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Feedback to Draft EIA Notification 2020

We feel that the 2006 notification needs to be modified as since some new environmental problems have cropped up in recent times while a number of existing problems have gone worse. Our suggestions are also rooted in our firm belief that sustainable utilization of natural resources and development must go together. Keeping all the above concerns in view, we hereby place below our reactions about the draft notification: in the following few lines. At the outset, we feel that the draft should have been published in regional languages for wider consideration. You will agree with us that any impact on our environment will also directly impact the public life. Therefore, public awareness is an essential part of it.

SUGGESTIONS

1. **Excluding certain projects from sharing EIA information with the public**

In Clause-5 (Categorization of projects and activities), sub-clause (7) it is mentioned that "---Further, no information relating to such projects shall be placed in public domain."

It is essential that the negative impacts on the environment and steps taken by the implementing agency be made public. Categorising "projects other than those concerning national defence and security" at par with defence related projects is not an acceptable proposition. Once the central government gets the power to categorise projects, for instance, nuclear power projects, oil installations etc as strategic projects, the draft notification confers the power to ignore all sorts of transparency.

Therefore, we demand that the Central Government should not be given any extra power to categorise some projects other than defence related ones as "strategic" just to exclude them from the process of appraisal and public hearing.

2. **Excluding certain projects from preparing any EIA**

In **Clause: 5 (Categorization of projects and activities) in the sub-clause (6)** states that all other projects under Category 'B2' (other than those projects specified under **sub-clause (5) of the above Clause),** shall require prior-EP from the SEIAA or UTEIAA, as the case may be. These projects shall not be placed before Appraisal Committee. This implies that EIA of some of these projects are not required to be apprised.

Therefore, it can be taken to consideration that the project proponents are capable of appraising their own projects.

This sub-clause excludes many important projects that may impose huge environmental externalities from its purview e.g., emit a huge amount of greenhouse gas (area development projects) and or may cause severe damage to wildlife habitats, corridors by fragmenting them (linear projects). These projects are included in items 9, 10(f), 11(b), 25, 38, 40, 41, 42, and 43 of the draft regulation.

Following examples will elucidate this further: -

(i) **in item 38-(i)** Expansion or widening of existing National Highways or Expressways or Multi-modal corridors or Ring Roads by length between 25 km and 100 km involving widening or right of way more than 70 m on existing alignments or realignments or bypasses. These linear projects are exempted from appraisal by SEIAA or UTEIAA.

'It is unfair that 'linear projects' should not be given all sorts of relief in protected areas by including them in B2 category.

(ii) **In item 42** Building Construction and Area Development Projects >1,50,000 sq. mtrs (150 hectares) of built-up area have been excluded from appraisal. However, as per the draft notification, the new construction projects up to 1,50,000 square metres (instead of the existing 20,000 square metres) do not need "detailed scrutiny" by the Expert Committee.

(iii) **In item 43** Elevated roads or standalone flyovers or bridges have also been excluded from appraisal. These building construction sectors and elevated roads, flyovers, bridges make drastic land use changes and therefore are among the largest indirect agents of greenhouse gas emission. However, as per the draft notification, the new construction projects up to 1,50,000 square metres (instead of the existing 20,000 square metres) do not need "detailed scrutiny" by the Expert Committee.

In this case we demand that, they need to preparesuch projects be brought back under the purview of EIA studies and public consultation as before.

3.**Monitoring of post project prior-EC or prior-EP**
n Clause-20""sub-clause-4it is mentionedthat **"**The yearly compliance report shall be submitted, each year, from the date of grant of prior-EC, till the project life, to the Regulatory Authority concerned. However, Regulatory Authority can seek such compliance reports at more frequent intervals, if deemed necessary."
In the 2006 EIA Notification submission of half-yearly compliance reports in respect of the stipulated prior environmental clearance was mandatory.
This deviation may fail to notice violations of environmental standards that a project proponent needs to follow.
We demand that the provisions of 2006 notification should be retained.

4. **Post facto approval**

In Clause 22 it is mentioned that the cognizance of the violation shall be made on the:-

(a) *suomoto* application of the project proponent; or

(b) reporting by any Government Authority; or

(c) found during the appraisal by Appraisal Committee; or

(d) found during the processing of application, if any, by the Regulatory Authority.

This means that even if a project proponent being aware of the violations does not make any *suomoto* application, and other agencies also fail to report the violation the project can be still be considered for appraisal. This allows making room for institutionalising violations of environmental laws of the land. Transferring the responsibility of recognizing the violation on the potential perpetrator of the violation is not acceptable.

Post facto approval is in violation of the "precautionary principle," which is a corner stone of paradigm of environmental sustainability. Even on 1 April 2020, Hon'ble Supreme Court of India on 1st April 2020, ruled that the central government had no power to grant post facto approval, on the grounds that this would be in "derogation of the fundamental principles of environmental jurisprudence." Writing for the bench, Justice D Y Chandrachud held that "environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."

"Dealing with violation cases" is a new section in the draft notification compared to the EIA notification 2006. It is reality that in most of the cases once the project is given a green signal for implementation, permanent damage to the landscape occurs. No amount of restoration effort can replenish the losses made.

Therefore, we demand that no such 'clause' depicting post facto approval should be included in the notification.

5. **Reducing the scope of public consultation**

In **APPENDIX-I** under the head "**Procedure of Public Consultation" in the last line of Clause 3.1 it is stated** "A minimum notice period of twenty days shall be provided to the public for furnishing their responses". In the 2006 notification this period was 30 days.

The 2006 notification defines 'public consultation' as the process by which the concerns of local affected persons and other stakeholders are addressed and taken into account while designing the project.

EIA documents of large projects with huge considerable investments, whose carry out period runs into several years, and even a decade, are complex scientific and technological documents. While adequate time is granted to projects for financial approvals, locally affected people have only 20 days—further limited narrowed by the draft notification from the narrow 30-day window itself at present—to respond to these projects. In sum, it expects farmers, tribals, fisherfolk, forest dwellers, and others to leave their livelihood and rush to study EIA reports within this short time period which ridiculously trivializes the provision of public consultation.

Further to state that this draft notification exempts certain projects from public consultation. These include all building, construction and area development projects, inland waterways, expansion or widening of national highways, and modernisation of irrigation projects.

We also demand that a period of 45-60 days' notice period should be given and prior to the process of public hearing, salient features emphasising upon the impacts and its management as mentioned in the EIA and EMP should be made available to the public in local language.This also includes projects under exempted category.

6. **Changing the definition of Capital Dredging**

In Clause-3 "Definitions", Sub-clause 8: the definition of the term "capital dredging," has been amended in the 2020 draft to refer only to seabed dredging for ports and such installations. However, dredging of riverbeds for building of navigable waterways, clearly a capital one rather than maintenance activity, has been exempted from the provision of EIA. The 2006 Notification covered non-maintenance dredging of both rivers and seabed under this definition. If riverbeds are allowed to be dredged without any ecological surveillance on them, then untold ecological consequences and impact on livelihoods will be in place. This deliberate omission from definition is totally unacceptable.

We demand that the definition of 'capital dredging' should not be changed as suggested.

7. Expansion Proposals of existing Projects

In **Clause-4, sub-clause-3** it is clarified that 'construction work' for the purpose of this notification shall not include securing the land by fencing or compound wall; temporary shed for security guard(s); levelling of the land without any tree felling; geo-technical investigations if any required for the project.

This means that a project proponent can start construction of a wall and also undertake levelling of the land where tree felling is not required without obtaining prior EC. It is obvious that activities like construction of walls and levelling of land change the land use and land cover of any particular landscape. Such changes may cause permanent damage to the ecosystem. In many cases, the land for proposed project or activity involves ecologically fragile areas, wildlife corridors, wetland, grasslands, floodplains, hills, scrubland, desert etc. where trees are not necessarily present but any construction or levelling on such lands could lead to a significant disturbance causing irreparable and irreversible damage to ecosystem.

We demand that 'no change in land use should be allowed prior to obtaining environmental clearance (EC)' has to be include in the regulation.

8. Public Consultation

In **Clause 14 sub-clause (2)** it is stated that in all the projects under item 31 of the schedule, the public consultation shall be limited to the district (s), where the National Park or Sanctuary or Coral Reef or Ecological Sensitive Areas are located.

We demand that the projects within or in 10 kilometre radius of such reserve sites and ecologically important areas, 'Public Hearing' should not be confined only to the district(s) involved. People outside the specified area should be allowed to interact in the public hearing as impacts on these ecologically

sensitive areas are likely to affect a larger domain than within the district(s) in which the reserve site is confined.

9. Validity of Prior Environment Clearance or Prior Environment Permission

In **Clause 19 sub-clause (1) (c)** mining projects have been given more relaxation in the draft by extending the duration of environmental clearance to fifty years or up to the period of validity of mining lease. In the 2006 notification the period of environmental clearance was only for thirty years. In the present draft, tThis full duration 50 years is considered as the part of the extraction phase.

We demand that as the environmental problems are escalating day by day and there are many cases of violation of rules in forest areas the previous provision of 30 years should be adhered retained without any extension of this period in any manner.

10. Exception of projects (The following cases shall not require prior-EC or prior-EP, namely:- ….)

In **Clause 26 sub-clause (19)** coal and non-coal mineral prospecting is kept out of EIA and environmental clearance.

Such prospecting, when done within a forest or ecologically sensitive area, needs involves transportation of heavy machinery to be transported into these areas leading to some significant land-use changes.

Therefore, we demand that environmental clearance should be made mandatory in these cases as well.

Besides above specific changes in the draft EIA notification 2020 we also suggest some inclusions as they are the need of the time.

1. In cases where EIA is done within or in the vicinity (within 10km radius) of Protected Areas like reserved forest (RF) areas with wildlife habitats of any such ecologically sensitive areas it should be made mandatory that Wildlife Management Plan (WMP) should be prepared simultaneously. The RFs and other protected areas generally have wildlife corridors around it. Habitat destruction is considered to be the major cause of biodiversity loss. A WMP prepared by experts and apprised by an expert committee appointed by National Board of Wildlife (NBWL) can help in rehabilitation of biodiversity to a considerable extent and can help check the biodiversity loss from potential habitat losses.

2. All important conservation sites like Reserved/Protected Forests, floodplains, wetlands, sacred groves, watershed areas, mangroves and habitats of vulnerable flora and fauna which are ecologically sensitive areas and perform significant ecological functions should be declared eco-sensitive sites irrespective of any notification by the MoEFCC. It should also include ecologically significant areas protected under Indian Forest Act 1927, Wetland Conservation and Management Rules 2017, CRZ Notification 2019, Island and CRZ Notifications and Rivers notified as National Waterways under National Waterways Act, 2016

It is evident that there have been major dilutions of 2006 EIA Notification in the proposed amendment in 2020 EIA Draft Notification. Although public consultation in most countries, are adjudged a key component in participatory governance, the major tendency in present draft is to grossly undermine the provisions of public

hearings. Any development activity, whether it is an industrial one or linear project or area development programme, essentially requires sizeable amount of land resource, that are in most cases in custody of the village public. Therefore, it is an ethical responsibility of the government and project proponent to arrange a detailed community level consultation before initiation of the project.

The ministry should actively consider undoing above mentioned changes in the draft regulation and including the points mentioned above to make it in tune with the principles of environmental sustainability. We also maintain that an EIA regulation has to keep the provisions of Sustainable Development Goals (SDG) in perspective. It should also meet the commitments given in the 'Intended Nationally Determined Contributions (INDC)' 2015 towards reductions in greenhouse gas emissions under the United Nations Framework Convention on Climate Change.

Finally, the pandemic situation prevailing in the country during the last three months has severely disrupted the normal lives and daily business of people. It should be appreciated that in the present circumstances many stake holders have not had the privilege to go into the deeper nuances of the different provisions in the draft. The experts, environment specialists and many others are yet to discuss or consult on the various provisions said draft due to various restrictions (social distancing etc.) imposed under lockdown. The vast section of the marginal people (tribas, fisher men, coastal men, hill communities) who are likely to be affected by proposed changes, could neither be consulted nor have had the luxury of considering the EIA draft.

Therefore, we call upon the MoEFCC to defer the process of consideration and introduction of 2020 draft notification till the post-pandemic normalcy.