

Indian Environment Minister Jairam Ramesh's Assurances Will Not Save Species From Extinction
ESG petitions Minister to Repeal the 190 Plants Exemption List

Union Minister of State for Environment and Forests (i/c) Mr. Jairam Ramesh in his "Clarification on MoE&F Notification of October 26, 2009 on Biological Resources Notified as Normally Traded Commodities" issued on 16th February, 2010 (available on the Ministry's website, <http://moef.nic.in>) has confirmed that the 190 plants listed in MoEF's Notification "would be exempt from purview of the Biological Diversity Act, 2002, provided they are traded as commodities". The Minister clarifies that "(t)his was in response to a long-standing request made by the Ministry of Commerce as well as from trade and industry". Regarding the development of the list, the Minister clarified that the "National Biodiversity Authority had set up an expert committee in November 2005 and it is this committee that identified these 190 agricultural products after consultations with various government bodies and research organisations". Mr. Ramesh reaffirms the sanctity of this Notification by stating that the Notification "simply gives effect to what has already been contained in the Act passed in 2002 and notifies a list of items".

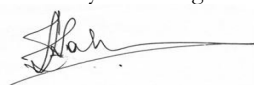
Responding to the fact that "(s)ome concerns have been raised on the implication of this Notification", Mr. Ramesh emphatically denies that the 190 plants lose protection of the Act. He clarifies "categorically that this Notification applies only for export of these 190 items and these exports would not require prior permission of the National Biodiversity Authority". It is specifically pointed out that "if these biological resources are used as a source for research or industrial purposes, they will require previous approval of the National Biodiversity Authority as per relevant provisions of the Biological Diversity Act, 2002". He ends this clarification on the hopeful note that his Ministry will keep the "implementation of the October 26th, 2009 Notification under the most careful watch and scrutiny".

The Minister's clarification is most welcome. It assures us that the Notification would not become a license for overexploiting our biological resources thus defeating the very purpose of the Biological Diversity Act and other conservation legislations. However, there are many core concerns that this clarification does not address at all.

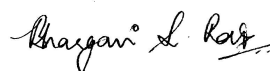
We have submitted a detailed representation on this issue to the Hon'ble Minister, which is enclosed. The letter describes our concerns that this Notification will expose our biological diversity to unnecessary threats:

1. The list of 190 plant species include *15 plants that are threatened, vulnerable or critically endangered. The threats to the survival of these plants species are as follows: 6 are listed as vulnerable, 5 near threatened, 1 is endangered and 3 critically endangered.* Considering that India has no regulatory capacity to distinguish the source of these species from cultivation areas or the wild, there is a very high chance that the desire for economic gains will lead to overexploitation of wild varieties, which could push already endangered plants into extinction. How exports can drive endangered species to the point of extinction is exemplified by the case of *Puntius denisonii*, a popular freshwater fish in the international aquarium trade owing to its exquisite beauty, which is also known as Denison's barb or "Miss Kerala".
2. The Minister's clarification note details some consultations held with specific agencies and bodies in developing this exemption list. But this process in no way fulfills the requirements of consultation as defined in the Biological Diversity Act. Kerala Biodiversity Board (which plays a critical role in conservation of species given its geographical position in the Western Ghats) has already confirmed that it was in no way consulted in the development of this list. Similarly, no State Biodiversity Board or any District Biodiversity Committee has been consulted in the process of formalising this list. Such lack of consultation thoroughly violates the due rights of local communities to be involved in such decisions, especially because the Biological Diversity Act protects their right to "to secure equitable sharing of benefits arising out of use accessed biological resources".
3. Besides the lack of democratic and statutory consultations, the secrecy by which this list has been developed is a particularly disturbing aspect of the Notification. The Minister himself did not even know about the list until it was brought to his attention at the Bangalore Bt-brinjal consultations! Mr. Ramesh has since clarified that the list was developed "in response to a long-standing request made by the Ministry of Commerce as well as trade and industry". We have learnt from representatives of pharmaceutical industry that over 900 species of plants were originally listed for exclusion and the number was brought down to 190. In a country where industry and exporters have the tendency to carelessly exploit natural and biological resources with impunity, such targetted consultations is likely to result in a situation where such lists may expand and could soon include other biological resources as well. In such a circumstance, the Minister's strong assurance that MoEF will "keep the implementation of the (Notification) under the most careful watch and scrutiny", does not build much confidence.

As the world commemorates the International Year of Biodiversity, we have urged Mr. Jairam Ramesh to take a major decision to protect India's biodiversity from potential ruin due to export of our irreplaceable biological wealth. A good first step would be to repeal this Notification as it includes endangered and vulnerable species, has been developed secretly and without compliance with the procedures laid down in the Biological Diversity Act. In addition we have urged him to ban export of threatened, critically endangered and vulnerable species, be they plants, birds, insects, fishes or microorganisms. In conjunction with proper environmental and economic impact studies, such a move will strengthen our internal capacities to utilise biological resources for in-country value addition, while simultaneously benefiting local communities.



Leo F. Saldanha
Coordinator



Bhargavi S. Rao
Coordinator (Education)

Environment Support Group, 1572, 36th Cross, Banashankari II Stage, Ring Road, Bangalore 560070. Tel: 91-80-26713559-61 Voice/Fax: 91-80-26713316
Web: www.esgindia.org Email: esg@esgindia.org

Encl.: ESG Letter to Mr. Jairam Ramesh along with a note explaining inclusion of threatened species in the list

Text of ESG Letter:

Shri. Jairam Ramesh
Minister of State (I/c)
Union Ministry of Environment and Forests
Paryavaran Bhavan
CGO Complex, Lodi Road
New Delhi

16 February 2010

Reg: Notification No. 2726 (E) of the Ministry of Environment and Forests, dated 26th October 2009 exempting 190 plants from the purview of the Biological Diversity Act per Sec. 40 “provided they are traded as commodities”

Dear Shri. Ramesh,

We write to you about the aforementioned Notification by which 190 plant species have been exempted from the purview of the Biological Diversity Act, 2002 (BD Act), “provided they are traded as commodities”. As is claimed in the Preamble to the Notification, this list has been evolved in consultation with the National Biodiversity Authority. However, there is no mention in the preamble if the draft of this Notification has been subjected to public comment as is required per Rule 5 of the Environment Protection Rules.

In the Bangalore consultation on the Bt brinjal issue, held by you on 6th February, 2010, a critical issue was raised that this notification was gazetted without any consultation whatsoever with any of the State Biodiversity Boards, District Biodiversity Committees, Forest Department, and such other relevant authorities. It was highlighted that issuing Notifications in such a manner constituted a major infringement on the due rights of local and state governments, and the wider public, to fully participate in such decisions. In addition, a grave concern was raised that the list of plants so exempted from the purview of the BD Act contained many threatened and highly endangered species, including those listed for protection under the Wildlife (Protection) Act, 1972.

In your “Decision on Commercialisation of Bt-Brinjal”, released on 9th February, 2010, the first footnote reports as follows:

“A wholly unjustified controversy was generated by two individuals at the Bangalore consultations on February 6th by their claim that a Gazette Notification of October 30th, 2009 exempting trade in 190 agricultural commodities from the ambit of Section 40 of the Biological Diversity Act, 2002 made these Bt-brinjal consultations a sham. This Notification has nothing to do whatsoever with the functioning of the GEAC and has absolutely no impact on genetic engineering issues. The Notification in the making for five years, was done at the behest of the Ministry of Commerce and other organisations so that the export of these commodities is not adversely affected. In case the species listed are used as bio-resources, permission of the National Biodiversity Authority is still needed before exports can take place.”

It appears from the above comment that the concerns raised by us relating to this Notification were considered unnecessary and of a trivial nature. In the melee that followed when we raised the issue, we never got the opportunity to articulate our critical concerns over this Notification.

In this context we are happy to note that you are reported in an article entitled “India Losing Rare Medicinal Plants”, published on the front page of The Asian Age, 14th February, 2010, to have stated that “a five-year moratorium should be placed on the export of all raw materials in order to save these plants from extinction.” Obviously your call is based on a deep consideration of the implications of trade to the conservation of such species.

In fact, the same article quotes you as having said that “annually, Rs. 800 crores worth of rare medicinal plants are being exported in raw form. These plants then get re-imported back into the country as medicines which are sold at much higher prices.” Surely we read your concern here to be one of ensuring that the value addition to our biological wealth remains in the country and that we are not losers due to our flawed export policies. Such dire implications seems to have influenced your decision as Minister of State for Commerce in 2007, when you proposed a 5-year ban

on export of raw materials. Shockingly this deep concern demonstrated by you to protect our biodiversity from over-exploitation has been shot down by current Union Commerce Minister, Mr. Kamal Nath.

How such gaps in policy making and regulatory efforts bring our endangered species to the point of extinction is exemplified by the case of *Puntius denisonii*, a popular freshwater fish in the international aquarium trade, also known as Denison's barb or "Miss Kerala" owing to its exquisite beauty. In a correspondence published in *Current Science*, Vol. 98, No. 2, 25 January, 2010, Rajeev Raghavan *et al.* have this to say about how "Miss Kerala" ended up on the IUCN Red List of Threatened Species:

"Denison's barb has been the centre of focus of an open-access and unmanaged fishery targeting various endemic fishes of Western Ghats for the international aquarium pet trade. *P. denisonii* was collected for the first time in 1996 and sent to Germany. The following year at 'Aquarama 1997' (world exhibition on ornamental fish), *P. denisonii* was awarded the third prize in the 'new species category' competition. This created hobbyist attention and the species soared in popularity. The opening up of the Cochin International Airport in 1999 probably stimulated increased trade, as Kerala was connected to Singapore (the largest world market for ornamental fish) by daily flights. During the last decade, *P. denisonii* was requested in majority of trade enquiries and was being exported in consistent numbers, very regularly from India. Of India's total live ornamental fish exports to the tune of US\$ 1.54 million during 2007–08, *P. denisonii* accounted for almost 60–65%. The 'boom and bust fishery' for *P. denisonii* was considered to be one of the most important conservation challenges in the Western Ghats. In spite of being listed as 'endangered' (EN) in the local Conservation Assessment and Management Plan Report, the species received less attention from policy makers for many years. Worse so, the species was even promoted as an 'export item' by certain government agencies! This apathy, and failure to regulate the collection and trade for over a decade resulted in massive declines of wild populations." (emphasis added)

From this analysis it is clear that it is the export of this fish that has brought it to the verge of extinction in less than a decade of its recognition as a collector's item. An editorial entitled "Endangered Beauty" in *The Hindu* dated 11 February 2010 endorses this concern against such uncontrolled export of "Miss Kerala" and demands "...there is a good case for prohibiting the export of specimens, dead or live" of this fish. Needless to state, such concerns must pervade over decisions relating to exports of all threatened species.

"Miss Kerala" is a fish that is on the verge of extinction even though it is protected with regular monitoring by the Fisheries Department, Biodiversity Boards and the Ministry. One can well imagine then what could be the consequence were a Notification issued to exempt such species per Sec. 40 of the Biological Diversity Act "provided it is traded as (a) commodity" for export.

We analysed the list to appreciate the threats that these 190 plant species were being exposed to due to unregulated exports and discovered to our shock that there were at least "15 plants amongst the 190 species (that) are in danger. The threats to the survival of these plants species are as follows: 6 are listed as vulnerable, 5 near threatened, 1 is endangered and 3 critically endangered". A note prepared by ESG comparing the threat values faced by the plants listed in the Notification is enclosed for your perusal as **Annexure A**.

While we bring such matters to your attention, we thankfully acknowledge the "Clarification on MoE&F Notification of October 26, 2009 on Biological Resources Notified as Normally Traded Commodities" that you have issued today. However, on a careful study of this clarification note, we find that the core concerns we raise above are not being addressed, which are as follows:

- 1) We appreciate the need for accommodating exports of biological resources by protecting traders from unnecessary and counterproductive bureaucratic hassles. However, when a species has been listed as threatened or endangered, and thereby identified for protection, it is essential that this species should not be listed as a "commodity" for trade and export. This will only precipitate the chances for its extinction as is the case with "Miss Kerala", cited above, despite it being protected.

- 2) We submit that the protection accorded per Rule 16 of the Biological Diversity Rules needs to be read with Sec. 59 of the Biological Diversity Act, which is as follows:

"59. The provisions of this Act shall be in addition to, and not in derogation of, the provisions in

any other law for the time being in force, relating to forests or wildlife.”

Clearly then, the need for protection of a species as identified under the Wildlife Act would assume importance and even supercede any action taken under the Biological Diversity Act. This is because the latter Act should not be “in derogation” of provisions of other existing law, particularly those which are specifically enacted to mandate protection of species.

3) The process by which the list of 190 species has been evolved, admittedly involving consultation with Foundation for Revitalisation of Local Health Traditions amongst others who have been so privileged, is fraught with various inconsistencies with the procedures laid down for such actions in the Biological Diversity Act. Absent clearly is the conformance with the mandatory requirement of consultation with State Biodiversity Boards and District Biodiversity Committees on such matters. In addition, this consultation process has admittedly involved several meetings with trade and industry lobbies on their export related concerns, but has excluded everyone else, including forest dwellers, farming communities, botanists, conservationists, etc. from this critical process. Importantly, though this Notification has been in preparation from 2004 in collaboration with the Union Ministry of Commerce, not once has draft of this Notification been subjected to public opinions as is required per Rule 5 of the Environment Protection Rules that grants the Ministry the power to issue such Notifications.

4) A core objective of the Biological Diversity Act is to ensure that the rights of local communities who have conserved our biodiversity for generations is fully protected. This aspect is forcefully elucidated in Sec. 21 (1) of the Act as the need to “secure equitable sharing of benefits arising out of use of access accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions”. The Notification seriously jeopardises this due right of communities to so benefit from the use of biological resources, as not one community has been consulted on the formulation of this list. The Notification thus opens the flood gates for the trading away of our genetic resources to merely benefit exporters.

5) The selection of these 190 plant species is another important concern. We have learnt from some representatives of pharmaceutical industry that over 900 species of plants were originally listed for exclusion per Sec. 40 of the Biological Diversity Act. This number was then brought down to the current list of 190 plant species. In so arriving at this list, there seems to have been no study whatsoever, of the environmental and economic impact of such exclusions, by the National Biodiversity Authority, or any of the State Biodiversity Authorities. Thus, this exemption list is bereft of any logic barring, merely, their trade for export value.

6) Then there is the most complex problem of poor regulation of sourcing of plants for commercial exploitation in our country. Since we do not at all have the capacity of ensuring threatened species are only sourced from cultivation zones and not from the wild, there is no way to certify the origin of the plants sourced for exports. As a result of this Notification we may thus be licensing the plunder of our irreplaceable biological wealth. This despite your assurance that the MoEF will “keep the implementation of the October 26th 2009 Notification under the most careful watch and scrutiny”.

Considering all of the above it is our considered view that the current process by which the Notification has been evolved lacks the sanction of law, the quality of concern for conservation of our biological wealth and the depth of consultation that ought to have preceded the formulation of this Notification. Such an exercise also sets a very bad precedent by allowing the bureaucracy to arrogate to itself enormous powers to decide about our futures in gross variance of law while discarding the mandatory need for public involvement. The fact that you were not aware of this Notification till we brought this to your attention is a very telling point indeed when we consider the fact that vulnerable, threatened, endangered and critically endangered species have found their way into this list.

In the International Year of Biodiversity, we hope it will not be on your watch that we would notify our plants into extinction merely for economic gains accrued from their exports. We urge you to take all corrective steps to protect our biological wealth. A good first step would be to repeal this problematic Notification while also initiating the process to ban export of theatened, critically endangered and vulnerable species, be they plants, birds, insects, fishes, and microorganisms.

Yours sincerely,

Leo F. Saldanha
Coordinator

Bhargavi S. Rao
Coordinator (Education)
Environment Support Group

Encl.: As above

Cc.:

1. Union Ministers in-charge of Finance, Commerce, Tribal Welfare, Health, Science and Technology, Agriculture and Fisheries
2. All State Ministers in-charge of Environment and Forests
3. Chairman, National Biodiversity Authority
4. Secretary, Union Ministry of Environment and Forests
5. Director General of Forests, Union Ministry of Environment and Forests
6. Chairpersons of all State Biodiversity Boards
7. Principal Chief Conservator of Forests of all State Forest Departments

Threatened Plant Species On The List Of Plants Exempted From The Protection Accorded Per The Biological Diversity Act, 2002

The Ministry of Environment and Forests issued a Gazette Notification on 26th October 2009 [S.O.2726 (E)], the preamble of which reads as follows:

“In exercise of the powers conferred by section 40 of the biological Diversity Act, 2002 (18 of 2003), the Central Government, in consultation with the National Biodiversity Authority, hereby declares that the provisions of the Act shall not apply to the following biological resources specified in column 2) of the table below provided they are traded as commodities.”

A total of 190 plant species are included in the above list. Medicinal plants account for 35, Spices 27, and the remaining 128 are grouped as Horticultural crops that includes Fruits, Vegetables, Root, Tuber and Bulbous Crops, Flower crops, Plantation crops, Medicinal crops and Aromatic crops. (*Tamarindus indica* has appeared twice on the list (at no.52 and no.82 with a spelling change - once under spices and again under fruits).

A careful review of the list reveals that many threatened species are included. While the purpose of such a list is to exempt anyone exporting these plants from the need to comply with provisions of the Biological Diversity Act, the question arises if threatened species can at all be included in such a list. This concern arises from the fact that exports form a major threat to the survival of our threatened flora and faunal species. As a consequence of this list it is our concern that it may result in over-exploitation of the genetic wealth of India, and could rapidly cause the extinction of several vulnerable and critically endangered species.

From the plant species included in the aforementioned Notification, we have identified many threatened plants species based on classification of threats to species as identified by Botanical survey of India¹. To be doubly sure of the accuracy of our comparison, we have surveyed the list of the Threatened plants species as displayed on website of the Ministry of Environment and Forests website² and also with information available on the website of the Foundation for Revitalization of Local Health Traditions³.

From these comparisons, we find that there are about 15 plant species whose conservation requires immediate or emergency attention because they are threatened. The threat values to the survival of these species is based on the codifications developed by International Union of Conservation of Nature and Natural Resources (IUCN). [Please refer to a description of the classification of threats at the end of this note.]

As a result we find that a total of 15 plants amongst the 190 species are in danger. The threats to the survival of these plants species are as follows: 6 are listed as vulnerable, 5 near threatened, 1 is endangered and 3 critically endangered.

A tabulation of these species based on the threats perceived is enclosed.

¹ Accessible at: http://www.bsienviis.nic.in/threatened_plants_of_india.htm (accessed on 10 February 2010)

² Accessible at: <http://www.envfor.nic.in/bsi/research.html> (accessed on 10 February 2010)

³ Accessible at: <http://envis.frlht.org.in/traded-medicinal-plants-database.php> (accessed on 11 February 2010)

Vulnerable	Near Threatened	Endangered	Critically Endangered
<i>Acorus calamus</i> (Kan: Baje)	<i>Gloriosa superba</i> (Kan: Aginsikhe, Balipaapu, Chowthi hoo)	<i>Rauvolfia serpentina</i> (Kan: Patalagarudi)	<i>Inula racemosa</i> (Kan: Rasnabheda)
<i>Curcuma angustifolia</i> (Kan: Koovehittu)	<i>Piper longum</i> (Kan: Hipli)		<i>Kaempferia galangal</i> (Kan: Kachchura)
<i>Garcina indica</i> (Kan: Dhupadamara)	<i>Dendrobium sp.</i>		<i>Valeriana jatamansi</i> (Kan: Tagara)
<i>Piper nigrum</i> (Kan: Menasu)	<i>Cymbidium sp.</i>		
<i>Aegle marmelos</i> (Kan: Belapatre)	<i>Cholorophytum borivilianum</i> (Kan: Musli)		
<i>Amorphophallus paeoniifolius</i> (Kan: Choorana gedde)			

Bhargavi S. Rao, M. Sc. (Botany), St. Joseph's College, Bangalore and M. Phil (Botany), Bangalore University currently Coordinator (Education and Training)
Environment Support Group

Sruthi Subbanna, M.Sc. (Environmental Science), Mumbai University & M. S. (Environmental Science), Oklahoma State University (USA) currently Research Associate
Environment Support Group

Note:

IUCN Red List of Threatened Species (also known as the **IUCN Red List** or **Red Data List**), founded in 1948, is the world's most comprehensive inventory of the global [conservation](#) status of plant and animal [species](#). IUCN is the world's main authority on the conservation status of species. A series of [Regional Red Lists](#) are produced by countries or organizations, which assess the risk of extinction to species within a political management unit. According to IUCN the 2006 Red list categories are as below.

Species are classified in nine groups, set through criteria such as rate of decline, population size, area of geographic distribution, and degree of population and distribution fragmentation.

- 3) [Extinct \(EX\)](#) - No individuals remaining.
- 4) [Extinct in the Wild \(EW\)](#) - Known only to survive in captivity, or as a naturalized population outside its historic range.
- 5) [Critically Endangered \(CR\)](#) - Extremely high risk of extinction in the wild.
- 6) [Endangered \(EN\)](#) - High risk of extinction in the wild.
- 7) [Vulnerable \(VU\)](#) - High risk of endangerment in the wild.
- 8) [Near Threatened \(NT\)](#) - Likely to become endangered in the near future.
- 9) [Least Concern \(LC\)](#) - Lowest risk. Does not qualify for a more at risk category. Widespread and abundant taxa are included in this category.
- 10) [Data Deficient \(DD\)](#) - Not enough data to make an assessment of its risk of extinction.
- 11) [Not Evaluated \(NE\)](#) - Has not yet been evaluated against the criteria.

When discussing the IUCN Red List, the official term "[threatened](#)" is a grouping of three categories: Critically Endangered, Endangered, and Vulnerable, in the order of highest to lower threat values.