

Environmental Decision-making: Whose Agenda?

Despite revisions in the environment impact assessment notification in 2006, the deficiencies have not been overcome. As a result, environment impact assessments, which assess a project by technical means as well as public opinion, are hardly thought of as important decision-making tools.

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On September 14, 2006, the ministry of environment and forests (MoEF) issued the new environment impact assessment notification, which replaced the 1994 version that had undergone 12 amendments. With this came into force a new process for the grant of environment clearance to development and industrial projects.

Even before the draft notification was issued, both the process of drawing the draft and content of the proposed law had come under severe criticism by civil society organisations, people's movements, academics and researchers. Several parliamentarians joined hands with the Campaign for Environmental Justice-India and supported concerns about the lack of a transparent and consultative process undertaken by the MoEF to draft and finalise the new 2006 notification, a legislation that has the potential to affect people's livelihoods, natural resources and ecological well-being of the country.

I Environment Clearance Process

Infrastructure, industrial and other development projects have been on India's agenda of "nation building" for decades. However, it is these projects that have been largely responsible for the loss of biodiversity, and degradation of natural resources such as water and soil, and affecting the lives and livelihoods of tribal and rural communities.

The environment clearance process was introduced in India with the purpose of identifying and evaluating the potential impacts (beneficial and adverse) – environmental, social, cultural and aesthetic – of developmental and industrial projects on the environment. All of these are critical to determine the viability of a project and to decide if a project should be granted environmental clearance and what the conditions for clearances should be. The process of obtaining clearance includes the preparation of a detailed environmental impact assessment (EIA) report and organising a public hearing.

Potentially, the notification forms a critical basis for environmental decision making in the country.

II Concerns

For the last 13 years of the notification, citizens' experiences of their involvement with the EIA and their role in the decision-making process has been bitter and disappointing. In many cases, the entire process was compromised with substandard or fraudulent EIA reports, public hearings marred by intimidation, violence and procedural irregularities, and the grant of clearance by the MoEF despite justifiably adverse public hearings and EIAs. Although the opportunity to re-engineer this process could have been used to address the above-mentioned long standing concerns, the new notification intentionally has not rectified several of the earlier flaws and in some cases even magnifies the problem. For example, there is an exclusion of many kinds and sizes of development/ industrial projects and activities from the list of projects requiring clearance that have identified negative environmental and

social impacts. There is no stated requirement of an assessment of the combined or cumulative impacts of projects related to each other (e.g., a port and mining project) or coming up in an ecological unit (e.g., a series of dams in the same river basin) or a geographical area (e.g., an area that already has several industrial units). The notification does not make necessary social and environmental impact assessment of policies and sector-wise programmes. Further, EIAs continue to be funded by project proponents rather than by an independent agency, which fails to allow the possibility of a biased and subjective EIA report. There is very little scope for the participation of people who are likely to be affected by the project, in the environmental assessment and overall clearance process. Public hearings have provided only a limited space for participation at the assessment stage, they are hindered by the lack of will to encourage participation, lack of availability of complete or accurate information and the absence of clear post-hearing clauses in the notification. There is also a lack of adequate and relevant expertise and human power amongst

concerned authorities including the expert committees of the MoEF. The penal clauses of the notification have never been implemented by the MoEF. Therefore, project proponents and EIA consultants repeatedly push inadequate, fraudulent and fudged reports. Finally, redressal mechanisms available to the public are weak and inadequate. The only exclusive forum for redressal is the National Environment Appellate Authority (NEAA) which also has several limitations.

III Furthering Commerce?

The new EIA notification draws its objectives from the report on reforming investment approval and implementation procedures, by a committee headed by V Govindarajan. The report identifies it being necessary to simplify the procedures for grant of approvals, reduce delays and ground level hassles and simplify the regulation of projects during their operational phase. The review of the environment clearance process is also fallout of the World Bank funded environmental

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management capacity building project of the MoEF. A note circulated to select NGOs in November 2004 and other related documents states this explicitly.

Key Issues

The new EIA notification, 2006 replaces environmental priorities with investment priorities and violates the mandate of the Environmental Protection Act 1986, under which it is issued. The most critical concern about the new notification has been the process by which it has come to being. Consultations on the draft notification were held only with representatives of industry and central government agencies, as per the ministry's own submission (based on responses to the right to information applications filed in 2005-06). State governments, panchayats and municipalities, NGOs, trade unions and local community groups were partially or completely kept out of the process. A revised version of the draft notification was also shared with industry associations in mid-2006 before the final version was issued in

September 2006. This inherent bias to negotiate with industry on environment regulation runs through the text of the notification.

The new notification has a separate clearance procedure laid out for construction projects but a careful reading reveals that the inclusion of this sector is only cosmetic. These projects do not need to go through the stages of screening or scoping and the notification allows their clearance to be processed without EIA studies or public consultation.

The EIA notification, 2006 states that the appraisal committees at the central and state levels will convey the terms of reference for the EIA report within 60 days of the receipt of Form 1 containing basic information about the project. While the notification clearly lays down guidelines on how long it should take for each of the four stages to be completed for the grant of environment clearance, there is no mention or record of how much minimum time must be spent on putting together a comprehensive EIA report. The new notification should have

specified the time needed between the grant of terms of reference and the completion of at least a four season EIA report.

As per the notification, only a draft EIA report will be available to the locally affected persons at the time of the public hearing. At the time when citizens are celebrating the use of their right to information, this retrograde step denies the affected persons access to the final impact assessment based on which clearances will be granted to projects.

The most critical issue of monitoring and compliance, which is an integral part of the environment clearance regime is dealt with in precisely three sentences in the new notification. There is only a mention of the six monthly compliance reports, which are to be submitted by the project proponent, leaving this to be a system of self-regulation, bound to fail and thereby, make local communities and the environment vulnerable to project impacts.

If one looks at the proposed composition of the screening, scoping and appraisal

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committees as per the new notification, they do not include social scientists, ecosystem experts or NGOs. These categories of experts were included in the composition of appraisal committees in the 1994 notification. An open letter on the problems with the composition and functioning of expert committees was sent to the MoEF with copies to the prime minister's office (PMO) in April 2005. Unfortunately, the ministry issued a circular (dated November 9, 2006) according to which all existing expert committees are to operate as expert appraisal committees under the new notification.

IV For Appropriate Decision-making

The scope of the environmental clearance process is vast and has a significant bearing in ensuring sound environmental decision-making in the country. Therefore, it must be ensured that the EIA process is under the rubric of a statute on public information and access or as mandatory rules under the Environment (Protection) Act, 1986. The issue of environment clearance of development and industrial projects is extremely important and cannot be subject to repeated amendments, often with bypassing the need for substantial debate. A notification being a subordinate legislation allows for this which will not be possible if it is an act.

Ensuring that environment clearance process is comprehensive: The EIA notification 2006 is not applicable to all projects. The activities in the schedule of the 2006 notification appear to be lengthy and exhaustive. But it is actually a dilution from the 1994 notification and the 2005 draft if the exclusions granted to sectors and projects from conducting EIAs or public hearings or both are factored in.

EIAs are needed for policies/plans and sectors and not just individual projects. All departments and ministries have to conduct policy-level and sector-wide EIAs in the form of strategic impact assessments (for various sectors including mining, power and so on). This is critical to judge the impacts of macroeconomic, developmental, and other policies, schemes, and programmes.

Ensuring that the EC process is participatory and transparent: The most radical amendment made to the EIA notification 1994 was the one which built on clauses for public participation and put out a set

of guidelines for conducting public hearings as part of the decision-making process on developmental projects. However, several of the guidelines laid out for the public hearing process are violated in many instances. The limitations introduced in the new EIA notification, 2006 worsen the situation. The current EIA regime completely undermines the spirit of public participation in environmental decision-making. Therefore, it is critical that public hearings are conducted for all projects and also conducted in at least three phases/stages for projects to be located in sites not cleared in advance. Further, there needs to be complete transparency in the conduct of public hearings

How can the process be scientifically and socially just? The content of the EIA notification is one of the biggest concerns in terms of the implementation of the EIA notification. EIAs are filled with false/inadequate/incomplete information; when the information is good, the conclusions are not in line with it. The focus of EIAs needs to shift from utilisation and exploitation of natural resources to conservation of natural resources. Many EIA reports tend to justify the need for the project, shifting the focus of the EIA as a process that provides/assesses the viability and desirability of the project to one that finds justification for the project and that offers simplistic solutions to.

Some steps that can help to ensure that the process of environment decision-making in development projects has some integrity are that EIAs be done independently and not with project proponents hiring the EIA consultant. This may be achieved by the collection of a fee for the conduct of the EIA and kept in an independent EIA fund. EIA consultants who have been engaged in preparing plagiarised and false reports or whose work has been found to be repeatedly substandard could be "black-listed" and not allowed to undertake EIAs. All EIA reports should clearly state the adverse impacts that a proposed project will have. This should be a separate chapter and not hidden within several hundred pages of technical details.

It is critical that EIAs are based on full studies carried out over at least one year. Single season data on environmental parameters like biodiversity, as is being done for several "rapid" assessments, is not adequate to gain an understanding of the full impact of the proposed project. *Compliance of clearance conditions:* The

compliance of clearance conditions is directly related to the transparency of the monitoring process and informed involvement of citizens in the process. Most projects are granted clearance (even in cases where there is stiff opposition from local communities) based on environmental and social conditions such as employment for local people, afforestation of degraded areas, maintaining health of project personnel, ensuring that there is no break out of communicable diseases, providing educational and other civic facilities to the local population, etc. However, neither does the local population know of these conditions that are supposed to be fulfilled by the developers nor do the developers reflect the true status of compliance in their reports to the MoEF.

Monitoring the compliance of conditions needs to clearly include a provision for a periodic review of environmental clearance granted, which can be based on several criteria including whether or not the project proponent has complied with the clearance conditions.

All such reports should be made publicly available.

The formation of local area monitoring teams comprising local area residents should also be encouraged by the sub state/district level monitoring agency.

Conclusion

With the reforms, EIA procedures have been taken over by economic interests and these procedures now, more than ever, treat environmental concerns as issues to be managed by short-sighted compensatory clauses. EIA procedures are clearly not being viewed (by the government and the project proponents) as decision-making tools where impacts of a project can be truly assessed, public inputs sought and one that allows the option of rejecting a high impact project. Today, every project, irrespective of its impact, can be granted clearance. The number of mitigation measures is all that will differ according to the severity of the impact. The system of ensuring that these mitigation measures are carried out is abysmally weak on account of the sheer number of projects that need to be monitored, the lack of robust procedures and poor human and resource capacities delegated to monitoring.

Unless these EIA procedures are revised altogether with the open and free participation of the project-affected people,

environmental and human rights groups and representatives of local self governments, development projects will unleash tremendous and widespread negative consequences on the poor and marginalised of India's citizenry. Poor and disempowered people will have no option but to retaliate with violence to save the ground beneath their feet.

This is not a scenario of the future, this is the present. 

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[This article is based on several existing analysis, including newspaper articles, reports and other publications of the authors. It also draws on several letters of the Campaign for Environment Justice-India (CEJ-I) written during 2006-07 (more details on www.kalpavriksh.org) and Open Letters sent to the ministry of environment and forests and the prime minister over 2004-06 by several civil society organisations, academicians and researchers. The recommendations section draws from the submission made by Manju Menon as a member of the Planning Commission Task Force on EIAs in December 2006.]