Shanker, Aarthi Sridhar, Naveen Namboothri and Meera Anna Oommen for their constant understanding, assistance and support throughout the project and in the finalisation of this report.

The Duleep Mathai Nature Conservation Trust for providing financial support which supported this publication.

## Section I: Introduction

Marine-coastal ecosystems and coastal communities are poorly represented in the public debates on India's social and environmental problems. Coastal and marine ecosystems are the backbone of a fisheries economy that supports livelihoods of millions directly and several more indirectly. According to the Marine Fisheries Census 2005, commissioned by the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture, Government of India, and conducted by the Central Marine Fisheries Research Institute (CMFRI), there are 3,202 marine fishing villages, 1,332 landing centres and 7,56,212 households. This amounts to total of 3.52 million marine fisherfolk in all maritime states and union territories of India, excluding the union territories of the Andaman and Nicobar Islands and the Lakshadweep Islands.

### Traditional fishing communities and fisheries

A large percentage of fishers are involved in artisanal, small-scale fishing operations in open water bodies including the sea, rivers and creeks, as well as in fish trading, processing and related activities. Fishing as an occupation is said to predate settled agriculture. Marine fisheries have always been part of the market system as it was never only subsistence based. In the Indian context fisheries was also the entire occupation of a single caste, geographically located in a village, unlike agrarian multi-caste structures (Vivekanandan 2007). Over time, there has been a cultural transformation in fisheries – a process consciously facilitated by the State. The current state of fisheries finds its genesis in the modernisation programme introduced by the Government of India to 'develop' the sector with the focus for development through the maximisation of production. In the late 1970s, modern fishing methods threatened the livelihoods of these communities and coastal ecosystems. Mechanised craft and gear, principally trawlers with bottom trawling gear, severely impacted fishing stocks.

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Unfortunately, these projects were carried out without much assessment of the impacts of such modernisation and mechanisation on the culture of fisheries and social arrangements within communities themselves. Fisherfolk in India have struggled for greater control over the seas and resource management, struggles which have been directed both inward as well as against the State. As a result, development has been encouraged without sufficient emphasis on resource conservation and has also increased disparity in the social and economic status of various fishing groups, with the non-mechanised sector, especially the traditional fisherfolk (many of whom still use traditional fishing techniques - either in craft or gear)<sup>1</sup> falling at the bottom of the spectrum. Fisher communities, particularly the artisanal communities, find themselves most impacted by this alienation, as the development drive has left them marginalised.

In the past, India's coastal areas and resources were managed within a framework of traditional knowledge accumulated over the centuries. Community groups such as fishers and other coastal populations enjoyed customary or traditional rights to exploit resources and to fish in adjacent coastal areas. The modern state impacted the customary practices of these communities and without communitarian controls.

The conflicts over fish resources have been mostly between sections or categories of fishers (some fisheries were introduced through government programmes and schemes like trawling) and the failure of the State to regulate or achieve consensus on sharing of resources between these various categories. The conflict over the coastal space is mostly between fishing communities and other new users and interest groups. Access to coastal resources is now being thrown open to all, giving a new meaning to the idea of 'coastal commons'. Conflicts are increasing with a number of communities being displaced from coastal areas or being threatened with displacement.

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<sup>1</sup> If one defines traditional fisherfolk on a community/caste basis and not on the basis of technology, then, with some exceptions, disparities have arisen within the traditional community itself (Vivekanandan, pers. comm., June 16, 2010).

It must be emphasised here that there are very clear linkages between the rights to the coast and the right to fish as without the former, the latter will be difficult to operationalise and eventually rendered meaningless.

Marine fishing in the Indian context, for most part, has been the entire occupation of a single caste dominating either villages or coastal stretches/regions geographically. The single caste demography of these communities has meant considerable autonomy and self governance that is highly organized, more or less equitable and controlled internally. The traditional community governance institutions in fishing communities are responsible for several functions in the village: management of livelihood relations, dispensing justice and conflict resolution, organising or presiding over social and religious community events, managing community income and expenditure and serving as a bridge to the outside world. These community institutions resolve conflicts both within the village as well as between villages and are also instrumental in governing commons (social, cultural and economic). However, the constitutional governance systems and the State do not recognise these institutions and the lack of a formal recognition of rights in the coastal governance framework will only lead to conflict and undermining of fishing community livelihood and social needs by corporate and non-coastal interests.

Individual or collective rights of fishing communities over coastal lands still do not exist and in most cases, communities do not even have titles and deeds for their houses and settlements despite 60 years of Independence. In the past few decades, fisherfolk have mobilised and organised to demand land rights from the State because of the rapid development in these areas. There have been many sectors, projects, and interest groups who have been waiting to usurp the coastal land and its bountiful resources. The coastal communities' traditional claims over coastal lands have prevented the onslaught of privatisation in the coastal areas. The Coastal Regulation Zone (CRZ) Notification, 1991 has been the only legislation with some mention and reference to customary rights of fishing communities on land in the coastal zone. However, it did not contain provisions and details to ascertain or establish these rights. The CRZ also did severely restrict fishing communities through the "No Development



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Zone” and placed restrictions on housing within 200-500m in CRZ-III. Furthermore, in the CRZ-I zones, no new development was possible. Despite this, fishing communities have seen the CRZ in its 1991 form as an instrument in their favour as it regulates all activities that can potentially impact the coast and community livelihoods.

At present there is a real threat to the very existence of coastal communities posed by a number of factors. An inequitable policy framework exists which is devoid of people’s participation. There are uncounted violations of CRZ Notification in coastal areas and its repeated amendments. It has already been analysed that the 21 odd amendments to the CRZ Notification were mostly in favour of development pressures and special interest lobbies (Menon & Sridhar, 2007). This backdrop forms the driving force behind this report which seeks to argue a case for according coastal land rights to fishing communities<sup>2</sup>.

**Section II** of this report presents findings from key studies on beach and coastal land use by fishing communities in India. It illustrates the point that large tracts of coastline space beyond the village settlement/hamlet are used by fishing communities for their livelihood.

**Section III** traces the demand of housing and land rights among fisher groups as well as the provision of the same in the coastal legislation framework. It also gives an overview of how environmental legislative reforms initiated by the Ministry of Environment and Forest have undermined protection of livelihood concerns in favour of unsustainable development. It also reviews the various committees and their recommendations on rights of fisher communities and their livelihood concerns.

**Section IV** concludes with an analysis of the discourse around fisher coastal land rights. It also provides a broad list of recommendations, a sort of road map for ensuring the rights of coastal communities.

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<sup>2</sup> Coastal land rights refers to rights (including user rights and access rights) of fishing communities to coastal lands for their livelihood purposes and their settlements, including the beach and shoreline space and taking into account the current and future social needs of the community.

## Section II: The coastal space and fishing communities

The beach front and the coast play a crucial socio-economic and socio-cultural role in the lives of traditional fishing communities (Pages 172-174 Rodriguez 2007a).

Historically, communities have evolved an intimate relation with particular stretches of coastline that they use, that is in front of their settlement and extends on either side. The boundaries of these stretches for each community are clearly demarcated - traditionally, geographically and culturally. There are a few anthropological and ethnographic studies on fishing castes and communities of India<sup>3</sup>, however, the property regime and use of coastal space across the entire coast has not been documented (especially the spatio-temporal details and patterns of shore/beach uses and settlements).

Observing the sea - surf and current conditions, indications of fish shoal movement and weather - using their traditional knowledge is an essential part of the preparation and planning that fishermen undertake for their fishing activities. This naturally requires residence in close proximity to the sea and an unimpeded view of the sea. In addition, the sea shore is an integral part of their social, cultural and economic fabric; the way their communities are organised. In fact, relocating “landwards” is generally looked down upon by the east coast fishing communities and mingling with outsiders is seen as a threat to community’s inherent nature and customs (Kannam 2005).

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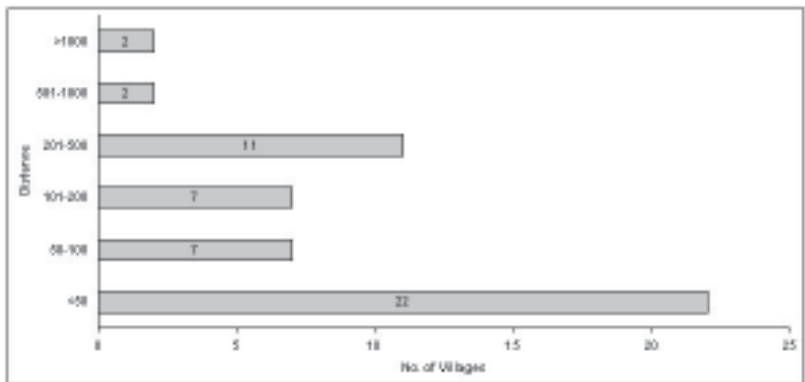
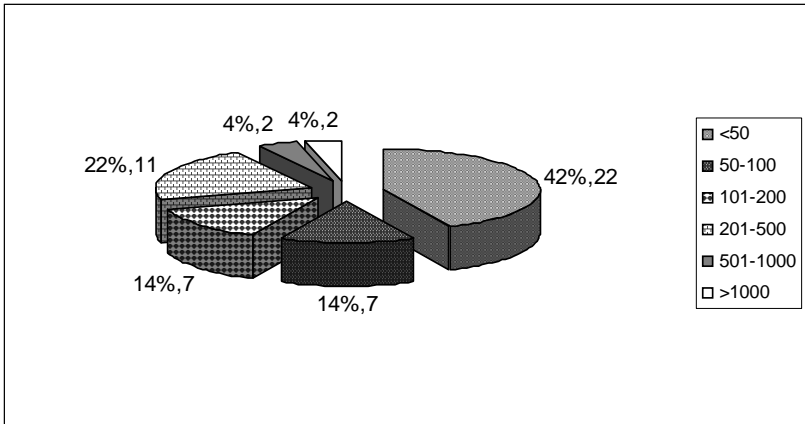
<sup>3</sup> A series of ethnographic and anthropological studies were commissioned by the Census of India in 1961 in which one village per state was studied in detail.

## 2.1 Proximity of settlements to the shore

Almost all fishing communities live close to coastal or an estuarine shoreline. In an earlier study by the author, in Tamil Nadu of the 51 villages sampled, 42% (22) of them are within 50 m from the shore<sup>4</sup>, 71 % (36) are within 200 m and 92 % (47) are within 500m from the shore (Rodriguez *et al.* 2009). The same is illustrated in the figures below:

**Figure 1: Distance of villages from the seashore (in m).**

Source: Rodriguez *et al.* 2009.



<sup>4</sup> The definition of distance from the shore for the purpose of this study was - the distance from the shoreline to the seaward front of the village.

## 2.2 Community perceptions and uses of beaches

The access and visibility of the sea is very crucial for fishermen as part of their daily decision-making, traditional ecological knowledge, and basic livelihood activities such as the launch of boats, laying of shore seines, drying of fish, mending of nets, berthing of boats and many other social functions (Bharathi 1991; Salagrama 2006; Praxis 2005). Furthermore fishermen have odd hours of fishing and also make unplanned trips based on other fisher's landed catches, which is possible only if they live on or near the shore (Kuriakose 2006).

The reasons for the proximity can perhaps also be attributed to the various uses of the beach space. This is illustrated below from a community perception study<sup>5</sup> on beach space use (Rodriguez *et al.* 2009). The various broad classifications of the community responses on beach space are shown:

### Livelihood

- Boat landing and storage
- Boat repair and maintenance
- Catch drying (includes fish, seaweed and conch)
- Pulling nets, laying and operating shore seine
- Storage of nets
- Making, mending and maintenance of nets (also cleaning and drying )

### Social

- Sports
- Leisure: sitting and relaxing, sleeping, and talking
- Meetings

### Cultural

- Cultural festivals

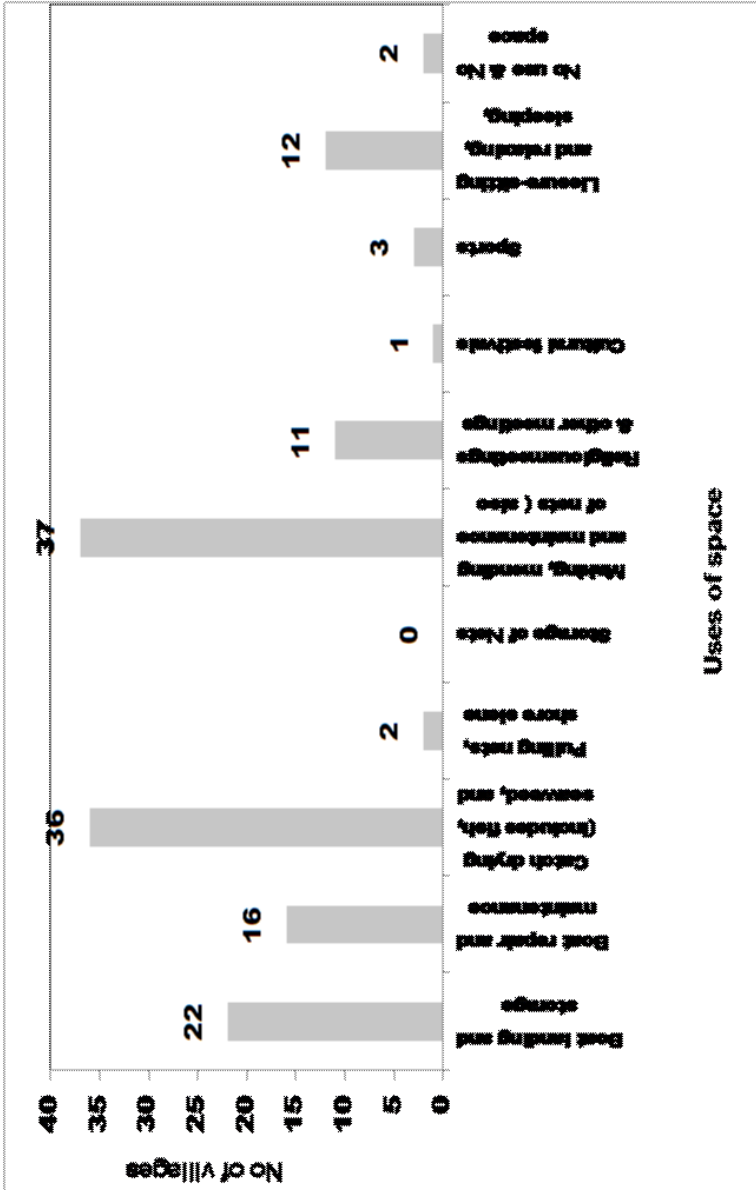
A quantitative and graphic representation of the responses on the various uses of the beach space is shown below in figure 3:

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<sup>5</sup> Communities were asked to list the various uses of the coastal space through a questionnaire-based survey.

**Figure 3: Uses of beach space.**

Source: Rodriguez *et al.* 2009.



### 2.3 Physical beach space use - a case study

It is important to emphasise here that the boundaries and uses of the coastline by villages extend far beyond the coastal shore area in front the settlement itself. A rapid survey<sup>6</sup> was conducted over a few weeks (June – July 2008) across a small 80 km coastline stretch consisting of 41 villages between Kallar to Pazhayar in Tamil Nadu, measured the length of beach used along the coast in each village compared to its length (i.e. length of the settlement along the coast). Here the length of a village was defined as the distance between the last houses on either extreme of the hamlet along the coastline, as visible from the shoreline. It must be mentioned here that there are a number of factors such as population, coastal topography, availability of land etc. which can affect settlement patterns and hence influence the village length as defined above. The objective of this study was simply to illustrate the fact that uses of beaches by villages extend far beyond the shore area in front the settlement itself<sup>7</sup>. This is illustrated in the tables and charts below depicting the length of shore space used for boats and fish drying.

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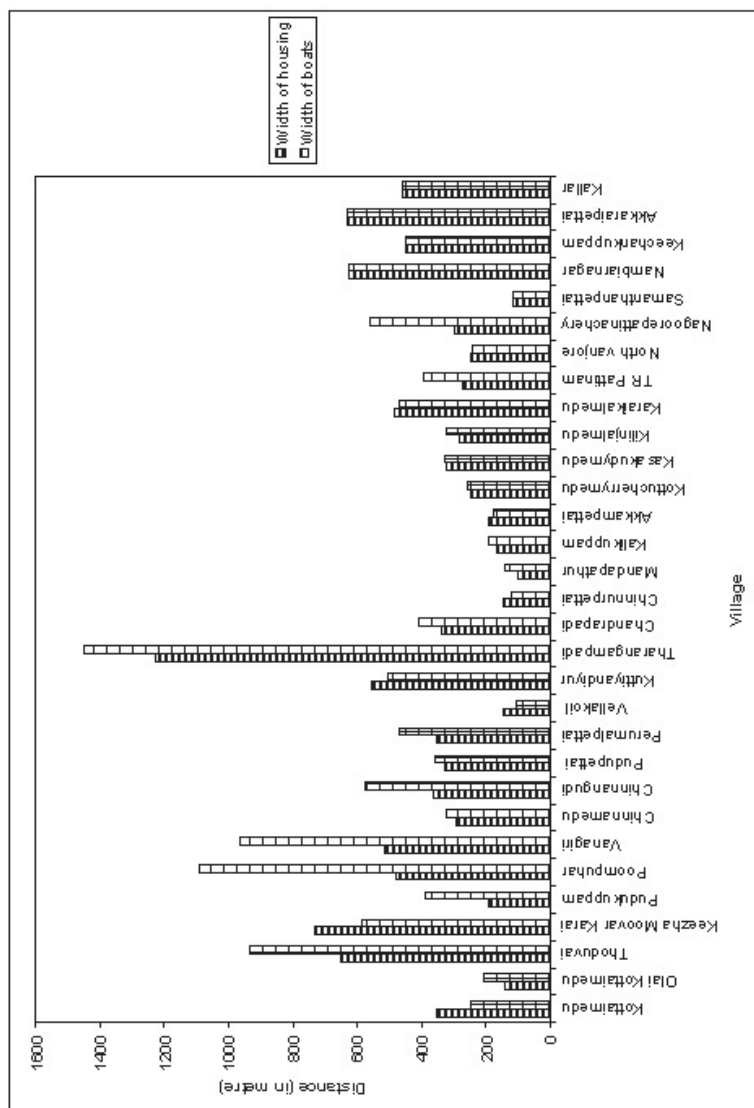
<sup>6</sup> This data is only illustrative and not comprehensive. The data is only specific to the weeks when field work was conducted. Ideally, to arrive at an accurate estimation of spatio-temporal beach space use and patterns, data would need to be collected over a whole year and through various seasons.

<sup>7</sup> The study did not look at the correlation between population or number of households and village length.

## Boat space

**Figure 4: Use of beach space for boats along with length of settlement along the shore.**

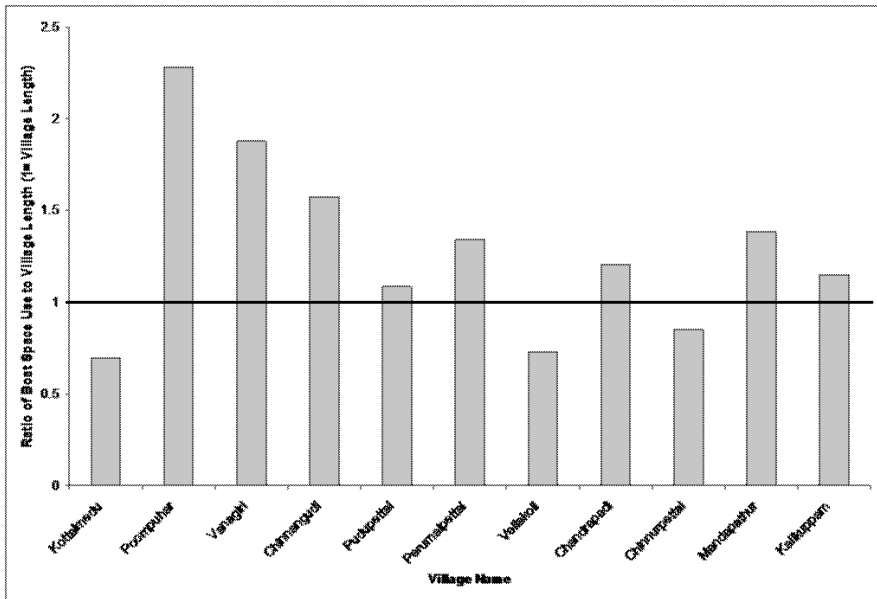
Source: Rodriguez et al. 2009.



In the case of the space used along the coast for boats, the length of the beach used on an average was 28% more than village settlement length along the coast. Basically, when normalised (with each respective village length being equal to 1), the figures of boat space use length is sometimes as high as twice the length of the settlement (along the coast). On an average boat space use is 1.33 times more than settlement length. The length of boat space use as a ratio to village length (along the coast) is shown in the adjacent figure:

**Figure 5: Ratio of use of beach space for boats to length of settlement along the shore.**

Source: Rodriguez *et al.* 2009.

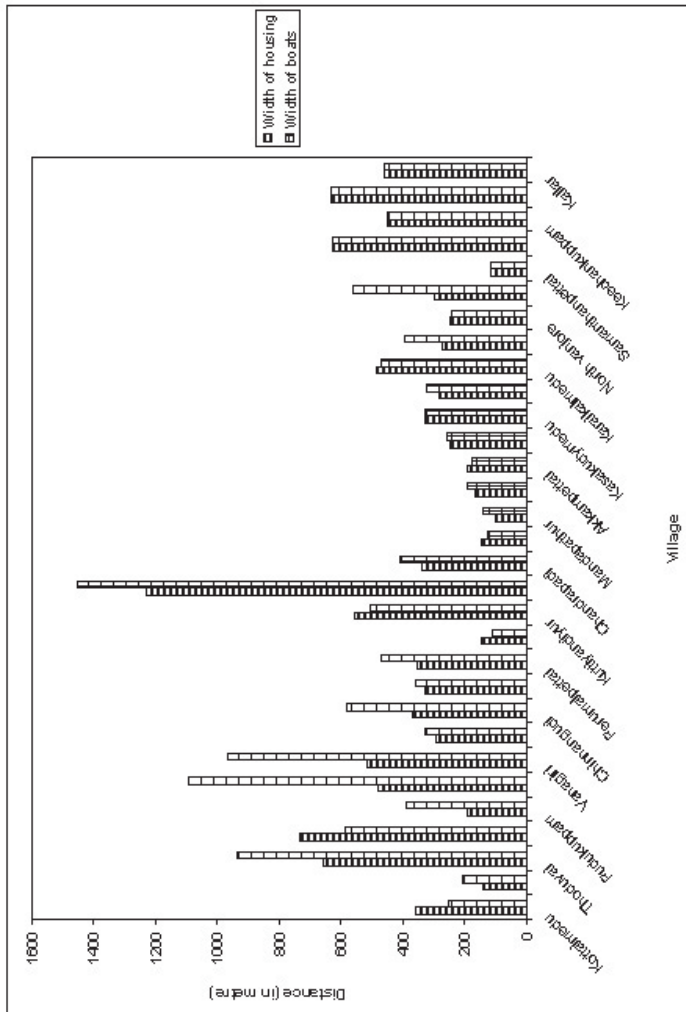




In the case of use of beach space (length of coast) for fish drying, the figure is much higher with the average being 42% or more than village length (along coast)

**Figure 6: Length of shore used for fish drying along with length of the settlement.**

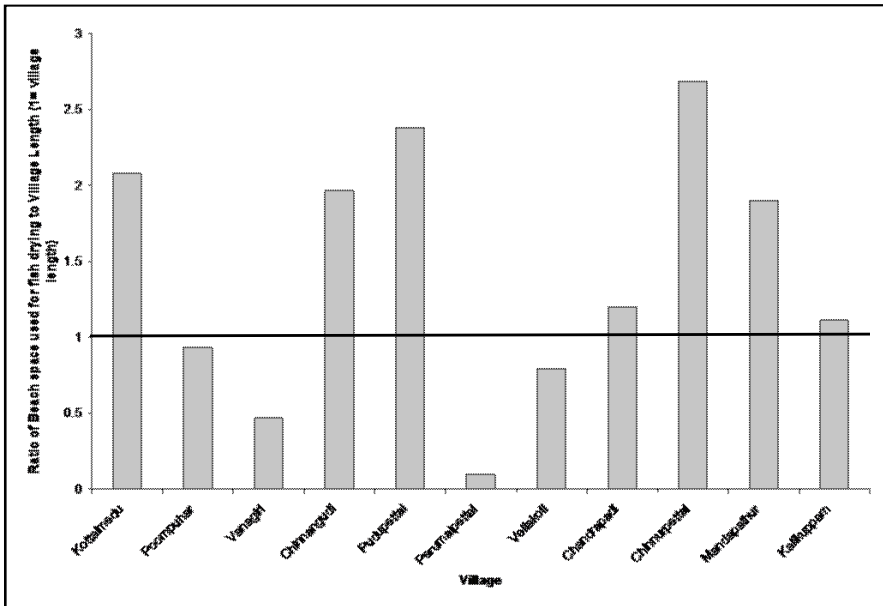
Source: Rodriguez et al, 2009.



Basically when normalised (with the respective village length being equal to 1) the figures of fishing drying space increases as much as 2.75 times beyond the village length (along the coast). This is shown in the adjacent figure where a ratio of 1 means that the use of fish drying space is equal to the length of that village.

### Figure 7: Ratio of beach space used for fish drying (*karuvad*) to village length

Source: Rodriguez *et al.* 2009.



The length of Chandrapadi village along the shore is 340m. The study showed that the beach space between Chandrapadi village and the next village, Tarangambadi was 1.8 km and only 1.4 km of this entire stretch was being used for fish drying at the time of the survey. This would have been higher or probably the entire length (1.8 km) but fish drying was hampered because stretches of *Casuarina* plantations had been grown by the Forest Department where the communities normally dried their catch (see picture below).



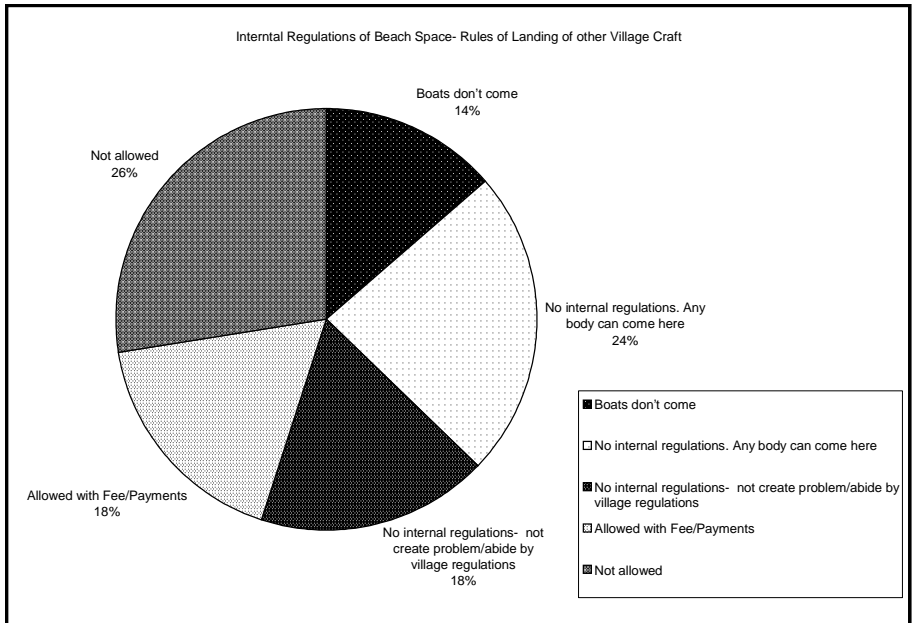
*Casuarina* plantations on sand dunes and beaches used for fish drying.  
Photo: Sudarshan Rodriguez

### 2.4 Community regulations of beach space

In an earlier study on Tamil Nadu’s fishing communities, it was observed that there were clear regulations about use of space by boats from other villages. Of the 51 villages studied, 7 villages did not have external boats that come in and hence they have no regulations. Of the remaining 44 villages, at least 32 villages had clear regulations on access to their shore. Of the 32, 14 don’t allow boats on their shore; 9 villages allow outside boats on their shore subject to payment of a fee; another 9 villages insist that the crew coming in should abide with local community regulations and must not cause problems to the village (Rodriguez *et al.* 2009).

**Figure 8: Internal regulation of beach space.**

Source: Rodriguez *et al.* 2009.



This shows that communities have internal regulations of how beach space is to be used. These regulations vary along the coast depending on the site of the settlement and the nature of near shore fisheries. Most villages develop internal regulations that are supportive of fisher people across communities; indicative of deeper social identities. This mechanism represented not only a control over space but also over fish resources and markets.



Shore seine net use depends large un hampered beach spaces.  
Photos: Sudarshan Rodriguez

Data also shows the continued prevalence of shore seine use despite its comparative decline since the past (Rodriguez *et al.* 2009). This indicates the need for the preservation of beach integrity for community beach space use. Shore seine use is also prevalent in fishing villages in urban areas. The adjacent photo is from Pallavakam in Chennai where available beach space is limited and is on the decline. In the past, ideally, a lot more space and much bigger nets would have been used.

To conclude, the above studies indicate that fishing communities use a much longer stretch of coastline than what is necessary for just their housing. Their beach use patterns extend far beyond the coastline of the seaward side of their settlements. Among some of the main livelihoods uses of the beach space are the parking of boats, drying of fish and the use of shore seines. Fisher community livelihoods and the future of their fisheries therefore depends strongly on the availability of beach space and the guaranteeing of rights to the same.



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## Section III: The case for coastal land rights of fisherfolk

The modern State has undermined the customary practices and regulations of fishing communities. This has created conditions of open access to coastal spaces and resources and resulted in new conflicts and displacement of some fishing communities from the coast, with many more threats yet to come. The lack of a formal recognition in the coastal governance framework of rights of access, use and control of coastal space by fishing communities will only lead to conflict and the usurping of coastal space and resources by corporate and non-coastal interests. In the past few decades, fisherfolk have mobilised and organised to demand their rights from the State. It is important to trace the demand of coastal land rights and the origin of its struggle.

### 3.1 Fishing community and land rights

The nature of fisheries requires that many fishing communities, particularly the traditional fisherfolk, be mobile and move residence across the coastline in different seasons, yet in many states, fishing communities do not even possess land titles in coastal areas despite their growing numbers across the coast (Kurien & Paul, 2000).

In fact, land titles were one of the many factors that influenced the way tsunami-affected fishing communities responded to various relocation surveys. When asked about their willingness to relocate beyond 500 m from the shore, many actually agreed for relocation, even though being close to the sea is critical for their livelihood. As most fishing families did not have *pattas* (titles and deeds) for the land and housing they occupied, a plot of 3 cents (1.5 cents in urban areas) with a clear title deed worth Rs. 1.5 lakh (even if it was beyond 500 m) was clearly a good deal for the vast majority of the poor fishermen households (Rodriguez 2007a). Some of them also calculated that they may be able to hold on to their original land by the sea even while accepting a new property beyond 500 m (*ibid*).

However, till the late 1990s, fisher communities not only did not see land as an asset since most of their lives, issues and conflicts revolved around the sea, but more importantly, they did not feel the need to prove the ownership of land. This latter view is endorsed by T.S.S. Mani an activist representing the interests of fishing communities in Tamil Nadu and an advocate of several fisherfolk causes. He states:

“The fisher people have been the traditional inhabitants of the coast. Their occupation of the land adjoining the sea was entrenched in their association with the sea. They never felt it necessary to prove their occupation of coastal lands through land pattas. In many areas they did not feel the need for this also because all their shore areas were in the trusteeship of temples or community institutions.”  
(Menon & Sridhar 2007)

The low importance that fishers accorded to establishing their rights over coastal lands began to affect them as coastal lands began to be taken over for development projects. In the 90s, large commercial ports, harbours and industries came up on the coast in all coastal states. These experiences made it evident to policy makers and other civil society groups that development projects had lasting negative impacts on both the coastal environment and traditional rights of the fisher people and therefore needed regulation (*ibid*).

In fact there are almost no detailed studies that explain the relations between fisher communities and coastal lands that one could base further discussions or analysis on. Most studies on fisher communities only mention the absence of any official legal ownership rights for fishers over coastal lands (Kurien & Paul 2001; Bavinck 2001; Southwold-Llewellyn 2006).

This has several implications not just for their entitlement to housing and related infrastructure but more importantly in their say and control of the coastal space, especially of the development in areas occupied and used by them.



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### 3.2 The regulation of the coastal space

The Indian coast is governed by several official legislations that regulate 'development' activities including construction, industrial activity and coastal infrastructure. Some of these legislations have an explicit mandate to protect coastal ecology and available natural resources of the region. Other laws govern the establishment of projects and schemes that use these resources for local and national economic growth. One such protective legislation is the CRZ Notification that was promulgated in 1991 using the provisions of the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986. Through such a notification, the coastline of the country was identified as an ecologically sensitive area, where development activities were regulated.

There are few studies on the genesis<sup>8</sup> of the CRZ Notification and even fewer analyses on the roles played by fisher community leaders, NGOs, environmentalists, government agencies and politicians in this process (Menon & Sridhar 2007).

The Indian coastline is a contested space. Tremendous pressures are driving development activities aimed at the rapid growth of the economy. The lack of interest of state governments, even the central government, in implementing the law was exposed in the course of several landmark cases in the Supreme Court, between 1993 and 1996. In the past 20 years, greater emphasis shown by the governments (both central and state) on development and growth has overridden the livelihood concerns of coastal communities. This is evident from the non-implementation of coastal management law and the dilution of the same in the past two decades (*ibid*).

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<sup>8</sup> Shyam Chainani's *Heritage and Environment: An Indian Diary* is probably the most detailed account of the events surrounding the eventual promulgation of this law.

### 3.2.1 The CRZ and fisher rights

Other than a brief mention in the preamble of the CRZ Notification as well as in the interpretation available in the 1996 judgment of the Supreme Court, there is very little in the CRZ Notification 1991, vis-à-vis fisher rights. The intent of the CRZ Notification was to control ecological damage to coastal areas caused by pollution, maintain coastal livelihood security, uphold the traditional rights of fishermen and maintain the aesthetic value of the coast. There were no concrete provisions and measures that explicitly define the rights of fishers (Menon & Sridhar, 2007).

The provision of a No Development Zone (NDZ) of 200m from HTL in CRZ III (read rural areas) at best only provides informal and continued customary access to the coast for fishing communities but no tangible rights. It can be argued that providing customary access is akin to safeguarding the livelihoods of fisherfolk. However, repeated amendments to the NDZ clause, allowed many non-fishing developments to take place here is indicative of the need to explicitly spell out the rights of fishing communities over such spaces. The CRZ Notification, 1991 is ridden with ambiguous terminology such as ‘traditional inhabitants’, ‘customary uses and rights’ (Sridhar 2005). As mentioned earlier, fishing communities do not have *pattas* or land rights and title deeds in the majority of cases. However, the CRZ notification only allows authorised constructions on the coast. The dichotomy has not been addressed till date (Menon & Sridhar 2007).

It is seen that those groups that have access to financial resources and political power exercise successful control on coasts than those solely dependent on it for their survival. The past few decades have witnessed the emergence of fisher representative bodies such as the National Fishworkers’ Forum (NFF) and fisher support groups that include several NGOs and community groups working for the uplift of fisher communities. They have demanded that fishworkers and their families be given the first right over the coast. Some of them have coined the term ‘sea tribes’ to draw a parallel between their condition and that of forest dwelling tribal communities. Although this articulation is used to build a sense of unified identity among fishworker communities, a concerted effort at going beyond sloganeering was yet to be made, at least till the mid 2000s (*ibid*).

### 3.3 From amendments in instalments to wholesale re-engineering

The MoEF in early 2000 had started a process to reengineer and reform environmental regulations. It is important to highlight these to illustrate the overwhelming attempts by the government to override environmental, social and livelihood concerns with development interests. All issues and concerns are not discussed in detail and only an overview of the sequence of events that lead to the demand and struggle for land rights is provided.

#### 3.3.1 Swaminathan Committee Report I, February 2005

One of these re-engineering efforts was the establishment of the M.S. Swaminathan Committee to review the CRZ Notification<sup>9</sup> and suggest changes for a new legislation (*ibid*). The mounting pressure on the MoEF to justify various aspects of coastal regulations led to the appointment, in 2004, of a committee of scientists headed by Prof. M.S. Swaminathan to review the CRZ regulations (Kasturi 2008). It submitted its report to the Ministry of Environment and Forests (MoEF) in February 2005.

The entire process of review of the CRZ Notification by this committee was criticised because it did not involve participation from public interest groups or coastal communities (Menon & Sridhar 2007). The committee considered the notification per se as being the problem and not the mechanisms for implementation such as the management authorities which are understaffed, shortage of funds and dealing with State Governments which may have no political will to regulate activities on the coast (Sridhar *et al.* 2006).

What really triggered the concerns of fisher and environment groups is that this committee report enclosed a framework for legislation in the annexure of its report which found no linkage to the main chapters of the report (Sridhar *et al.* 2006). This framework introduced a “setback line” that permitted commercial activities on the seaward side of the setback

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<sup>9</sup> Anon 2005.

line and pushed back all dwelling units of fisher communities to the landward side of the line. It proposed a dangerous situation of transferring the traditional ownership of and access to beach-fronts from fisher communities to non-coastal agencies with commercial interests. Furthermore, the framework had no mention of rights and protecting the livelihood of fisherfolk (Rodriguez 2007a). The recommendations and framework of a new legislation mentioned in this report were used by the MoEF to introduce the new notification titled 'Coastal Management Zone Notification, 2007', in place of the CRZ Notification (Menon *et al.* 2007).

### 3.3.2 Leaked draft notification, May 2007

In May 2007, a draft version of the CMZ Notification was leaked out of the MoEF which stated that the proposed draft CMZ is based on the recommendations of the first Swaminathan Committee report. The MoEF had denied developing any draft notification and disassociated itself from this draft.

Responding to the implications of this leaked draft, the National Fishworkers Forum (NFF) called a National Consultation on Impending Threat to the Coastal Zone on June 11, 2007 in Chennai inviting various groups and NGOs to deliberate on this draft. A coordination committee was formed with (the late) Harekrishna Debnath, who was then the Chairperson of the National Fishworkers' Forum, as Convener. The "National Campaign against CZM Notification" was a coalition with National Fishworkers' Forum (NFF) as its convener and consisted of various fishworker organisations, pro-community and pro-livelihood NGOs, environmental groups, etc. The campaign involved mass mobilisation along the entire coast with the objective of mobilisation against the State policy and also of educating the fishing community against the dangers of the new policy. It involved intellectual support of various groups and NGOs which challenged the theoretical and conceptual foundations of the state policy. This livelihood-cum-environmental platform was a significant partnership.

The “National Campaign against CZM Notification” held massive rallies and protest meetings across the country on August 9, 2007. The choice of date was deliberate and symbolic as it coincided with the anniversary of the “Quit India Movement”.

The campaign had six basic demands: (i) formally withdraw any effort for a new legislation such as the CMZ, (ii) Retain the original CRZ notification of 1991, (iii) take stock and action against all CRZ violations on the coast, (iv) a comprehensive legislation be developed to protect environment and right of communities on the basis of public consultations, (v) settlements and customary uses of coastal spaces used by fishing villages be recognised. This was probably the first articulation of land rights in some form.

Responding to the anti-CMZ campaign, the MoEF circulated a concept note on the CMZ in November 2007. It also organised, at short notice, a consultation on November 10, 2008 in Mumbai, seeking to offer a rationale for the new notification. It was an attempt to counter the criticism that the 2005 Swaminathan Committee Report had been finalised without any consultation with fisher groups. The MoEF invited some groups including the NFF, which boycotted the meeting. Since the MoEF did not pay for the travel of participants, the meeting was not widely attended. However, strong protests and objections were raised about the note at the meeting.



### 3.3.3 Draft CMZ Notification, July 2008

Despite the protests, a draft Coastal Management Zone Notification to replace the CRZ Notification was issued on May 01, 2008 by the MoEF. This was based on the framework of legislation in the annexure of the 2005 Swaminathan Committee report with some minor superficial changes added (Sridhar *et al.* 2008). This was further amended and re-issued on July 22, 2008 to include a provision for a 'greenfield airport' in Navi Mumbai.

The notification was basically a brazen attempt at disempowering fishworkers and traditional coastal communities, and make available premium lands in coastal areas to commercial interests by dismantling several protective and regulatory mechanisms of the CRZ Notification, 1991 that restricted unplanned development (*ibid*).

There was absolutely no concern or focus on the rights and access of coastal communities especially fishing communities. Given that the proposed legislation aims to govern and 'manage' development on the coast, this omission has significant implications for coastal communities. This is a big departure from the CRZ Notification which recognised fishing settlements and permitted certain rights and protection for the same (*ibid*).

Meanwhile, in May 2008, the NFF launched a national yatra titled Machhimmar Adhikar Rashtriya Abhiyan (translated as National Campaign for Fisher Rights) with the slogan "Save the Coast, Save the Fishers" (NFF 2008). It had many demands including the ones made by the National Campaign against CMZ in 2007. This included reverting to the implementation of the original version of the CRZ Notification 1991 and abandoning the CMZ Notification. This yatra would cover all the coastal states of the mainland starting from Kutch in Gujarat and ending in the Sunderbans in West Bengal. The finale was a protest in Delhi in November 2008 by fishers from all coastal states.

Fisher communities across India and environmental groups strongly opposed the draft CMZ notification on grounds that it would open up beaches (critical to fisher livelihoods) to intense commercialisation, infrastructure development, and consequent displacement of traditional

communities besides causing widespread and irreversible environmental and social impacts.

On November 04, 2008, fishworkers from all over the country reached New Delhi as part of the NFF struggle to stage a *dharna* which included the same demands of the yatra and specifically demanded for proactive enactment of legislation to protect traditional fisher peoples' preferential access as well as their customary rights over coastal and marine spaces and most importantly, the withdrawal of the Coastal Management Zone (CMZ) notification, proposed by the Ministry of Environment and Forests (MoEF) (Kohli, 2008). This Delhi struggle included meeting Members of Parliament and addressing the civil society and the media.

#### 3.3.4 CEE Consultations on CMZ: Further articulation of demand for rights, July-September 2008

The CMZ Notification had stirred a hornet's nest. The MoEF received an unprecedented 8,000 objections to the notification. Given the protests and also the demand of local language engagement and participation of fishing communities, the MoEF assigned the Centre for Environment Education (CEE) the task of organising public consultations to elicit the viewpoint of local communities in mid 2008. CEE organised 35 public consultations between July 26 and September 13, 2008 in nine coastal states. The participation was variable due to the time constraints in communication, rains and lack of provision to reimburse travel costs for the participants. However, despite the limitations, the articulation of rights was very clear and unanimous in all of the consultations and across all the states with widespread opposition and rejection of the CMZ notification. CEE in its report on the consultation mentions that the majority viewpoint was of the need for an Act wherein basic rights of the traditional coastal communities are protected (CEE 2008).

### 3.3.5 Parliamentary Committee on Science and Technology, Environment and Forests, September 2008

In September 2008, the Parliamentary Committee on Science and Technology, Environment and Forests also examined the draft Notification. It held a few consultations and meetings from September 2008 to January 2009 where concerns on the CMZ as well as the case for coastal land rights were made. The above committee tabled a strong report in March 2009 in favour of the fishermen and concluded that the Ministry “*should not make haste in implementing the CMZ Notification without addressing the conflict of interests between the stakeholders – mainly the fisherfolk and coastal communities.*”

It mentioned that a bottom-up rather than top-down approach with people’s participation was needed in policy formulation. It asked the MOEF not to make haste in implementing the CMZ Notification without addressing the concerns of the stakeholders – mainly the fisherfolk/coastal communities. However it did not reject the CMZ Notification. In its report, the Committee stated “*...the government should get the CMZ Notification translated into local languages and circulated widely in every village/hamlet so that the local communities are made aware of the actual implications of the notification and are not swayed by hearsay or guided by misgivings about it...*” (Maitreyan, 2009).

It recommended that the “*CMZ Notification be kept pending/in abeyance till mechanisms/instruments – executive and legislative – are put in place for inclusion and integration of coastal communities through participative, decision-making and control instruments*” . The Committee also emphasised the need for consideration of a separate legislation for coastal rights, along the lines of the Traditional Forest Dwellers Act, 2006<sup>10</sup> for securing traditional fisher families’ rights by the relevant central ministry.

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<sup>10</sup> The full title of this legislation is The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006



### 3.3.6 Swaminathan Committee Report II (Final Frontier), July 2009

There was no decision on the CMZ subsequent to the parliamentary committee report on account of the 15<sup>th</sup> Lok Sabha elections in May 2009 and the formation of a new Union Government and a change of the Minister of Environment and Forest (MoEF). The new minister, Mr. Jairam Ramesh initially tried to clear all pending matters including the CMZ Notification only to realise the opposition to it. He met various delegations including the NFF and conveyed to them that he and his ministry were committed to an engagement over the concerns raised by them. On July 2, 2009, the minister informed the NFF that bowing to public pressure, the CMZ draft notification would be allowed to lapse and CRZ would continue with amendments to improve it.

He also said that a committee chaired again by Prof. M.S. Swaminathan was already working to provide recommendations in this regard. While there was scepticism about this development, the minister requested them to be patient and assure them that once the report was out, the NFF would be free to react and state their position to this report.

In the meantime the “Report of the Expert Committee on the draft Coastal Management Zone (CMZ) Notification”, constituted by the MoEF, under the Chairmanship of Prof. M.S. Swaminathan was submitted on July 16, 2009 (MoEF 2009). It recommended, among other things, the following:

- The CMZ Notification, 2008 should be allowed to lapse.
- Amendments are incorporated in the existing CRZ Notification, 1991 for better coastal management.
- Protection to fishing communities and families for habitat and livelihood security is enhanced through amendments in the CRZ Notification.

This second Swaminathan Committee report called the ‘Final Frontier’ report also endorsed ‘the need for consideration of a separate legislation, along the lines of the Traditional Forest Dwellers Act, 2006 for securing traditional fisher families’ rights by the relevant Union Ministry’ (MoEF 2009).

### 3.3.7 August 2009 to February 2010 - CEE Consultations II- strengthening the CRZ

While the CMZ 2008 Notification has lapsed, the MoEF undertook another series of consultations ostensibly to gather public opinion about the second Swaminathan committee recommendations ('Final Frontier' report) and incorporate appropriate suggestions before bringing in further amendments to strengthen the existing CRZ 1991.

With this stated objective, MoEF commissioned the Centre for Environment Education (CEE) to hold 10 public consultations. Union Minister, MoEF, Jairam Ramesh announced that he would be attending five of public consultations being held at Goa, Mumbai, Cochin, Chennai and Bhubaneshwar. The inputs from these consultations were to be considered by the Ministry while strengthening the existing CRZ 1991.

While the consultations created a platform for expressing views and grievances, it did not provide an opportunity for discussing the specifics and deliberating over nuances. Thus, when the Minister, Jairam Ramesh announced that the MoEF would bring out a new draft notification in March 2010, at the end of the consultations, the NFF and the National Coastal Protection Campaign (NCPC) objected to it on the grounds that the consultations provided only an opportunity to air grievances or opinions and there had been no debate or discussion on many of the substantive issues. The NFF demanded further discussion and dialogue (Vivekanandan 2010).

### 3.3.8 April 2010 -"Pre-Draft" CRZ Notification 2010

Despite the above objections the MoEF decided to bring out a pre-draft<sup>11</sup> notification in April 2010 along with a concept note. It sought public feedback before May 31, 2010. The MoEF also brought out various local language versions of the pre-draft.

Based on the feedback to the pre-draft notification, the Ministry may bring out a draft notification, which will have a statutory character and provide for the statutory period of 60 days for public feedback. *Hence the pre-draft is a new intermediate step introduced to elicit views before starting the statutory process of issuing a draft notification.*

The pre-draft CRZ Notification does not reflect in spirit or in letter any of the concerns raised and recommendations made during these public consultations, some of which were even reflected in the "Consultation Report" submitted by the Centre for Environmental Education (CEE) on March 25, 2010<sup>12</sup>. Many important social, political and ecological issues pertaining to legislating on coastal areas, which were raised at the consultations and in public petitions, have simply not been covered in the pre-draft. Three broad points against this are:

- The clear demands to strengthen the CRZ Notification while recognising and guaranteeing rights of fisher communities to resources and its management are not part of the pre-draft.
- Serious flaws and omissions in the enforcement and implementation design such as the blind grafting of the clauses of the EIA Notification into this pre draft when the problems of the former are well known and accepted even by the Ministry.
- Vagueness and arbitrariness of the new categorisation, their definitions, objectives and regulation.

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<sup>11</sup> The pre-draft notification is not a statutory notification and is only an indication of what changes the Ministry proposes to bring to the CRZ.

<sup>12</sup> CEE 2010

The 'pre-draft' is doubly disappointing as groups had hoped that after the consultation the MOEF would ensure a much improved legal regime that would better regulate destructive development on the coast, and protect the livelihoods of traditional fishers. The contents of this pre-draft are grossly inadequate to control the rampant industrialisation on the Indian coastline. It also fails to address the dwelling and livelihood rights of the fishing community, providing only token concessions.

The National Coastal Protection Campaign (NCPC),<sup>13</sup> a collective comprising of a broad range of fishworker groups including the National Fishworkers' Forum (NFF), fishworker support organisations and environmental groups jointly rejected the Ministry of Environment's 'pre-draft' CRZ, 2010 notification for being anti-people, anti-environment and pro-industry.



CRZ violation, Murdeshwar, Uttara Kannada, Karnataka  
Photo: Sudarshan Rodriguez

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<sup>13</sup> The NCPC is a platform of fishworker organisations, environmental and conservation groups who are concerned about coastal and marine issues. Its membership is broad based and includes the National Fishworkers Forum, South Indian Federation of Fishermen Societies, Tamil Nadu, Pondicherry Fisherpeople's Federation, International Collective in Support of Fishworkers, Kalpavriksh Environmental Action Group, Greenpeace India, World Wide Fund for Nature, Conservation Action Trust, Centre for Education and Communication, Pandy Citizen's Action Network, TRINet and Dakshin Foundation amongst others.

## Section IV: Conclusion & recommendations

Given that fishing communities are integral to the coastal areas of India, which is illustrated in section II of this report, the State has to recognise the rights of the fishing community to access and use of beach space, as well as regulate the entry of external actors. There has been a consistent demand to recognise the rights of fishing communities to access and use the coastal space. There was also a very clear demand for the unambiguous role and responsibility of fishing communities in the management and protection of the coasts.

The key focus of the recommendations made here is to evolve and strengthen government policies - along with community-based governance structures, for the control, rights and access of coastal resources, particularly coastal lands. Only by ensuring coastal land rights of fishing communities as defined by socio-cultural traditional boundaries, can a balance between development planning, coastal management and fisher livelihoods be achieved.

### 4.1 Shortcomings in the ‘Final Frontier’ recommendations

With regards to changes in the CRZ to accommodate fishing community interests, the Swaminathan Committee report, “*Final Frontier*”, provides only two categories of recommendations:

- a. Livelihood activities - inclusion of a list of livelihood activities as permissible
- b. Relaxing the No Development Zone (NDZ) in CRZ III (i.e. the area lying between 0-200 m from the high tide line). This category includes two aspects – 1) allowing dwelling units for fisherfolk and 2) permitting economic activities like tourism under the ownership of fisherfolk.

The above two cannot claim to guarantee the livelihood security of fishing communities completely. The above suggested provisions neglect to recognise that coastal areas are virtually regulated common property resources. As long as the State retains absolute power to transfer lands for private and public interest purpose as it defines, the issue of conflicts

over governance of these spaces will persist<sup>14</sup>.

Thus these patchy amendments do not solve the issue of conflicts and issue of access and rights over the space which is intrinsically linked to the livelihood security of fisherfolk.

It is critical that rights of traditional fisher communities to coastal spaces be formally recognised and gain primacy over infrastructural development in such spaces. Merely permitting a set of fishing activities and facilities within the CRZ or any coastal law falls short of the fisher demand for control over coastal governance. Ignoring this element will only lead to further conflict between fisherfolk and non-fisher interest groups. Many of the activities that the pre-draft CRZ -2010 seems to permit will undermine the rights of fisher communities over the coastal beach space.

#### 4.2 A separate legislation for rights

While the Swaminathan Committee report, “*Final Frontier*” endorsed the need for a separate legislation, along the lines of the Traditional Forest Dwellers Act, 2006, it did not specify what these rights would be. It is also unclear what the ‘relevant ministry’ here would be, implying that the responsibility for this exercise should be vested with a Ministry other than the MoEF. It is possible that a comprehensive Act to enable coastal land rights may take at least 2-3 years to be promulgated. At the current pace of economic growth, a race for coastal land grab to fuel development projects, tourism and so on is the stark reality of coastal spaces. This implies that a sense of urgency must accompany the demand for rights to coastal lands. Until then the only scenario will continue to be that each individual fishing hamlet fight its own battle against each local development threat and negotiate these in an unjust political space.

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<sup>14</sup>The CRZ 1991 was never implemented in most states and hence for practical purposes was more a “unregulated common property resource”. Moreover, the regulatory framework did not actually accord any community rights and hence eventually, even when implemented in its limited scope it tended to more towards becoming the private property of “other interests and users” and not the fishing community.

In the light of this two strategies of relevance to securing coastal land rights for fishing communities are suggested below:

- a. One which is short term: which immediately ensures rights and protection to fishing communities through amendments in the CRZ Notification and;
- b. The second which is a long term one: a process of evolving a comprehensive separate legislation, along the lines of the Traditional Forest Dwellers Act, 2006 for securing traditional fisher community rights.

### **4.3 Not just rights but control and responsibility over resources**

The framework and institutional mechanism of the coastal management notification (through the revision of the CRZ) and the proposed Bill on Fishing Community Land Rights must both firmly uphold the primacy of rights of fishworker communities to coastal areas. They should not just be involved in decision-making and in determining the kind and terms of all local coastal development interventions, but need to be centrally involved in the management of the resource.



#### 4.4 How to ensure rights and through whom?

If the above is agreed to, then the question that arises is which body or institution within the coastal community can take on this responsibility? Gram panchayats are clusters of many hamlets of which the fishing hamlet is a minority. Hence, in a typical panchayat, the interests of the coastal fishing community will not be uppermost in the minds of the panchayat leaders (T. Peter, pers. comm. 2009; T. Peter, pers. comm. in Venugopal 2007). In addition, the single caste demography of fishing hamlets has meant considerable autonomy and self governance and the communities thus are highly organised and controlled internally. Fisherfolk as a result do not participate in gram panchayats and exhibit very weak representation in these bodies (V.Vivekanandan, pers. comm., 2009; Harekrishna Debnath, pers. comm., 2009). Not much has been studied in this context to throw light on different implications this has on governance.

However, the fisher's poor participation and marginal role in the gram panchayats is a concern for these communities who are apprehensive of the collusion between local officials, developers and gram panchayat officials to permit polluting industries and hotels along the coast, causing irreversible damage to the coast and to fishing grounds (NFF 2008).

As mentioned earlier, the government should recognise and acknowledge the rights of the fishing community to have access and control over lands that are used for fishing purposes and for their economic, recreational, social and cultural purposes through:

- a. the immediate amendment of the CRZ;
- b. a detailed comprehensive Act of Parliament along the lines of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The control of these lands, access and rights in both cases should be vested through mechanism where the central role is with the community. Below are some specific recommendations that should be included in both these measures:



1. The definition of a fisher community, fisher hamlet and fisher needs to be clarified and defined.
2. There should be regularisation and settlement of rights of all fisherfolk houses and settlements till date. An exercise should be undertaken to accord proper titles, land *patta* or and joint ownership titles conferred on the community, depending on the social and resource use context as specified by the community.
3. Extra land and space to allow for the future expansion of settlements should be designated as community property and appropriate titles should be conferred on the community.
4. For the above, a detailed study in each state, of a representative sample of the fishing communities should be undertaken. This study should enquire into how fishing community settlements are planned, designed and grow. This would need to take into account social, cultural, geomorphologic and livelihood parameters that influence the same.
5. A detailed study has to be made into how fishing communities traditionally use the shore and coastal land (including estuarine areas) and how fishing communities regulate their coastal space, demarcate village boundaries geographically and culturally. State policy must recognise traditional regulation of the coastal space and strengthen these internal regulations. Any prescription towards coastal land rights should be done only after the above is complete.
6. From the above, all land used by fishing communities for traditional activities should be designated as community property and necessary titles should be conferred on the community.
7. All coastal land rights should be inalienable rights and should not be allowed to be acquired by or transferred to non-fishing coastal communities.
8. In addition to the above lands, government revenue land in coastal areas should not be allowed to be acquired by non-fishing coastal communities.

9. Any coastal development plans or project must assess the impact on coastal spaces and the community usage of these spaces. There should be a clear cut transparent mechanism and redressal system to address the conflicts that might arise in such cases. These mechanisms should also have the representation of NGOs, fisher groups and unions.
10. As land is a state subject in the Constitution, a detailed state-wise study of various categories of coastal land tenures should be undertaken.
11. In each state, one must study and explore which institutions/ organisations are there in the fishing hamlet to which all families owe allegiance and which have the power to negotiate and decide on behalf of the village and also enforce regulatory measures.
12. The issue of how an exclusive claim for the coastal space by fishing communities will affect the relationships with other communities on the coast or other non-fisher communities that live in a fishing hamlet needs to be examined.
13. The relationship of the fishing hamlet and its own self governance mechanism (where it exists) with the constitutional authorities, especially the gram panchayat, needs to be studied and discussed internally first by fisher groups. The implications of the above on community sovereignty should be kept in mind at all times.
14. In each state, region and community, a review and discussion on the ideal mechanisms, organisations and institutions through which community-based governance structures, control, rights and access of the coastal space and its conservation and use needs to be undertaken.
15. The above two points imply that the community needs to be prepared to take on the role and responsibility for coastal governance. This aspect need widespread and extensive grassroots consultation with the community in each state.

16. Ideally, the same mechanism and legislative framework to achieve regulation of activities on the coast should be used to secure coastal land, housing rights and rights of access to beach spaces to fisherfolk.

To conclude, based on the above, a framework to grant usufruct rights and control to fishers over coastal areas with appropriate conservation conditions must be devised. These need to be formally incorporated into the CRZ Notification to begin with. Further details can be worked on to usher this in, in the form of a dedicated legislation for Coastal Land Rights of Fishing Communities, through wider consultations and participation of these communities.

The patterns of coastal land use and growth of settlements adjoining the sea and estuarine areas are entrenched in the fishers' association with the sea. The right to coastal land for fishing communities has little meaning when viewed singularly as the association and relationship between coastal land and marine rights are inextricably intertwined. The need for a mechanism that acknowledges, integrates and operationalises this linkage (in terms of equitable user and access rights for fisher communities) merits at least a sincere discussion from the State.



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India's shores are home to 3,202 marine fishing villages, 7,56,212 households and above 3.52 million marine fisherfolk. Or is it? Despite 60 years of independence, individual or community rights of fishing communities over coastal lands still do not exist. In most cases, communities do not even have titles and deeds for their houses and settlements. This poses a real and present danger to the very existence of fishing communities fighting with non-coastal commercial interests on their home lands.

This report makes a case for coastal land rights to be accorded to fishing communities. It gives an overview of land use through some illustrative case studies on beach and coastal land use by fishing communities in India and traces the demand for housing and land rights among fisher groups as well as the provision of the same in the coastal legislation framework. It also provides an overview of the coastal environmental legislative changes initiated by the Indian Ministry of Environment and Forest. The analysis of the different reform committees recommendations, consultations, campaigns and the engagement between communities and the State reveals the fragility of fisherfolk livelihood security in the absence of coastal land rights.