

ELEVEN YEARS OF THE ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION, 1994

How Effective Has It Been?



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in collaboration with

Just Environment Trust

Environment Justice Initiative
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KALPAVRIKSH



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CONTENTS

ACKNOWLEDGMENTS PREFACE ABOUT THIS REPORT EXECUTIVE SUMMARY

1. Eleven Years, Twelve Amendments	13
1.1 Amendment Dated 4 th May 1994	13
1.2 Amendment Dated 10 th April 1997	14
1.3 Amendment Dated 27 th January 2000	14
1.4 Amendment Dated 13 th December 2000	16
1.5 Amendment Dated 1 st August, 2001	16
1.6 Amendment dated 21 st November 2001	16
1.7 Amendment dated 13 th June 2002	16
1.8 Amendment dated the 28 th February, 2003	16
1.9 Amendment dated the 7 th May, 2003	17
1.10 Amendment dated the 4 th August, 2003	17
1.11 Amendment dated the 22 nd September, 2003	17
1.12 Amendment dated 7 th July, 2004	18
2. Practice and Implementation of the EIA Notification	21
2.1. Delegation of powers between Centre and States	21
2.2 List of Industries/Operations or Processes Excluded from Parts or All of the EIA Notification	22
2.3 Transparency and Scope for Peoples' Participation in the Clearance Process	24
2.4 Merely an Administrative Hassle for Project Developers	25
2.5. Environmental expertise in the Environmental Clearance Process	28
2.6 The Public Hearing Process	31
2.7 Lack of Information Regarding the Status of Projects Undergoing Environmental Clearance	33
2a. Table: Violations of the EIA Notification	34
3. Undermining People's Participation: <i>By Neeraj Vagholikar</i>	41
4. Institutions for Redressal of Environmental Clearance	47
4.1. National Environment Appellate Authority (NEAA)	47
4.2. High Courts	50
4.3. Supreme Court	53
4.4. Central Empowered Committee (CEC) of the Supreme Court	54
5. Proposed Reforms in the Environmental Clearance Process: <i>A Critique</i>	57
5.1 Issues of Process	57
5.2 Issues of Content	58
5.3 Shorts Cuts to save time	59
5.4 Reforms in Grant of Environment Clearance	61
6. Recommendations	73
6.1 General	74
6.2. Applicability of the EIA Notification	75
6.3. Quality of EIA Reports: preparation and content	75
6.4. Public Hearings	77
6.5. Grant of Clearance	79
6.6. Composition of Expert Committees	80
6.7. Monitoring, Compliance and Institutional Arrangements	80
6.8. Redressal	81
6.9. Capacity Building	82
Annexure: EIA Notification, as on 7th July 2004	85

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Through this report we would also like to acknowledge the struggles of several communities to gain a greater decision-making role with regard to the natural resources around them. We hope to make this report a meaningful part of your struggles in the coming days.

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May 2005

PREFACE

Obtaining environmental clearance for developmental projects from the Ministry of Environment and Forests (MoEF) was a mere administrative requirement till January 1994. This was when the Environment Impact Assessment (EIA) Notification was issued under the Environment Protection Act, 1986. The notification made it mandatory for 29 industrial and developmental activities (increased to 32 by subsequent amendments) to get environmental clearance from the central government before establishing or starting operations. Several projects/processes/operations identified in Schedule I of the notification need to follow a procedure laid down in the notification, which includes preparing a detailed EIA report and organising a public hearing.

The notification thus forms the basis for environmental decision-making with regard to developmental projects in the country. The EIA process was introduced with the purpose of identifying / evaluating the potential beneficial and adverse impacts of developmental projects on the environment, taking into account environmental, social, cultural and aesthetic considerations. All of these considerations are critical to determine the viability of a project and to decide if a project should be granted environmental clearance. And if yes, on what conditions.

Although the notification came in 1994, the need to assess the impacts of developmental projects goes back decades. For instance, with reference to hydroelectric projects, the Central Water Commission (CWC) issued guidelines to conduct investigations regarding major irrigation and hydroelectric projects in 1975. Its chapter on environment stated that the planning, construction and operation of projects have ecological impacts, some of which are irreversible, and that it would be necessary to have a careful evaluation of these impacts. However these directives were hardly used. It was only in 1985 that the Department of Environment issued the Guidelines for Environmental Assessments, which specified the various studies necessary as part of an Environment Impact Assessment (EIA). This included studies on impacts on forests and wildlife in the submergence zone, waterlogging potential, climatological changes and so on.

The draft of the 1994 notification was dated 28th January 1993. This draft contained a strong rationale behind bringing into force such a notification. It clearly stated that considerable adverse environmental impacts had been caused due to the degradation of the environment, including excessive soil erosion, water and air pollution, on account of certain development activities; and that it is necessary to protect and improve the quality of the environment by controlling pollution and other developmental pressures. Further, it stated that certain developmental projects should be carried on within the carrying capacity¹ of an ecosystem. Unfortunately, when the EIA notification was issued on 27th January 1994², this rationale did not appear as part of it. Only a reference was made to the draft notification.

There were some other significant differences between the draft notification and what was finally notified. For instance, the draft notification did not restrict itself to being applicable to certain activities either due to investment limits or due to operations or processes involved in the project/activity. However, such restrictions figured in the January 1994 notification and the list of exclusions has only increased through the various amendments until now.

Another major difference in between the draft and the final notification was that the draft mentioned *Railway lines (involving acquisition of non-railway land) including underground Railways* in the list of projects requiring environmental clearance. In the January 1994 notification, railway lines don't figure in Schedule 1 and have never been added since.

After eleven years of the notification, citizens' experiences of the EIA notification and decision-making process of development projects is still filled with disappointment, anger and frustration. There seems little political will to uphold the principles behind the notification or even the clauses of the notification. This is clear from the fact that though the MoEF has the powers to reject a project if it violates the notification, it has not done so in cases that were brought to its notice by NGOs and community groups. The EIA notification offers public hearings as a forum to listen to peoples' concerns but this space is manipulated by project authorities and government agencies to suit their ends. As we finalise this report, we hear of a public hearing that took place in Raigarh, Chattisgarh for the expansion of Jindal's Sponge Iron plant, where local people were asked to queue

¹ The method of arriving at the carrying capacity of an area is not stated anywhere in the notification.

² The EIA notification was conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986.

up and drop their objections into a box. There is also the public hearing that took place at Noamundi, Jharkhand wherein the tribal community groups from the area were not allowed to enter the venue by the police force stationed there. This is surely not how a participatory process should be conducted.

There are documented cases of clearances having been granted despite inadequate and fraudulent data. The attitude of project proponents towards the requirements of the notifications is to view them as merely a legal formality. In addition, there have been a series of amendments to the notification, including some that have compromised the very spirit of the notification.

Throughout this period NGOs, citizens' groups and activists have raised concerns about the inherent flaws and discrepancies in the notification as well as the problems with its implementation. Campaigns have been taken up on specific cases as well as on aspects of the notification itself (e.g. public hearings). Groups have also approached the High Courts in various states. Networks have been formed among groups to take up issues collectively. Training programmes have been organised for various groups, citizens, judiciary and government officials.

However, apart from a few positive amendments and some good initiatives, the actual potential of the notification is yet to be realised. The notification is presently going through a review process and guidelines are being prepared by the MoEF. The Draft Report on Formulation of Revised Environmental Clearance Process - Phased Implementation Plan has been uploaded on the MoEF website for comments.

Recently, the Ministry of Environment and Forests, in the process of revamping the environmental clearance procedure, released a note presenting set of 'Good Practices in Environmental Regulations'. The note, titled "Reforms in the Environment Clearance Process", has also been shared with some NGOs. One of the changes being proposed in this new environmental clearance regime is the handing over of some projects to state governments for clearance. Interestingly, the draft notification on 1993 had a list of 56 categories of industries that would be subject to environmental clearance from the state government. This list was removed from the 1994 notification, which had no mention of a system of environmental clearance to be followed by the state government.

The implementation of the existing EIA notification and the new reforms proposed by the MoEF need to be analysed threadbare and the emerging issues and concerns ought to be addressed collectively by Ministries at the central level, state governments, NGOs and citizens' and community groups. This report includes a set of recommendations, which could be used to plan the framework or scope of a consultative process to address environmental decision-making of developmental projects at the central level. Such a process could further elaborate and develop the recommendations and prioritise them in terms of importance and time needed for realisation. The consultative process could also identify supportive activities such as training and capacity building components for government and non-government sectors that could help the move towards an environmentally and socially just decision-making process for developmental projects.

ABOUT THIS REPORT

This report attempts to take the reader through the developments in the EIA notification and its implementation over the eleven years of its existence. The information is based on experiences of communities and environmental groups across the country. Over the last few years there has been a fair amount of exchange of information among the network of groups and individuals working on EIA related issues.

The report has six sections:

The first section (**Amendments to the Environment Impact Assessment Notification**) goes into the details of the twelve amendments to the EIA notification that have taken place over the last eleven years. Some of them have been significant changes having far-reaching implications for people and the environment. The section begins with the EIA notification updated with all the changes up to the ones made through the latest amendment dated 7th July 2004.

The second section (**Practice and Implementation of the EIA Notification**) highlights the implications of the various clauses of the Notification. It attempts to understand the consequences of the exclusion of activities from environmental clearance/site clearance processes or specific requirements like the public hearing. The section also deals with the lack of transparency and scope for peoples' participation in the environmental clearance process, as it stands today. Another aspect dealt with in this section is the composition of the Expert Committees of the MoEF that recommend the clearance of projects in five development sectors.

This section also carries a **Table** containing a set of examples representative of **violations of the EIA notification** and the responses of citizens, NGOs, government agencies and courts.

The third section (**Undermining People's Participation**) is a piece written by Neeraj Vaghlikar soon after the amendment to the Environment Impact Assessment (EIA) in August 2001, which exempted mining projects for major minerals with a lease area up to 25 ha from the requirement of mandatory environmental public hearings as a part of the environmental clearance process. The piece also attempts to understand the larger implications of the EIA notification with reference to the mining sector.

The fourth section (**Institutions for Redressal of Environmental Clearance**) highlights the workings of the National Environment Appellate Authority (NEAA), High Court, Supreme Court and the Central Empowered Committee of the Supreme Court in redressing the complaints about environmental clearance granted to development projects. A few examples have been elaborated to demonstrate how the available mechanisms have dealt with cases that challenged clearances granted by the MoEF. The section deals in detail with the kinds of cases that have been filed before the NEAA.

The fifth section (**Proposed Reforms in the Environmental Clearance Process: A critique**) deals with problems in the reforms proposed in the environmental clearance process by the Ministry of Environment and Forests.

The sixth section comprises of a set of **Recommendations** regarding the Applicability of the EIA Notification, Preparation of the EIA Report, Public Hearing procedures, Grant of Clearance, Composition of Expert Committees, Monitoring, Compliance, Institutional Arrangements and Redressal.

EXECUTIVE SUMMARY

Till January 1994, when the Environment Impact Assessment (EIA) Notification was issued, obtaining environmental clearance for developmental projects from the Ministry of Environment and Forests (MoEF) was only an administrative requirement. This notification, issued under the Environment Protection Act, 1986 made it legally mandatory for 29 industrial and developmental activities (increased to 32 by subsequent amendments) to obtain environmental clearance from the central government before establishment or starting operations. The list of projects identified in Schedule I of the notification need to follow a prescribed procedure for environmental clearance, which includes the preparation of a detailed EIA report and organising a public hearing. The EIA notification thus governs the central level environmental decision making on developmental projects in the country.

The EIA process was introduced with the purpose of identifying and evaluating the potential impacts (beneficial and adverse) of a project, be it environmental, social, cultural or aesthetic. All of these are critical to determine the viability of a project and to decide if it should be granted environmental clearance. And if yes, on what conditions.

The process prescribed under this notification could bring together local communities, project affected people, government agencies, project proponents, planners, consultants and NGOs in decision-making processes. The convergence of some of these constituencies for environmentally sustainable and locally appropriate decision making has occurred partially in a few cases. However, by and large, the notification remains under-used, misinterpreted or ignored. The strengths of this notification are also being continuously diluted through amendments.

Eleven Years, Twelve Amendments

In the last eleven years of the existence of the notification, there have been twelve amendments. Some of these changes have had far-reaching implications for people and the environment. Many activities have been removed from the purview of the notification, or have been exempted from processes like public hearing. This has diluted the very spirit of the notification. As an example, the December 2001 amendment added defence related road construction in border areas to the list of exclusions. So, such constructions do not need go through the environment clearance process. The reality is that all over North East India and Sikkim, defence roads are the largest developmental projects. Such construction undertaken without the study of environmental and social impacts, has caused fragmentation of wildlife habitats, brought in huge numbers of labour, which have created a pressure on local natural resources like firewood.

Institutions for Redressal of Environmental Clearance

Redressal mechanisms have been created in existing and new institutions to challenge environment clearances granted to development projects. The single institution created specifically for this purpose, yet least used is the National Environment Appellate Authority (NEAA). It has been in existence since 1997 and has had only 15 grievances brought to it. Out of these, many have been rejected on grounds of lack of jurisdiction, presentation of the case in a wrong format and so on. Environmental clearances of projects have also been challenged in High Courts and the Supreme Court, which have often been long drawn and expensive processes. Some of these cases have led to critical and landmark judgments. Environment clearance cases have also been brought to the notice of the Central Empowered Committee (CEC) of the Supreme Court. Although EIA violations might not be the primary focus of these petitions, they may be one amongst several issues.

Practice and Implementation of the EIA Notification: Key Concerns

EIAs can prove to be a very progressive tool in development planning. However, this can only happen if reports are honest in the representation of facts and are based on as full an understanding of the impacts of a proposed project as the current level of knowledge offers. Unfortunately, most EIAs that are conducted today do not consider rejection of the project on environmental or social grounds as an option. In instances where the EIAs have concluded that a project is to be rejected, subsequent interventions have succeeded in 'modifying' these conclusions.

There are several inadequacies plaguing the content and implementation of the EIA notification. Some of these are:

a) Applicability of the EIA Notification: There are several projects with significant environmental impacts that are exempt from the notification either because they are not listed in Schedule 1 or their investments are below the limits stated in the notification.

b) Quality of EIA Reports: One of the biggest concerns with the environmental clearance process is related to the quality of EIAs that are being prepared. Either the information contained is incomplete/false/inadequate or when the information is correct, the conclusions drawn are inconsistent with it, resulting in a biased outcome. Assessment processes fail to consider several critical parameters and aspects. Many EIA reports are based on single season data and are not adequate to determine the environmental impacts of a proposed project. These factors make the entire exercise contrary to its very intent. As per the Notification, it is the responsibility of the project proponent to commission and fund the preparation of an EIA. There is little chance then, that the final assessment presented is unbiased.

c) Public Hearings: There are several lacunae in the way public hearings are conducted all across the country. The EIA notification offers public hearings as a forum to listen to peoples' concerns but this space is manipulated by project authorities and government agencies to suit their ends. Further, a number of projects with significant environmental or social impacts have been excluded from the mandatory public hearing process. There are also concerns on whether and how the opinions expressed during the public hearing are used in the decision making process at the centre. In many cases, minutes of public hearings or recommendations of the public hearing panel do not reflect the actual proceedings and objections raised. Further, the recommendations of the public hearing panel are only advisory and it is not mandatory for the Impact Assessment Agency to even consider these while granting environmental clearance to projects.

d) Grant of Clearance: There are several concerns with reference to the grant of environmental clearance of the projects. Firstly, for projects that require site clearance, it is often assumed by project proponents that once site clearance is granted, environmental clearance will follow. As a result, many project proponents begin construction of the project components (like housing colonies, roads), even before the environmental clearance is granted. This is despite the fact that it has been specified in the EIA notification that it should not be done. At another level, when environmental clearance is granted despite public objection/ rejection, the reasons for the same are not conveyed to all those who have sent in written objections and/or attending the public hearing. In the present process, there is no way to get information regarding reasons why a project is granted clearance despite opposition at various levels.

e) Composition of Expert Committees: Although the EIA notification provides for a fairly balanced composition for the Expert Committees (Schedule III of the notification), the current composition does not fulfill those criteria. Yet these committees continue to recommend clearances to projects.

f) Monitoring, Compliance and Institutional Arrangements: Projects are granted clearances based on certain conditions, which the project authorities need to comply with. These are both related to the construction phase and post construction phase of a project. However, the compliance of these conditions is minimal in many cases. The regional offices of the MoEF are to monitor the compliance of these conditions and prepare reports. But with a large area and many projects under their jurisdiction, the monitoring remains unsatisfactory.

g) Redressal: The present redressal mechanism meant exclusively for challenging environmental clearance (National Environment Appellate Authority) is extremely weak and limited in its scope. The National Environment Appellate Authority has heard only 15 cases in the last eight years. The process of seeking redressal from courts requires a fair amount of energy and financial allocation. It is not possible for all those affected and with grievances to take on legal battles against large and powerful project proponents.

h) Capacity Building: There is an urgent need to build capacities of government agencies, communities, NGOs and judiciary with regard to the implementation of the existing EIA notification. Even though the provisions allow for people's participation in the process, the lack of information and capacity are great hindrances in making this possible. No matter how good the provisions of the law are, their implementation hinges on the capacities of officials given this responsibility.

After eleven years of the existence of this notification, citizens' experiences of the EIA notification and decision making process of development projects is still filled with disappointment, anger and frustration. There seems little political will to uphold the principles behind the notification or even the clauses of the

notification. This is clear from the fact that though the MoEF has the powers to reject a project if it violates the notification, it has not done so in such cases brought to its notice by NGOs and community groups.

Throughout this period, NGOs, citizens' groups and activists have raised concerns about the inherent flaws and discrepancies in the notification as well as the problems with implementation. However, apart from a few positive amendments and some good initiatives, the actual potential of the notification is yet to be realised. Moreover, there is little evidence of these suggestions being taken on board by the Ministry of Environment and Forests (MoEF)

Proposed Reforms in the Environmental Clearance Process

The Ministry of Environment and Forests (MoEF) has prepared a note titled 'Reforms in grant of Environmental Clearances', which states that "in order to further improve the EC process and to make it more effective and time bound the MoEF had undertaken a comprehensive review of the existing EC process as a sub component of the World Bank Assisted Environmental Management Capacity Building (EMCB). This project which had started in 2001 has been completed on 30th June 2004." The suggested reforms negate some critical checks that were put into place in the EIA notification through the dialogue between civil society groups and the Ministry of Environment and Forests.

The following are few of the concerns about the proposed reforms:

Issues of Process

- The document delineating the changes in the environmental clearance process governed by the EIA notification is based on the findings of a World Bank funded project implemented by a Delhi based consultancy group, ERM, on behalf of the MoEF. Further, MoEF's document refers only to the Govindarajan Committee report on Investment reforms which recommended the reform of approval procedures to enhance investments in developmental projects. The suggestions and recommendations from an extensive collection of well researched and analysed arguments that have been put out by several organisations in the last decade have been ignored. There have also been many consultations and meetings, including several funded and supported by the MoEF itself. Even these reports and outputs have not been referred to while developing a new process.

Issues of Content

- *Flawed Categorisation:* The parameters of categorization of whether projects are 'high impact' or 'low impact' ones is not known. And it is this categorisation that determines whether projects will be cleared by the state or the centre.
- *Time required for clearance:* The main purpose of the reforms is to speeden up the time required for the environmental clearance process. However, the reforms do not address the greatest reason for time delay that takes place in the environment clearance process, which is the high level of unscientific and unauthenticated data furnished by project proponents and consultants. It leaves issues such as improving the quality of assessments and having these done independently rather than paid consultants which are necessary to ensure appropriate decision making..
- *Public Hearings by Project Proponents:* The most regressive step in this newly proposed process is the handing over of the entire public hearing process to the vested interest party, the project proponent. This nullifies the entire process of any semblance of objectivity and unbiased decision-making.
- *No Access to EIA report:* This proposed process undoes a significant space that the notification had provided through the 13th June 2002 amendment; of making the entire EIA report available to the public prior to the public hearing.
- Two agencies emerge as key players in the decision making process in the newly proposed format. One is the Expert Committee (EC) at the central level and a corresponding regulatory body at the state level to assess projects other than those in Category B. The proposed format does not lay out the necessary qualifications that this EC and regulatory body need to have to be able to perform this important function. In the present format, the composition and environmental expertise of the advisory EC has already come under question.
- The regulatory body at the state level is not defined at all in the new format.

The MoEF also justifies the short cuts, which are applied by project proponents, and consultants with regard to impact assessment studies by stating that it only expects some projects like river valley projects

to present comprehensive EIAs. The others, which include nuclear projects, could be assessed on the basis of rapid EIAs.

Key Recommendations

Several groups and local people who have experienced the EIA process and have taken part in it through public hearings have had questions about loopholes in the process and have made suggestions on how the process could be made more effective. An attempt has been made to bring some of these learnings together in the form of recommendations. They cover a wide range of concerns like applicability of the EIA notification to all projects proposed in sensitive ecosystems, improve the quality of impact assessments, bring in more independence, transparency and sharing of timely information in the process, the role of local communities and NGOs in the clearance process and monitoring of projects, enhance the expertise involved and capacity building of all stakeholders to effectively use this process and to improve the redressal of EIA related grievances.



ELEVEN YEARS, TWELVE AMENDMENTS

Amendments to the Environment Impact Assessment Notification, between January 1994 and January 2005¹

In the last ten years, there have been eleven amendments to the EIA notification. Discussed below are some of them along with their implications. The principal notification was published in the Gazette of India vide number S.O.60 (E) dated 27-1-1994 and subsequently amended twelve times till 7th July 2004.² The amendments are:

- 1.1 Amendment Dated 4th May 1994
- 1.2 Amendment Dated 10th April 1997
- 1.3 Amendment Dated 27th January 2000
- 1.4 Amendment Dated 13th December 2000
- 1.5 Amendment Dated 1st August, 2001
- 1.6 Amendment dated 21st November 2001
- 1.7 Amendment dated 13th June 2002
- 1.8 Amendment dated the 28th February, 2003
- 1.9 Amendment dated the 7th May, 2003
- 1.10 Amendment dated the 4th August, 2003
- 1.11 Amendment dated the 22nd September, 2003
- 1.12 Amendment dated 7th July, 2004

1.1 Amendment Dated 4th May 1994

The 4th May 1994 amendment used Rule 5(4)³ of the Environment Protection (EP) Rules to bring in changes stating that the Central Government felt that they were necessary in the 'public interest'.

The following amendments were made:

- Section I (a) of the principal notification stated that project proponents are to submit a detailed project report for seeking environmental clearance for projects. In this amendment the word 'detailed' was dropped from this clause.
- Section I (b) on rejection of cases on insufficient or inadequate data in the principal notification states

specified data and action plans. This amendment dropped 'action' from this clause.

- It was through this amendment that site clearance required for the prospecting and exploration of major minerals in areas above 500 hectares was restricted only to major minerals and not all minerals as in the principal notification.

- As per section III (a) of the principal notification, summary feasibility reports were to be evaluated by the Impact Assessment agency. The amendment replaced this by stating reports are to be evaluated. Also, earlier the evaluation and assessment of the documents submitted with the application form was to be done in consultation with the committee of experts. The clause "if deemed necessary" was added to this clause. So after this amendment it was no longer mandatory by law for the Impact Assessment Agency to consult experts in the decision-making on environmental clearances.

- Another change was with reference to the visits to sites of factories and interaction with affected populations and environmental groups. This was mandatory as per the principal notification but the phrase 'if necessary' was inserted into this clause in the amendment.

- Section III of the principal document says Summary feasibility reports, Environmental Management Plans, the recommendations and the conditions subject to which environmental clearance is given shall be made available to the concerned parties and environmental groups on request. The amendment has deleted 'summary feasibility reports, Environmental Management Plans' and substituted it with 'Summary of the reports'. Further, while the principal notification stated that these shall be made available to the

¹ We would like to acknowledge the information put together by Aarthi Sridhar (Environmental Researcher, Bangalore, India), which has been used for this section.

² The principal notification was published in the Gazette of India vide number S.O.60 (E) dated 27-1-1994 and subsequently amended vide S.O. 356 (E) dated 4th May, 1994, S.O 318 (E), dated 10th April, 1997, S.O. 73 (E) dated 27th January, 2000, S.O. 1119 (E) dated 13th December, 2000, S.O. 737(E) dated 1st August, 2001, S.O.1148 (E) dated 21st November, 2001, S.O. 632 (E) dated the 13th June, 2002, S.O. 248 (E) dated the 28th February, 2003, S.O. 506 (E) dated the 7th May, 2003, S.O. 891(E) dated the 4th August, 2003, S.O. 1087(E) dated the 22nd September, 2003, S.O.801(E), dated 7th July, 2004.

³ *Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central government may deem necessary from time to time, give notice of its intention to do so.*

concerned parties and environmental groups on request, the amendment made a critical change by adding 'subject to the public interest' to this clause.

- A new clause that was added by this amendment was that "the clearance granted shall be valid for a period of five years from commencement of the construction or operation."

- Another amendment made the clause about availability of the compliance reports/half-yearly reports of the Impact Assessment Agency, subject to public interest only (Section IV).

- It added that nothing in the notification would be applicable to Items 3, 18, 20 [Ports, Harbours, Airports (except minor ports and harbours); All tourism projects between 200m-500m of High Tide Line or at locations with an elevation of more than 1000 meters with investment of more than Rs.5 crores, Mining projects (with leases more than 5 ha)] if they fall in areas covered by S.O No 416 (E) dated 20th June 1991 (declaration of Dahanu Taluka as Ecologically Fragile Area.).

- It also added that for highway projects (entry 21 on Schedule I) with investment less than 50 crores, the EIA notification will not be applicable.

- Prior to this amendment mining projects with a lease of more than 5 hectares was listed in Schedule 1 of the notification. The scope of this entry was limited to only major minerals with this amendment.

1.2 Amendment Dated 10th April 1997

This amendment was also issued using Rule 5(4) of the Environment Protection Rules related to public interest.

- One of the most critical elements of this amendment introduced the Schedule IV on Public Hearings to the EIA notification. As per the amendment, the recommendations of the Impact Assessment agency would now also need to be based on details of the public hearing, apart from other considerations.

- This amendment also came out with details on "Delegation of Power to State Governments for Thermal Power Plants." It stated that the following category of projects were to be granted environmental clearance by the concerned State Governments:

- All Cogeneration Plants, irrespective of installed capacity
- Captive Power Plants up to 250 MW (both coal and gas/naphtha based) coming up separately and not along the main industry and;
- Utility projects like:
 - (i) Coal based plants up to 500 MW using fluidized

- (ii) Coal based Power Plants up to 250 MW using conventional technologies

- (iii) Gas/Naphtha based plants up to 500 MW

It further added a note to the above amendment stating, "all projects proposed to be located within the radius of 25 km boundary of reserved forests, ecologically sensitive areas (including National Parks, Sanctuaries, Biosphere Reserves, critically polluted area) and within 50 kms of an inter-state boundary would require environmental clearance from the Central Government".

- Further in Schedule 1 of the notification the entry for highway projects was clarified as being those excepting projects relating to improvement work including widening and strengthening of roads with marginalised land acquisition along the existing alignments provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserves, Reserve forests.

1.3 Amendment Dated 27th January 2000

This amendment to the EIA notification was also very critical to the environmental clearance process. It was based on the premise that:

"expansion or modernization of any activity (if pollution load is to exceed the existing one, or new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification."

It then laid down amended clauses for seeking environmental clearance of projects. Some of the points added to the notification were:

- The EIA notification has a clause, which allows for rejection of environmental clearance due to the submission of insufficient or inadequate data and action plans and for rejection of the case if incomplete data was submitted for the second time. (Section 2 I b). This amendment clarified, "submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact Assessment Agency to reject the case summarily."

- This amendment specified that public hearing is not required in respect of Small Scale Industrial Units (as defined in the Industrial Policy from time to time), widening and strengthening of highways, mining projects (major minerals) with lease area up to twenty-five hectares and modernisation of existing irrigation projects.

Public Hearing of a Different Kind!

The draft of the amendment of 1st August 2001 was issued on 3rd January 2001. Following this there was very strong opposition by NGOs and community groups. The MoEF then invited all those who had responded to the draft notification to a 'public hearing' on 23rd April 2001.

There were about 15 people present at the hearing and it was chaired by V. Rajagopalan, the then Joint Secretary (IA) along with Anand Kumar, Director. There were only five NGO representatives (Centre for Social Action, Kalpavriksh, Toxics Link, Econet, and Environment and Human Rights Law Initiative), who could attend the hearing. This was primarily due to financial constraints and not being able to travel long distances for a meeting in New Delhi. The other participants included representatives from Ambuja Cement, Cement Manufacturers Association, and an association of Indian Foundrymen. Clearly the representation from the industry outnumbered the concerns raised by the NGOs.

It was clearly specified that this was to be a 'hearing' where everyone's opinions would be heard. But there was no scope for arguments and debates on any of the points. The objections raised by the NGOs included:

1. Small Scale industries, in a cluster or otherwise, can be extremely harmful to the environment and can also have social impacts. Specific examples from Gujarat were highlighted.
2. Public Hearings should be decided on the basis of siting of a project and ecology of a region rather than the scale of the project.
3. Public Hearings are the only legal space that people have to raise their concerns and the process can be mutually beneficial to both industry and local communities.
4. The EIA notification should be strengthened rather than diluted.

Some of the points of view presented by the non-NGO representatives included:

1. Public Hearings take very long to organise and thus there is time loss. As a result small projects and expansion of existing projects should be exempted from the same.
2. Small scale industries should be exempted from EIAs.
3. For mining projects there are already norms laid down that would need to be followed for environmentally friendly mining. This is especially so for companies who have received ISO14000 certificate. Such initiatives should be exempted from public hearings.
4. If a project covers 2 districts, there should be only one public hearing covering both districts.

The Memorandum

Following this 'public hearing', 38 representatives from all across the country signed on a Memorandum to V.Rajagopalan, the then Joint Secretary (IA). The memorandum dated 9th May 2001 was handed over to the Joint Secretary in person, by some Delhi-based signatories. It stated:

- a) "Opportunities of this sort should be more participatory and open to all citizens who want to raise concerns rather than through selective invitation.
- b) It would make the hearing much more effective if there is scope for debate rather than just an expression of opposing viewpoints.
- c) Several groups who are actively involved in the issues at regional levels find it extremely difficult to avail of opportunities of this sort when they are organised in Delhi. Thus a lot more initiatives should be taken to initiate dialogue at regional levels.

The signatories of this memorandum would like to bring to your notice several concerns with regards to the status of the implementation of the EIA notification, 1994 as well as the proposed amendment to the same."

None of this however, was reflected in the final amendment of 1st August 2004. Some NGOs continued to follow up with writing letters to the MoEF expressing discontent with the final amendment. They also requested the MoEF to share the minutes of the 'public hearing' held at Paryavaran Bhawan on 23rd April 2001. None of this evoked a response from the MoEF.

1.4 Amendment Dated 13th December 2000

This amendment brought about one critical change wherein it added to the list of exclusions (there were three as per the earlier amendment, this was the fourth), defence related road construction in border areas, from the purview of the EIA notification.

1.5 Amendment Dated 1st August, 2001

The draft of the amendment of 1st August 2001 was issued on 3rd January 2001. This final amendment stated that the public hearing process will not be required for:

- (i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities;
- (ii) widening and strengthening of highways ;
- (iii) mining projects (major minerals) with lease area up to 25 hectares,
- (iv) units located in Export Processing Zones, Special Economic Zones and
- (v) modernisation of existing irrigation projects.

1.6 Amendment dated 21st November 2001

This amendment was issued using the 'public interest' clause, (a) of sub-rule (3) of rule 5 of the Environment Protection Rules.

● According to this amendment, nothing in the EIA notification would now be applicable to any item falling under entry No. 8 (Bulk drugs and pharmaceuticals) of Schedule-I covered by the notification G.S.R. 1037 (E) dated 5th December 1989. Notification G.S.R. 1037 (E) is the *Rules for the Manufacture, Use, Import, Export and Storage of Hazardous micro-organism, genetically engineered organisms or cells*.

● The amendment also added the following clause to Schedule IV on Public Hearings:

“(5) Time period for completion of public hearing: The public hearing shall be completed within a period of 60 days from the date of receipt of complete documents as required under paragraph 1”

1.7 Amendment dated 13th June 2002

This amendment was issued using the 'public interest' clause, (a) of sub-rule (3) of rule 5 of the Environment Protection Rules.

One of the most important changes was that this amendment made it mandatory for the Environment Impact Assessment report to be available at designated places 30 days prior to a public hearing, in other words, as soon as the notice for the public hearing was issued.

Before this change only an executive summary of the EIA was to be made available. It had been a long-standing demand of many groups and individuals working on, or affected by, the environmental clearance process that the EIA document be made public. This amendment, after more than eight years of the notification, made access to information on environmental impacts accessible to citizens.

Some of the other salient features of the amendment include:

1. Pipeline Projects would now not require an Environment Impact Assessment Report.
2. For pipeline and highway projects, public hearings shall now be conducted in each district through which the pipeline or highway passes.
3. For 16 sets of projects, including nuclear power projects; river valley projects; ports, harbours, airports; petroleum refineries; storage batteries; thermal power plants; pulp paper and newsprint; (entry nos.1,2,3,4,5,7,9,10,13,14,16,17,19,21,25,27), where the investment is less than 100 crores for new projects and less than 50 crores for expansion /modernization projects, no environmental clearance shall be required.
4. The earlier amendment had excluded bulk drugs and pharmaceuticals from the notification. This amendment clarified that they are to be excluded only if the product is covered by G.S.R 1037 (E) dated 5th December 1989.
5. This amendment further added to the list of exclusions of projects requiring environmental clearance from the central government. The new entry to this list was “modernization projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores”.

1.8 Amendment dated the 28th February 2003

In 1999, the Ministry of Environment and Forests (MoEF) had imposed “prohibitions on carrying certain processes and operations in the specified areas of Aravalli range as specified in the said notification, except with prior permission of the Central Government.” The powers to implement the decision had been conferred to the State Governments of Haryana and Rajasthan vide notification S.O. 1189 (E) dated 29th November 1999.

In this amendment to the EIA notification, the MoEF upheld the opinion that “there should be a uniform procedure for granting environmental clearance to mining projects for major minerals involving mining lease areas of more than five hectares...” Keeping this in mind the MoEF once again used sub-rule (4) of rule 5 of the Environment

Protection Rules with reference to public interest, the following amendment was made:

● Earlier all "Mining projects (major minerals) with leases more than 5 hectares" (item 20 of Schedule 1) were exempt from the EIA notification if they were being taken up under areas covered by the S.O. No.102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; S.O. No. 416 (E) dated 20th June, 1991 and S.O. No.319 (E) dated 7th May, 1992⁴. With this amendment, this exemption was removed.

1.9 Amendment dated the 7th May, 2003

This amendment was issued using sub-rule (4) of rule 5 of the Environment Protection Rules according to which whenever it appears to the Central Government that it is in the public interest to do so, it may dispense with the requirement of notice (regarding the proposed amendment) under clause (a) of sub-rule (3) of rule 5 of the Environment Protection Rules.

This amendment made a modification to Item 2, of Schedule 1 of the notification, which is the list of projects requiring environmental clearance. Item 2 which was *River Valley projects including hydel power, major irrigation and their combination including flood control*, was changed to:

"2 - River valley projects including Hydel Power Projects, Major Irrigation Projects and their combination including flood control project except projects relating to improvement work including widening and strengthening of existing canals with land acquisition up to a maximum of 20 meters, (on both sides put together) along the existing alignments provided such canals do not pass through ecologically sensitive areas such as national parks, sanctuaries, tiger reserves and reserve forests."

1.10 Amendment dated the 4th August, 2003

This amendment was issued using the powers conferred by Section 23 of the Environment (Protection) Act, 1986 (29 of 1986).⁵ As per the 10th April 1997 amendment the MoEF, subject to certain conditions and limitations, delegated powers to the State Governments for clearance of Thermal Power Plants. The following amendment was made to this provision:

"every project proposed to be located in

(a) a critically polluted area; or

(b) within a radius of fifteen kilometers of the boundary of –

(i) reserved forests,

(ii) ecologically sensitive areas which include national parks, sanctuaries, biosphere reserves; and

(iii) any state,

shall require environmental clearance from the Central Government."

Earlier, all thermal power projects located within 25 kilometers of a boundary of reserved forests, ecologically sensitive areas (including National Parks, Sanctuaries, Biosphere Reserves, critically polluted area) and within 50 kilometers of an inter-state boundary would require environmental clearance from the Central Government.

1.11 Amendment dated the 22nd September 2003

Unlike the last few amendments to the EIA notification, which were issued using the public interest clause of the Environment Protection Act, the draft notification proposing this amendment was opened up for comments for a mandatory period of 60 days. The draft notification inviting suggestions and objections was issued on 4th October 2002. Some important amendments were brought on board, which included:

● No public hearing shall be required for "offshore exploration activities, beyond 10 kilometers from the nearest habitated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m.), corals, coral reefs, national parks, marine parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life."

● For greenfield airports, petrochemical complexes and refineries the project authorities will intimate the location of the project site to the Ministry of Environment and Forests while initiating any investigation and surveys. In effect this means that site clearance will be required for these projects from the MoEF.

● Isolated petroleum product storages was added to Item 4 of schedule 1 of the notification which was petroleum refineries including crude and product pipelines.

⁵ Powers to Delegate: Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notifications, such of its powers and functions under this Act [except the powers to constitute an authority under sub-section (3) of section 3 and to make rules under section 25] as it may deem necessary or expedient, to any officer, State Government or other authority.

⁴ These notifications are related to declaring areas in different parts of the country as ecologically sensitive, including Murud-Janjira, Doon Valley, Dahanu Taluka, Aravalli Range. See: <http://envfor.nic.in/legis/legis.html#H>

1.12 Amendment dated 7th July, 2004

This amendment was issued in draft form first on 27th October 2003 inviting objections and suggestions (from all persons likely to be affected)⁶ within a period of sixty days. The following formed the basis of issuing such an amendment to the EIA notification:

"...Orders of the Hon'ble Supreme Court in the Writ Petition (C) No.725 of 1994⁷ with I.A. No.20, 21, 1207, 1183, 1216 and 1251 in Writ Petition (C) No.4677 of 1985 in the matter of news item published in Hindustan Times titled "And Quiet Flows the Maiky Yamuna" vs. Central Pollution Control Board and Others; and

Orders of Hon'ble High Court of Madras in W.P. (C) No.33493 of 2003 and W.P. Nos.35205, 35517, 35691, 35692 and 35825 of 2003 and W.P. M.P. Nos.40556, 42562, 43720, 45348 to 45350, 42791, 42792, 43882, 43181, 43366 to 43369, 43544 and 43545 of 2003 between C.S. Kuppuraj and others Vs. the State of Tamil Nadu and others..."

Keeping the above orders in mind the amendment added two more categories to the Schedule 1 of the EIA notification, which lists the projects requiring environmental clearance. These were: -

- New construction projects
- New industrial estates.

However, nothing in the EIA notification will be applicable to:

- any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.
- any industrial estate falling under entry 32 (new industrial estates) of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.

Also, nothing will be applicable to new construction projects, and new industrial projects) if they occur in areas covered by S.O. 114 (E) dated 20th February,

1991; S.O. No. 416 (E) dated 20th June, 1991* and S.O. No.319 (E) dated 7th May, 1992.

The following explanation was given for this:

- New construction projects which were undertaken without obtaining environmental clearance, and where construction work has not come up to the plinth level, shall require environmental clearance as per the EIA notification with effect from 7th July, 2004.
- In the case of new Industrial Estates which were undertaken without obtaining the clearance and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require environmental clearance as per the EIA notification with effect from 7th July 2004.
- Any project proponent intending to implement the proposed project mentioned above (for items 31 and 32 with reference to the investment and/or area specified) in a phased manner or in modules, will need to submit the details of the entire project covering all phases or modules for appraisal to the MoEF.

Amendments were also made to the format of the Application Form specified in Schedule II of the EIA notification, which is regarding the procedure for seeking environmental clearance. The project proponent, as part of the Form A, would need to submit details with reference to the following, in addition to all that has been already specified in the form:

- the quantum of existing industrial effluents and domestic sewage with incremental load to be released in the receiving water body due to the proposed activities along with treatment details;
- the quantum and quality of water in the receiving water body before and after disposal of solid wastes including municipal solid wastes, industrial effluents and domestic sewage; and
- the quantum of industrial effluents and domestic sewage to be released on land and type of land.
- nature and quantity of solid wastes generated including municipal solid wastes, biomedical wastes, hazardous wastes and industrial wastes.

⁶ Note: this does not refer to concerned citizens or environmental groups.

⁷ The Court directed Central Pollution Control Board on 27.8.99 to monitor the water quality at Palla, Agra Canal and Okhla at regular intervals. Besides the river Yamuna, CPCB was also directed to monitor the drains at the point prior to the discharge into the river Yamuna for assessing the wastewater quality and pollution load. In compliance to the order of the court, the Central Pollution Control Board is monitoring the river Yamuna for its water quality at 5 locations along with 25 drains in compliance to orders of this Hon'ble Court and have submitted the results of 67 rounds of monitoring since 1999 (<http://www.cpcb.delhi.nic.in/pamsweb/courtatters.htm>).

In Response

Both the draft and the final amendment received very positive responses from civil society and NGOs and letters expressing the same were sent to the MoEF. Some details highlighted in a letter from Kalpavriksh Environmental Action Group were:

- *“...Despite insistent demands from citizen groups for many years now, State Governments and local bodies often grant sanction for large projects without assessing the infrastructure available, and the possible repercussion on both infrastructure and the urban environment ...*
- *...Almost all states have enacted and implemented Town Planning Legislation from the early part of the last century (eg. The Bombay Town Planning Act, 1915, the Madras Town Planning Act, 1920). Urban plans, spatial plans, development plans have formed part of commitments to international development and financial organizations, but State Governments have found no reason to make planning a serious participatory exercise. The setting up of specialized planning authorities in most states has not made the planning process more sensitive; on the contrary it has become more esoteric and insular.*
- *....The fact that States have, contrary to the intent of the 73rd and 74th Constitutional Amendments, failed to empower the local bodies and/or build capacity in them to understand and tackle such issues is a poor reflection on their commitment to decentralization and it is ironical that some States are complaining about centralisation ...”*

Practice and Implementation of the EIA Notification

In the past two decades of environmental decision-making of development projects, the EIA Notification has shown promise in bringing together local communities, project affected people, government agencies, project proponents, planners, consultants and NGOs. The convergence of some of these constituencies for environmentally sustainable and locally appropriate decision-making has occurred partially in a few cases, although by and large the notification remains under-used, misinterpreted or ignored. Meanwhile, the strengths of this notification are being continuously diluted through amendments.

The most recent step to further reduce the scope of the notification is the review of the Environmental Clearance process that the Ministry of Environment and Forests (MoEF) has put out following a project undertaken by the Ministry with financial support from the World Bank. (See Section on Proposed Reforms in the Environmental Clearance Process).

The draft of the principal EIA notification (1994) that was put out in January 1993, stated that "the expansion or modernisation of any existing industry or new projects listed in Schedule I or Schedule II shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government or as the case may be, the State Government concerned in accordance with the procedure specified" in this notification. Since then, the EIA notification has been applied to relevant projects that are to be cleared by the MoEF. It has also been used by NGOs and groups to understand the process of clearance. Their collective experience has resulted in learning the problems of the notification in terms of its implementation.

In this section, we propose to highlight some of these problems.

2.1 Delegation of powers between Centre and States

The first draft notification of 1993 had a list of projects that would be cleared by the state (Schedule II). However this Schedule did not appear in the first final notification that appeared in 1994. The first draft notification of 1993 stated, "Any project listed in Schedule II and proposed to be located within 5 (five) kilometers of the boundary of reserve or protected forests, or designated ecologically sensitive areas, or

within the safe distance stipulated in the Statement on Industrial Policy or other policy statements of the Government of India for protection of human settlements or wildlife habitats would also be considered by the State or Central Government according to the guidelines issued by the Central Government." Even for projects under Schedule II, to be reviewed by the state, the EIA notification formulated a process.

Subsequently, some state governments have listed out the projects that were brought to them by project developers for environmental clearance, but not all state governments have done it. As a result, there is ambiguity in the minds of project developers regarding whether their projects need environmental clearance at all and if so, whether from the central or state government. As of today, some state governments have established and followed certain procedures for granting environmental clearance to projects that fall within their jurisdiction. However, these procedures are not common to all states.

In the 1993 draft notification, the Central Government gave itself the powers to review the environmental clearance given to any project by any State Government if a *prima facie* case against environmental clearance is made out by the affected parties. In all such cases, the matter would be referred by the MoEF to a Review Committee comprising of one representative from the MoEF, one representative from the State Government concerned and a maximum of three experts in the fields relevant to the project. Now, however, the centre or state can challenge each other's decision on environmental clearance only through a legal course of action by using the National Environmental Appellate Act, 1997 (See Section on Institutions for Redressal of Environmental Clearance).

The amendment dated 10th April 1997 delegated Powers to State Governments for clearance of Thermal Power Plants cogeneration/ captive power plants etc. It is not clear why such a delegation, and that too only for Thermal Power, took place and why the same does not apply to other category of industries as well. The impact of such a delegation on the environmental clearance procedures and compliance of conditions is also not known.

2.2 List of Industries/Operations or Processes Excluded from Parts or All of the EIA Notification

a. Exclusions from Environmental Clearance

The draft of the principal notification had no mention of exclusion of projects from the environmental impact assessment and clearance process. However, certain projects were excluded from the provisions of the notification that appeared in the final version dated 27th January 1994. Subsequent amendments have only increased such exclusions.

These are:

- *Any item falling under entry nos. 3, 18 and 20 of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No.102 (E) dated 1st February, 1989; S.O. 114(E) dated 20th February, 1991 and S.O. No.319 (E) dated 7th May, 1992 .*

Entry numbers 3,18 and 20 in Schedule I are Ports, Harbours, Airports (except minor ports and harbours), all tourism projects between 200m-500m of High Tide Line or at locations with an elevation of more than 1000 meters with investment of more than Rs.5 crores, and mining projects (major minerals) with leases of more than 5 hectares. The S.Os mentioned in the clause for exclusions are notifications declaring certain areas such as the Aravallis, Dahanu and Murud-Janjira as ecologically sensitive/fragile areas (ESAs).

It is not known as to why these are excluded from the EIA notification if these projects are proposed to be undertaken within ESAs. These ESA notifications only list activities or processes, which are either permissible or to be regulated or prohibited. If ports and harbours, tourism projects and mining projects were prohibited as per these ESA notifications, then there would have been no need to include them in the EIA notification. However, if they are not prohibited by the ESA notification, then including these activities in the EIA notification would help to decide on these projects according to the EIA process. As of now, these projects are excluded from the EIA notification; the question is what is the MoEF's process to understand the environmental impacts of these projects in the ESAs and how is a decision on the clearance of these projects taken?

- *Any item falling under entry Nos. 1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 16, 17, 19, 25 and 27 of Schedule-I if the investment is less than Rs.50 crores. This limit was raised to 100 crores for new projects and less than Rs. 50 crores for expansion / modernization projects (by amendment dated 13 June 2002)*

Exclusions based on investment limits rather than on processes involved and project locations are not

appropriate. This factor came into play in the case of the Mahadayi River Diversion Scheme project on the Karnataka-Goa state border. The Karnataka state government proposes to build two earthen dams on the Bhandura and Kalasa Nalas (streams) to divert 7.56 TMC of water to the east flowing Malaprabha River. The diversion of the Kalasa Nala would cost Rs. 44.78 crore and the Bhandura Nala, Rs. Rs.49.2 crores. Both these proposals are components of the overall Mahadayi Diversion Scheme. When envisaged, the combined cost of the projects would have been over Rs. 90 crores which would have made it necessary to obtain environment clearance and also conduct an environmental public hearing to be conducted. When split up, the cost of the two dams allowed it to bypass these mandatory requirements. However in 2002, the entire scenario changed with an amendment that excluded projects costing less than Rs.100 crores from the procedures and requirements of the EIA notification.

- *Any item reserved for Small Scale Industrial sector with investments less than Rs.1 crore.*

Small scale sector units are not studied in detail for their impacts on the environment by government agencies such as Pollution Control Boards (PCBs) or environmental NGOs probably because they are labeled 'small', or are seen to have fewer impacts or because they are more discreet in their presence unlike large factories. Therefore such a broad exclusion of an entire range of activities and operations simply on the basis of their economic categorisation as 'small scale' and their level of investment seems inappropriate.

- *Modernization projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores*

Similar to the issues raised in the earlier points regarding exclusions, the command area of less than 10,000 hectares might include ecologically sensitive areas, important habitats for one or more species of flora or fauna, the traditional lands of tribal communities and so on. Since investment limit and size of the project, and not its siting determine the application of the EIA notification, such projects do not get assessed as per the notification, even if the command area is environmentally or socially critical or important.

b. Exclusions from Site Clearance

It is also unscientific that the EIA notification requires only eight types of projects to obtain site clearance from the Centre when in most cases the location of the project is of utmost importance to

keep environmental and social impacts to a minimum. Location in already polluted pockets where any incremental increase could negatively affect the environment and people are not considered for site clearance. Industrial projects, which may not require site or environmental clearance as per Schedule I should not go unassessed if they are proposed to be established in areas where pollution levels are already above permissible limits.

c. Exclusions from Environmental and Site Clearance

Minor ports and Railways (including underground railways) that would involve acquisition of non-railway land were excluded from requiring site as well as environmental clearance in the principal notification of 1994 although they were present in the draft of this notification. Similarly, defence-related road construction projects in border areas were excluded from the notification in December 2000.

Many of these railway and road projects have fragmented corridors, affected wildlife habitats of threatened species and resulted in the direct and indirect displacement of several thousands of families. All over North East India and Sikkim, defence roads are the largest developmental projects. The Sikkim State Biodiversity Strategy and Action Plan presents road construction as a major cause of deforestation in the state and presents action points to reduce the damage due to developmental activities by Garrison Reserve Engineering Force (GREF) and Border Roads Organisation (BRO). Such construction has caused fragmentation of wildlife habitats and brought in huge numbers of people for labour, creating pressure on local natural resources like firewood.

Any argument made to include defence projects within the ambit of the EIA notification has been met by comments regarding the importance of these projects for national security and therefore not to be rejected on any grounds. If there is a consensus on the above point, it could be established that such projects go through the EIA notification so that their potential

impacts are assessed and the maximum is done to mitigate these impacts, without suggesting that the project be rejected. It could be ensured that these projects are kept within the purview of the EIA notification, only so that a process for assessing the environmental and social impacts of projects is followed.

d. Exclusions from Public Hearings (PH)

● *Projects such as Small Scale Industrial Units located in (a) notified/ designated industrial areas/ industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities; Mining Projects with lease area up to twenty-five hectares, widening and strengthening of highways, modernization of existing Irrigation Project units located in Export Processing Zones, Special Economic Zones, offshore exploration activities beyond 10 kms. from the nearest inhabited village boundary, gaothans and ecologically sensitive areas; such as, mangroves (with a minimum area of 1000 sq.m.), corals, coral reefs, national parks, marine parks, sanctuaries, reserved forests and breeding and spawning grounds of fish and other marine life have been excluded from conducting public hearings by a series of amendments.*

The draft amendment dated 27th January 2001 stated in its rationale, "And whereas it has been found that Small Scale Industrial Units, Mining Projects with lease area up to twenty-five hectares, widening and strengthening of Highways, and modernization of existing Irrigation Projects cause minimal impacts, both on the environment and people living in the vicinity; And whereas the environment impacts of such projects can be assessed on the basis of the information provided by the project proponents to this Ministry even without a public hearing;"

This amendment, despite objection from civil society organisations was finalised and notified on 1st August 2001.

The above seems to be a very arbitrary and environmentally unsound reasoning! In any case, these projects have to conduct impact assessment studies and are allowed to start construction/operations only after they receive clearance. So then why cut out only

High Powered Committee's Opinion on Siting of Industries

The Report of the High Powered Committee on Management of Hazardous Wastes, chaired by M. G. K. Menon and set up as a result of Writ Petition No. 657/95, created very specific guidelines for siting that industries must follow. The report states, "Many of these problems have arisen simply because there are no accepted criteria for the siting of units generating hazardous wastes. The country, in fact, is paying the price for the location of hazardous industries in ecologically sensitive areas, and sometimes within the bounds of residential areas, which have major consequences on the lives and livelihoods of people in these areas. Hazardous industries (and their wastes disposal sites) should be located in specific designated areas in the state statutory land use plan. They must be based on zoning criteria, which should not be violated without compelling reasons. Siting of industries/industrial estates must no longer be a purely political decision only. The interests of all stakeholders, particularly the community at large, must be taken into account."

the public hearing process? Would it not be beneficial to also inform the public about proposed plans so that their concerns are addressed prior to starting the project? The exclusion of these projects from the mandatory public hearing process is firstly violative of the citizens' right to know the impacts of proposed projects and secondly, a reflection that the Centre itself thinks of the public hearing process as being one that will create unnecessary problems for the project proponent who needs to be 'shielded' from the process.

Out of the projects excluded from Public Hearings, the following fall within Schedule I, thus requiring environmental clearance from the central government:

- small scale industrial undertakings located in notified/ designated industrial areas/industrial estates or areas earmarked for industries under the jurisdiction of industrial development authorities with investment over 1 crore;
- mining projects (major minerals) with lease area between 5- 25 hectares;
- units (of the kinds mentioned in Schedule I) located in Export Processing Zones, Special Economic Zones with investments less than 1 crore;
- modernisation of existing irrigation projects if command area is above 10,000 hectares or cost of

project more than Rs.100 crores;

– offshore exploration activities (for oil and gas).

If we look only at the example of mining leases that have been excluded from the public hearing process, leases below 25 ha can cause tremendous damage in ecologically and culturally sensitive areas and under no circumstances can we make assumptions that these have "minimal impacts" and that public hearings are therefore not required. There are umpteen examples of leases under 25 ha for both minor and major minerals from around the country, which have caused or will cause significant social and ecological impacts. There are the marble mines in the Alwar district of Rajasthan, the iron ore mines in Sundur in Bellary district of Karnataka, the bauxite mines in the tribal areas of Anantagiri in the Eastern Ghats in Andhra Pradesh, the coal mines in the Jaintia Hills of Meghalaya (See Section on Undermining People's Participation).

e. No EIA Report Required for Pipelines

As per the 13th June 2002 amendment of the EIA notification, pipeline projects are completely exempt from conducting an EIA. What are the reasons or intentions behind this? Since this amendment was not opened out for public comments, it did not allow for a debate or a counter-point to be heard on the implications of such an amendment.

The same amendment also clarifies that though an EIA report will not be required, a public hearing will need to be conducted in every district crossed by a pipeline. The EIA report is a critical component of the environmental clearance process. It is the only way for the public to get to know aspects of a project, and is also meant to provide information on the range of possible impacts of the project. With no other way for people to access information about the project components, the public hearings would be a mere formality, as the public would not have any prior information on the basis of which to form their opinions about the project.

The amendment does not make clear as to what will be the fate of pending pipeline projects in the light of this amendment.

2.3 Transparency and Scope for Peoples' Participation in the Clearance Process

The positive elements of the initial notifications, which could have ensured effective peoples' participation in various steps of the environment clearance process, have been systematically diluted. One positive outcome in the amendment of 1997 is that a procedure was laid out for the process of public hearings. Ironically, as mentioned in the earlier paragraphs, several projects and activities were excluded

EIA notification identifies ecologically sensitive areas

Currently thermal power projects such as captive power plants (both coal and naphtha based), coal based plants are to be granted clearance by the state government. An amendment dated 4th August, 2003 stated that thermal power projects that are located in the following areas shall require environmental clearance from the central government as per the procedure in the EIA notification:

- * located in a critically polluted area
- * located within a radius of fifteen kilometers of the boundary of any state, reserved forests or ecologically sensitive areas¹ (including national parks, sanctuaries and biosphere reserves).

This is indicative of the kind of clauses and criteria that are needed much more in the EIA notification as they recognise at the outset the sensitivity of the area where the project site is proposed.

The parameters for identifying areas as ESAs also needs to be made available in the EIA notification so that project proponents and state governments know what the MoEF means by 'ecologically sensitive areas'.

¹ A national committee was set up in 2000 to identify parameters that help to identify ecologically sensitive areas. The parameters identified are Species Based (Endemism, Rarity etc), Ecosystem Based (sacred groves, frontier forests etc) and Geomorphological feature based (uninhabited islands, origins of rivers etc) (Report of the Committee On Identifying Parameters for Designating Ecologically Sensitive Areas In India, Ministry of Environment and Forests, New Delhi, 2000)

from the public hearing process altogether due to amendments since 2001. There are also several problems with the way public hearings are conducted all across the country, defeating the very purpose of public participation.

a. Interaction with Affected Population

As per the principal notification, the Impact Assessment Agency¹ was to “prepare a set of recommendations based on the technical assessment of documents and data furnished by the project authorities and supplemented by data collected during visits to sites or factories and interaction with affected population and environmental groups”. In the very next amendment in May 1994 the clause ‘if necessary’ was added to this, thus making the discussions with these constituencies a matter of choice rather than being mandatory.

The clause was further amended in 1997 to read, “The Impact Assessment Agency shall prepare a set of recommendations based on the technical assessment of documents and data furnished by the project authorities and supplemented by data collected during visits of sites of factories, if undertaken and details of public hearing”. Although ‘details of the public hearing’ are now added to the list of documents that the IAA must consider before it makes its recommendations, this cannot substitute the critical local inputs that the Agency could have obtained from direct and unmoderated interaction with the affected people and environmental groups.

In the lack of a comprehensive format for reporting the public hearing, the public hearing documents or the minutes of the public hearing as they are mostly called, at best give only the opinions of the local population filtered by the biases and opinions of the public hearing panel and the Pollution Control Board.

b. Amendments without inviting public comments

The most basic problem on this front has been the manner in which the MoEF has issued some of the amendments to the EIA notification. Some critical amendments which have far reaching negative implications on the ground for local communities and the environment have been brought out without putting out a draft for public comments using the clause, “in public interest” from the Environment Protection Rules.

This includes, the 13th June 2002 amendment which

exempted pipelines projects for undergoing an EIA, and increased the investment limit of projects requiring environmental clearance to Rs. 100 crores, The same applies to the 22nd September 2003 amendment that exempts activities such as “offshore exploration activities, beyond 10 kilometers from the nearest habitated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m.), corals, coral reefs, national parks, marine parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life.”, from the purview of public hearings. These activities have critical impacts on both the environment as well as the lives and livelihoods of people. Why were views of the public not sought for this amendment, then?

It is clear that ‘public interest’ truly lies in participatory processes. A few of the notifications that have been put out as drafts before being finalised have been responded to by civil society groups with great enthusiasm. The comments from such groups are well thought out and detailed. Examples are the detailed responses to the 1st August 2001 amendment or the 7th July 2004, as mentioned in the section on Amendments to the EIA notification in this report (See Section Eleven Years, Twelve Amendments).

2.4. Merely an Administrative Hassle for Project Developers

a. The powers to summarily reject the project is never used

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 clauses of the EIA notification, which are meant to deal with this problem, have remained unused. The clauses read: “Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact Assessment Agency to reject the case summarily” and “Concealing factual data or submission of false, misleading data/reports, decisions or recommendations would lead to the project being rejected”. Since the clauses have largely remained unused, there is no pressure on project proponents to submit accurate and all relevant data about the project.

In the case of the Dandeli mini hydel project in Karnataka and the Lower Subansiri hydel project in

¹ The EIA notification states “The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests.”

Assam-Arunachal Pradesh, the participation of people in the EIA process was effective in proving to the MoEF that the data presented in the EIA and other reports by the project consultants was inadequate and inaccurate on many fronts. In both these cases the MoEF accepted the problem and commissioned further studies. Although the additional studies were also pointed out as being inadequate, the MoEF did not heed the warnings. In the case of the Lower Subansiri project the clearance was granted on the basis of a poor EIA report rather than rejected as it should have been, as per the EIA notification.

In the case of the Dandeli project, it was proved that the EIA report submitted for the clearance of the project was plagiarised, cover-to-cover, from the EIA report of another project in the neighbouring area! Even the fresh EIA report that was subsequently prepared was inadequate on many counts.² The Deputy Commissioner of Uttara Kannada district (where the project site is proposed) who is also chairman of the public hearing panel as per the EIA notification, rejected the project. Ironically, the project has still not been rejected at the state and central levels.

The EIA for Loxim Colors Ltd, Gujarat at village Ekalbara was prepared by the Ahmedabad based San Environtech Pvt. Ltd. In a letter to the Gujarat Pollution Control Board in May 2004, Paryavaran Suraksha Samiti (PSS) pointed out that the information on the biodiversity of the area had been copied from another document. The document mentions plant species, which do not exist in the vicinity of the proposed project site. The letter points out in detail how critical information about the impacts of industrial discharging of certain carcinogens has been withheld from the EIA.

Several other examples are presented in the Table

EIAs finally available to people

The 13th June 2002 amendment to the EIA notification brought about a much needed and positive change. It met a demand being made by communities and citizens' groups since the EIA notification had come into being. The amendment made it mandatory for the EIA report to be made public 30 days before the public hearing was to take place. Prior to this amendment, only an executive summary was to be made available.

The power of access to information is clearly demonstrated by the cases where the EIA report has been made available informally to citizens or through the formal process under the EIA notification. This access has led to the realization of umpteen instances of inadequate, incomplete and sometimes even fraudulent EIA reports. Many projects have also been granted clearance on the basis of these reports.

on Violations of the EIA Notification in this report.

b. Rapid Assessments

In the last few years a disturbing trend has been the preparation of rapid EIAs based on single season data. As per the Explanatory Note Regarding the Impact Assessment Notification dated 27th January 1994, "As a Comprehensive EIA report will normally take at least one year for its preparation, project proponents may furnish Rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project. Comprehensive EIA report may be submitted later, if so asked for by the IAA."

Many critiques, including that of the Dandeli Mini Hydel Project (Karnataka), Allain Duhangan Hydro Electric Project (Himachal Pradesh), Loxim Colors Ltd (Gujarat), Prototype Fast Breeder Reactor (PFBR) at Kalpakkam (Tamil Nadu) and many others, have raised the issue of the inadequacy of rapid assessments. Several projects have been rapidly assessed and subsequently granted clearance based on inadequate information. Downstream impacts of a hydroelectric project are bound to be different at different times of the year. A partial assessment of impacts will only result in an incomplete impact analysis. However, the conclusions of these rapid assessments form the basis of environmental clearances.

c. Construction prior to obtaining environment clearance

The EIA notification clearly states that projects should not start construction, however preliminary, before environmental clearance is granted. However this is the norm most flouted by project developers. For example: National Hydroelectric Power Corporation (NHPC), a Public Sector Undertaking (set up in 1975) that is involved in building of irrigation and hydropower projects, has flouted this norm in many of its projects. They continue to do so because having been in the business for years they have never been punished for having violated this rule. In the case of their recent venture, the Lower Subansiri Hydro Electric Project (Arunachal Pradesh), they began construction prior to getting environmental clearance but have been allowed to continue with 'business as usual' without being penalised for the violation.

d. Deemed Approval for Projects

There is a clause in the EIA notification, which states, "If no comments from the Impact Assessment Agency are received within the time limit³, the project would be deemed to have been approved as proposed by project authorities". This is a very dangerous clause.

² (Source: www.esgindia.org/campaigns/dandeli/dandeli.html).

There could be several reasons for delay in the response from the MoEF while the project developers may construe that the project has been cleared.

Every letter granting environmental clearance to a project comes with a set of conditions that a project proponent must comply with. The compliance of these conditions lays substantial burden on project budgets and has serious ramifications on project schedules. Therefore, it is important that they are communicated clearly to the project developers and agreed upon by the latter. In the absence of clear communication at the outset, the conditions of clearance are ignored or only partially dealt with by the project proponent. In order to avoid non-compliance on this account, it would be more effective for the MoEF to make known that the project is to be taken as 'cleared' only after the project authorities have received the letter of environmental clearance from the MoEF and have responded to the MoEF, in writing, their agreement to fulfil all conditions put down in the clearance letter. Any constructions, preliminary or otherwise, undertaken prior to this should be considered a violation of the EIA notification.

e. Compliance of Clearance Conditions and Public Access to Compliance Reports

Partial or complete non-compliance of clearance conditions has been ignored or gone unaddressed in the past by the monitoring agency, the MoEF. A study on compliance of environmental conditions⁴ done by members of the Expert Committee in 1995 revealed that non-compliance of conditions by river valley projects (cleared between 1978 and 1995) was to the extent of 90%⁵! Along with lack of timely and clear communication by MoEF to the project proponents, there may also be other reasons for non-compliance like poor monitoring systems, unrealistic and impossible targets of conditions in time or workload, or lack of direction and assistance to the project proponent in achieving these conditions.⁶

The compliance of clearance conditions is directly related to the transparency of the monitoring process and the informed involvement of citizens in the process. "Impact Assessment Agencies shall make compliance reports (which are submitted by the project developer

to the MoEF) publicly available." This was what the notification stated until the clause "subject to public interest" was added by an amendment dated 4th May 1994.

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 to local people, afforestation of degraded areas, maintaining health of project personnel, ensuring that there is no outbreak 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. These reports can be obtained, if at all, only from the MoEF office in New Delhi. The lack of access to compliance reports has severe repercussions on the rights of people who were opposed to the project as well as those for whose benefit some conditions may have been laid out (e.g. project affected persons, downstream communities). The benefits do not in most cases reach the local community as they may not know of the conditions and so cannot question the project proponents about them or demand that these conditions be met.

A case in point is the Teesta hydel project Stage V in Sikkim. The project authorities, the National Hydroelectric Power Corporation (NHPC), have been violating conditions of clearance for the last two years. The state government has filed a case against them for violation of state laws in the High Court. However, the local citizens do not know this since the compliance reports of the project are in effect not public documents. When Kalpavriksh did manage to get a copy of the compliance report of NHPC from the MoEF, it was found that there was no mention of the non-compliance of the clearance conditions or the case filed by the High Court. The report actually seemed to give an impression that all was well with the project and all conditions were being complied with!

f. No access to EIA reports after the project clearance

It has been the experience of the NGOs and

³ As per the EIA notification, "the assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter." So the time limit amounts to 120 days from the receipt of the documents.

⁴ Environmental clearance under conditions was being granted to projects even before the EIA notification came into being. However it is only after 1994 that clearance and conditions have become a legal process; before 1994 they were part of only an administrative process.

⁵ Source: Kothari, A. "We should have gone to Court", *The Ecologist Asia*, Vol 11, No 1, January-March 2003.

⁶ Source: Kothari, A. *Environmental Aspects Of Large Dams In India: Problems Of Planning, Implementation, And Monitoring*. Submission to the World Commission on Dams, Public Hearing, Bhopal, September 21-22, 1998.

citizens' groups that once the environmental clearance process is completed for a project it is difficult to get access to the EIA reports. These are often not available at the district level offices where they are meant to be, prior to the public hearing. This is important for several reasons, including the need to monitor whether a project proponent is following all the mitigation measures and other assurances specified in the EIA/EMP. Since the reports are not easily available, it becomes difficult for the communities or civil society organizations to regularly monitor the project components.

2.5 Environmental expertise in the Environmental Clearance Process⁷

As mentioned earlier, what was initially a mandatory need to consult an Impact Assessment Agency and a committee of experts, was converted to a matter of convenience by adding the clause "if deemed necessary" (amendment as per 4th May 1994). Despite this, the practice followed is that all projects to be cleared by the MoEF are brought to the Expert Committees (EC) for recommendations on environmental clearance. According to the MoEF website, there are to be seven such committees, which are Industrial projects, Thermal projects, River Valley and Hydroelectric projects, Mining projects, Nuclear Projects, Infrastructure and Miscellaneous projects and New Construction Projects and Industrial Estates.

The following aspects of the composition and constitution of the Expert Committees are problematic. This also leads us to believe that the environmental expertise presently available in the Expert Committees that assist the MoEF to take decisions regarding the environmental clearance of developmental projects is far from adequate. It is impossible to substantiate this conclusion with information on the level of expertise demonstrated by the EC members or the application of their expertise in the decision-making process during the committee meetings. This limitation is due to the fact that the minutes of EC meetings are not accessible to citizens; only the decisions are put up on the MoEF website. However, we have reached this conclusion on the basis of the composition and constitution of the committees and the final decisions of past and present committees to recommend clearance to certain projects that have resulted, or are likely to result, in

serious environmental and social impacts.

a. Composition and constitution of the Expert Committees under the MoEF

i. Inadequate Environmental Expertise:

Schedule III of the notification clearly states that the Expert Committees are to assess environmental impacts. So it is implicit that the committees consist of experts from the field of environment. The schedule further lays down the kinds of expertise that should be present in every committee. These include (i) Ecosystem Management, (ii) Air/Water Pollution Control, (iii) Water Resource Management, (iv) Flora/Fauna conservation and management, (v) Land Use Planning, (vi) Social Sciences/Rehabilitation, (vii) Project Appraisal, (viii) Ecology, (ix) Environmental Health, (x) Subject Area Specialists.

However, it is utterly shocking that none of the committees have the above composition.

- There are only two representatives of relevant fields, one from the Wildlife Institute of India and the other from the School of Environmental Sciences, Jawaharlal Nehru University, in all the six committees put together.

- There are no sociologists, social scientists, anthropology experts or social work professionals when the composition requires the presence of experts in the field of social sciences/rehabilitation. This clearly affects the assessment of project impacts on people, especially on local communities, women, children and other marginalised groups in society.

- Three out of six committees have individuals who are listed by their name and residential addresses only. Out of these, three individuals are office bearers of the Dravida Munnetra Kazhagam (DMK), which happens to be the political party to which the present and previous Ministers of Environment and Forests belong.

ii. Technological bias:

The ECs have a maximum number of members who are engineers and have other technical qualifications in the field of engineering. In such a situation, it is likely that the outcomes or decisions on projects are loaded with merely technological perspectives to complex environmental problems without due consideration given to social and environmental perspectives. The Committee for

⁷ This analysis is based on the composition of six the Expert Committees available on the MoEF website as in November 2004. Following this there has been a change in the composition of the committee for River Valley and Hydroelectric projects, and a new committee on New Construction Projects and Industrial Estates has been added. However, neither of these changes alters the overall arguments emerging from the current analysis. The information on the profile of expert committee members has been found from random web searches since they are not put up on the MoEF website which carries the list of members who constitute the committees. We found no information regarding the expertise of some members.

Industrial Projects has 4 members from a chemical engineering background. However, there are no members with expertise in flora and fauna conservation and management, social sciences, ecology, environment and health.

iii. Field of expertise of Chairperson:

As per the Notification, the Chairman should "be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector". None of the chairpersons are even closely related to the field of environment. All present Chairmen are ex-Secretaries of government departments or ministries, and none have a professional or academic background in ecology or environment. In some cases they have been secretaries of departments or ministries that are proposing the projects to their committee. How unbiased can the Committee's advice be in such a situation? E.g. Dr M. Chitale, who was Chairman of the Environmental Assessment committee for River Valley Projects, till recently served in the Central Water Commission and Ministry of Water Resources (MoWR). Most of the projects that came to his committee for clearance were envisaged by the CWC and supported by the MoWR.

iv. Affiliations of members to agencies and institutions:

According to the EIA notification the members serve on these committees in their individual capacity. This may have been decided in order to maintain independence in the functioning of the committees. However, in reality the affiliations of the members to their institutions or departments of service does impact the decision-making process. 28 out of 59 members are from government-affiliated institutions or agencies set up directly under government departments/ministries like Ministry of Water Resources and Ministry of Mines, who are the main project proponents in the area of irrigation and power projects and mining. It is

difficult for committees with such a high percentage of members from such institutions/agencies to take critical views on projects if necessary, as most of the projects are backed by these ministries/departments.

A number of the institutions where many of the EC members are employed also conduct studies and assessments for the projects that come up for clearances. So EC members could be assessing projects for which studies have been done by their own institutions. For example, the Numaligarh Refinery near Kaziranga was cleared by an Expert Committee (1989-1990) under the Chairmanship of the Director of NEERI even though the NEERI had done the EIA for the project. In the present process there is no way to ensure that this does not happen.

v. Lack of representation of diverse stakeholder constituencies:

All the committees comprise mostly of academics and ex- or serving bureaucrats.

- Even though Schedule III demands that NGOs / persons concerned with environmental issues be included on the committee, there are only two NGO representatives out of 64 members (one has expertise in children and education and the other is from the Confederation of Indian Industry). This is absurd, considering the number of environmental groups and NGOs there are to choose from, and who have been an integral part of the environmental movement in India through their research, advocacy and direct action at grassroots level. Indeed in the earlier years, NGOs were well-represented; they have been shunted out only in the last 2-3 years.

- There is absolutely no representation of local community members or groups on these committees. This is blatantly unjust, as most of the development projects on which the committees take decisions are meant to come up in rural and tribal areas and would impact natural resources with which communities have cultural and spiritual connections and over which they

Regional Representation in the Expert Committees

S.No.	Committee	Number of Members	Geographical Location				
			South	North	West	Central & East	North East
1.	Industrial Projects	12	7	4	1		
2.	Mining Projects	13	3	7	2	1	
3.	Thermal Projects	13	4	9			
4.	River Valley and HE Projects	14	3	8	2	1	
5.	Infrastructure and Misc. Projects	12	8	3		1	
	Total	64	25	31	5	3	0

have rights and privileges. It is inappropriate that formal 'experts' alone take decisions regarding development projects, when it is entirely possible to include representation from local communities who are capable of bringing into the committee their traditional knowledge and understanding of environment and development issues.

vi. Regional bias:

Most of the members of the expert committees are either from Delhi /Noida or Tamil Nadu. Out of the 64 members, 20 are from Tamil Nadu (mostly Chennai) and 26 from Delhi, making up two-thirds of all members! There is very little or no representation from states from North, Central, East and North East India. Can we expect experts from Delhi and Tamil Nadu to know the ground situation and the socio-political realities of every region where proposed projects are to be located? It is unlikely that this regional bias is a mere coincidence, given that the present and previous Ministers for Environment and Forests belong to Tamil Nadu.

vii. Faulty decision making in the committees: Expert committees continue to recommend projects for clearance despite problems in substantive and procedural issues. There are a number of reasons for this:

- *Inadequate availability of information:* Information available to ECs through Environmental Impact Assessment (EIA) reports is inaccurate and inadequate in most cases. A number of EIAs scanned by several NGOs and independent experts have revealed that aspects on biodiversity, livelihoods and dependence on natural resources and social aspects are very cursorily dealt with. NGOs have also brought to light the fraudulent practices of consultancy groups as in the case of the plagiarising of the EIA report for the Dandeli Hydel Project by the well-known consultancy group, Ernst and Young.

- *Shortage of assessment time:* ECs are under immense pressure to give a quick response on projects so that projects and investments are not delayed. Such pressure results in cutting corners in the process of investigations, site visits and detailed analysis of project reports. Any time required to conduct extra studies demanded by ECs is construed as delaying the project.

- *No consultations with local communities:* The EIA notification allows committee members to undertake site visits. But often the only people the committee meets during the visits are the project proponents. Expert Committee members thus have the opinions and positions only of the project proponents and consultants and not of local community members, NGOs and other stake holders.

viii. No guidelines on what should be the minimum qualification (educational or experiential) of an expert:

It is not clear from the list of committee members and their designations available on the MoEF website as to what their expertise is. A detailed web search with their names drew a blank for some of the EC members. It is not known whether the MoEF has a clear process to identify experts in various fields including environment. The present composition of ECs demonstrates the lack of a sound process to select experts to be on the committees.

ix. Conditions for dissolution of committee:

The conditions for the dissolution of the committee are not clear. In 1995 the EC for river valley projects was abruptly terminated before its mandatory two-

SCHEDULE-III
(See sub-para III (a) of Para 2)
COMPOSITION OF THE EXPERT COMMITTEES FOR ENVIRONMENTAL IMPACT ASSESSMENT

1. *The Committees will consist of experts in the following disciplines:*
- (i) Ecosystem Management
- (ii) Air/Water Pollution Control
- (iii) Water Resource Management
- (iv) Flora/Fauna conservation and management
- (v) Land Use Planning
- (vi) Social Sciences/Rehabilitation
- (vii) Project Appraisal
- (viii) Ecology
- (ix) Environmental Health
- (x) Subject Area Specialists
- (xi) Representatives of NGOs/persons concerned with environmental issues.
2. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector.
3. The representative of the Impact Assessment Agency will act as a Member-Secretary.
4. Chairman and Members will serve in their individual capacities except those specifically nominated as representatives.
5. The Membership of a Committee shall not exceed 15.

year term. This was not a matter of chance, as the EC had taken a radical decision to not grant clearance to any more projects in states where past projects were not complying with mandatory conditions. If terms and conditions are not laid down, then committees can be dissolved as and when they become inconvenient to the MoEF.

x. No committee for nuclear projects:

The website of the MoEF indicates that there is to be a committee to assess nuclear projects. This committee has not been constituted and no members

How Balanced are the Expert Committees in their Composition?

[Note: Each Expert Committee has varying number of members. There is one Chairman and one Member Secretary, who is an MoEF official]

Industrial Projects: Twelve Members in all. Other than the Chairman and Member Secretary, the committee comprises of four members with a Chemical Engineering background, one from the Central Pollution Control Board (government affiliated), one MLA, one DMK state official, and one whose expertise is not known. There is no person with expertise in flora and fauna conservation and management, social sciences, ecology, environment, health and no representatives from NGOs or environmentally concerned citizens

Mining Projects: Thirteen members in all. Apart from the Chairman and Member Secretary, there is one representative from the Indian Bureau of Mines, one from a Public Sector company that deals with copper, three people whose expertise did not appear through web searches. There are also representatives from other government bodies like India Meteorology Department and Central Ground Water Authority. There is once again no person with social science expertise and no representation of NGOs or environmentally concerned citizens.

Thermal Projects: Thirteen members in all. Apart from the Chairman and Member Secretary, one person from the Central Pollution Control Board, one Chemical Engineer from IIT, one representative from the Confederation of Indian Industry and one from the Coal Ministry. One is a member of the DMK political party whose expertise does not fit the subject of the committee. There is one person with expertise in flora and fauna conservation and management, social sciences and ecology. There are no representatives from NGOs or environmentally concerned citizens.

River Valley and Hydroelectric Projects: Fourteen members in all. Apart from Chairman and Member Secretary, two members are representatives from other central government ministries, i.e. Department of Land Resources and Ministry of Water Resources. There is one representative from the DMK political party. There are two representatives from government-affiliated institutions. The expertise of four members was not available on the web. There is no person with expertise in flora and fauna conservation and management, or social sciences, and no representatives from NGOs or environmentally concerned citizens.

Infrastructure and Miscellaneous Projects: Twelve members in all. This committee also looks at projects under the Coastal Regulation Zone. It might be a coincidence that many infrastructure projects mooted by Tamilnadu are referred to this committee before clearance. There are seven representatives from Chennai, one from West Bengal and one from Andaman and Nicobar Islands. There is one member whose expertise was not available on the web. This is apart from the Chairman and Member Secretary. There is no person with expertise in flora and fauna conservation and management, social sciences, ecology, environment, health and no representatives from NGOs or environmentally concerned citizens.

[This is based on the list available on the MoEF website in November 2004]

have been listed as per the information on the website. As it appears, nuclear power and related projects listed in Schedule I of the EIA notification are being granted environmental clearance without the MoEF seeking 'expert advice'. For example, Environmental Clearance for the 500 MW Prototype Fast Breeder Reactor at Kalpakkam in Tamilnadu was granted clearance despite stiff opposition at the public hearing and detailed critiques of the EIA report. The MoEF website also has no entry for nuclear plants in both pending and approved clearances sections.

2.6 The Public Hearing Process:

The most radical amendment made to the EIA notification was the one which built on the 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.

a. Notice of Public Hearing

As per the notification, the State Pollution Control Board must issue a notice for an environmental public hearing, which shall be published in at least two

newspapers widely circulated in the region where the project is being proposed, one of which shall be in the vernacular language of the locality concerned. The State Pollution Control Board shall mention the date, time and place of public hearing. All persons including bona fide residents, environmental groups and others located at the project site or sites of displacement likely to be affected can participate in the public hearing. They can also make oral/written suggestions to the State Pollution Control Board.

Despite this clause, several cases have been found where local communities are not allowed to participate due to fear that they will hinder the public hearing process and oppose the project. There are many instances where police force and violence has been used to keep away tribal groups, fishing communities, villages from submergence zones, etc. who are direct stakeholders of the region where the project is proposed. In September 2004 around 2,000 local adivasis who wanted to participate in the public hearing that was held in the premises of TISCO for a new mining lease in Noamundi, Jharkhand were kept out of the premises by the state police force. In another

Good Practices in Public Hearing

The Public Hearing process has gained in its scope in recent years due to its creative use by NGOs, communities and proactive government officials.

At the hearing for the Upper Tapi Hydro Electric Project in Amravati, Maharashtra in February 2001, the District Collector took the initiative to put up charts with diagrams as well as a list of the public hearing panel members. About 8000 people from surrounding villages came for the hearing and presented their opinions and viewpoints. Various NGOs took a proactive role in disseminating information about the project using recorded audio cassettes prior to the public hearing.

In the case of the Allain Duhangan Hydro electric project, the pressure from local communities and NGOs pushed the proposed funding agency of the project, International Finance Corporation, to initiate a public hearing process. The EIA report, which was re-done as per the requirements of the funding agency, was translated into the local language and made available to the local people. Following this a public hearing panel was appointed. But before the panel heard the public, it requested for a pre-public hearing meeting between the affected population and the project proponent, facilitated by a neutral NGO. During this meeting, the contents of the EIA and the mitigation measures were discussed by the local community, project proponents, and EIA consultants. The neutral body presented its report to the public hearing panel and the main public hearing took place after this process.

Some project proponents and project funding agencies have started uploading the EIA reports on websites so that it aids information dissemination prior to a public hearing. This was done in the case of the Parbati Stage III, Karcham Wangtoo and Allain Duhangan Hydro Electric Projects as well as for a Cement Plant at Solan, Himachal Pradesh. Though this is not adequate to ensure that the information reaches project-affected communities, it is at least an attempt to make information available in the public domain.

In Himachal Pradesh a committee has been set up under the chairmanship of the Secretary, Himachal Pradesh State Council for Science, Technology and Environment. The committee is to oversee the process of EIA and public hearings and order for repeated or amended EIAs and public hearings when needed. The committee has intervened effectively in the case of the Karcham Wangtoo Hydroelectric project.

In Karnataka, a district-wise list of public hearing panel members was available to citizens in 1998. It is not known if such a list exists today. Such a list could help citizens approach the panel members prior to the hearing and have detailed discussions. This could also help the panel to keep themselves informed, in advance, of their responsibility at the public hearing.

instance, on 29th January 2005, a public hearing was conducted for a Sponge Iron plant of Jindal Steels in Raigarh, Chhatisgarh. About 4000 people had gathered to register their concerns over the expansion of the Company's activities, which had already affected their natural resources, but none of them was allowed to speak. The hearing only allowed them to queue up to submit any objections/feedback and each complainant got to take home a piece of paper indicating that she/he had registered a complaint. There was no provision for people to speak about their grievances or ask any questions in relation to the project.⁹

b. Composition of public hearing panel

The Notification clearly lays down rules for the composition of the panel, whose job it is to document the objections and suggestions of the public at the hearing. But in practice, many of the PH panels are not complete. Several of them are put together just prior to the hearing and the panel members in such cases are not adequately informed of their specific role on the panel. In many cases, as the composition of the panel is not made known to local people, the District

Collector or the Pollution Control Board put together panels which do not fit the composition stipulated in the notification.

c. Access to executive summary and EIA reports: Prior to the amendment, which stated that EIA reports must be made accessible to citizens, people could only ask for the Executive Summaries of the EIA reports. Executive Summaries have no information about environmental and social impacts of projects. This problem has now been resolved at least at a legal level with the full EIA being made available before the public hearing.

However problems still remain in terms of the time available for people to go through the EIA reports. They are to be made accessible to the public at least 30 days prior to the public hearing. But this is done only in some cases where both Pollution Control Boards and citizens are aware of this provision. The reports are usually in English, which makes the information inaccessible for local groups and communities. For example in the case of the Pala Maneri and the Lohari Nag Pala hydro electric projects in Uttaranchal of the National Thermal Power Corporation (NTPC), local

⁹ Source: Note on the Public Hearing prepared by National Centre for Advocacy Studies (NCAS) and personal communication with Manshi Asher, NCAS.

communities and NGOs have highlighted that the relevant documents were not made available 30 days prior to the public hearing. On this basis, the NGO, Matu People's Organisation asked for a reissuing of the public hearing notice, through a legal petition to the State Pollution Control Board (SPCB).

d. Outputs from the Public Hearing: Finally, although the EIA notification lays down the process of conducting public hearings, it does not recommend a format for the recording of the public hearing. The recording, whether written or audio-visual, is done as per the understanding and availability of resources of the SPCB or the District Collector's office or NGOs or local community groups. The notification also does not state how the outputs of the public hearing will feed into the decision-making process. Is the MoEF bound to consider the comments made at the hearing in its decision-making process? What is the weight given to these comments over other aspects of the decision making process? Will the comments of the affected parties be given more weight than those of the people who will benefit from the project? Should the panel only communicate to the MoEF the comments made by people or should they also give their 'verdict' about the project? Is the MoEF mandated to keep people informed about how their comments regarding the project have been used in the decision-making process? These are all critical questions that have not been addressed in the notification and therefore have serious ramifications on the ground. The most extreme ramification has been the refusal of several groups to participate in such a process as they feel that their comments would simply be used to justify the project no matter what they say at the hearing. They would

consider participating in this process only if the above questions are clarified by written word in the notification.

A case filed by the Centre for Social Justice (Jan Vikas) in the Gujarat High Court and the subsequent judgement did help to clarify some of these questions (See Section on Institutions for Redressal of Environmental Clearance).

2.7 Lack of Information Regarding the Status of Projects Undergoing Environmental Clearance:

As of April 2005, the only public source of information about the status of environmental clearance of a project is the website of the MoEF. The dates of the Expert Committee meetings and the status of clearance are put up here. However, there is a time gap of weeks or in some cases months before information is updated on the site. In such circumstances, it becomes impossible for the concerned citizens or groups to raise matters regarding clearance with the MoEF or any other institution like the National Environment Appellate Authority (NEAA) within the specified time period (See Section on Institutions for Redressal of Environmental Clearance). It is unfortunate that many cases challenging the environmental clearance of projects have been rejected by the NEAA simply because the petitioners have not filed the case before the specified 30 day period from the date of issue of environmental clearance. It is virtually impossible to effectively use the NEAA to redress faulty clearances unless the time factor is amended or done away with, or information made accessible in a way that allows citizens to challenge projects on the basis of sound information and within a reasonable time period.



VIOLATIONS OF THE EIA NOTIFICATION¹

S.No.	Development Project	Violations	Citizens' Response/Intervention	Result
	NORTHERN INDIA			
1.	<p>Parbati Hydro Electric Project, Himachal Pradesh</p> <p>An Agreement for the execution of Parbati Hydro Electric Project was signed on 20.11.98 between Himachal Pradesh Government and National Hydro Electric Power Corporation, even before the project had all the necessary clearances. The foundation stone of this project has been laid in November 1999, also before the project had been cleared.</p>	<ul style="list-style-type: none"> - Misleading and inadequate information on social profile of the region as well as impacts on biodiversity (invoking action as per Section 4) - Stage-managed and improper public hearings (Violating procedure laid down in Schedule IV). 	<ul style="list-style-type: none"> - People's opposition and concerns communicated to project authorities (NHPC) and MoEF - Environmental Clearance challenged under the NEAA² - Protest letters to the PM pointed out that the laying of the foundation stone of the project would be an illegal act as the environmental clearance for the project had not been obtained. Additionally he would be ignoring his own role as the Chairperson of the Indian Board for Wildlife (IBWL), as the denotified area of the GHNP and the areas to the north where dams and tunnels are to be built for the project are vital wildlife habitats³. 	<p>Case heard by the Appellate court, and petition disposed in December 2001. Environmental clearance granted to project in June 2001.⁴</p>
2.	<p>Karcham-Wangtoo Hydro Electric Project, Himachal Pradesh⁵</p>	<ul style="list-style-type: none"> - Misleading and inadequate information in the EIA report Executive Summary and EIA not available in local language (Violation of guideline as ordered by Gujarat High Court) 	<ul style="list-style-type: none"> - Detailed critique of EIA prepared - Local level agitation and boycott of public hearing thrice as documents were not available in the local language. Local people demanded that the executing company should first get the No Objection Certificates from the gram sabhas, where people are being affected and should not do blasting during construction.⁶ 	<p>Environmental Clearance pending</p>
3.	<p>Chamera II Hydro Electric Project, Himachal Pradesh⁷</p>	<p>No access to EIA and Executive Summary before public hearing. No adequate information on the Public Hearing with the people (Violation of the procedure laid down in Schedule IV).</p>	<ul style="list-style-type: none"> - Submission made to Himachal Pradesh State Pollution Control Board and MoEF. - Video recording of the public hearing. 	<p>Project Commissioned in 2004.</p>

¹ This table does not claim to present the entire set of violations of the EIA notification nor is it completely balanced on the region/sector wise representation. The main aim is to highlight the range of violations and action that are taking place with reference to EIAs all over the country. The source of information presented in this table is a series of emails received on the eiawatch@yahoogroups.com listserv, active discussion with people working on EIA issues, court judgments/orders, critiques of EIAs, newspaper reports as well as web based searches on these projects. Some information has also been sourced from the Forest Case Update (<http://www.geocities.com/forestcase/forestcaseupdate.html>).

² National Environment Appellate Authority was set up under National Environment Appellate Authority Act, 1997. Application by Pradeep Chaudhary, Janadhikar Sangharsh Morcha/Iqbal Singh, SAVE, Himachal Pradesh.

³ Protected Area Update 23, January 2000. Kalpavriksh

⁴ Economic Survey 2001- 2002, Dept of Finance Govt of Himachal Pradesh <http://himachal.nic.in/finance/bud0203/ecosurv/eco7.htm>

⁵ Dams, Rivers and People, Vol 2, Issue 9-10-11, October-November 2004 and Personal Communication with Himanshu Thakkar, SANDRP

⁶ Source: <http://www.janmanch.org/newsletter/sandrp-update-jan2005.htm>

⁷ Source: Letter by South Asia Network on Dams, Rivers & People (SANDRP) to Himachal Pradesh State Pollution Control Board, HP State Council for Science and Technology and Secretary, MoEF dated 31st August 2004

S.No.	Development Project	Violations	Citizens' Response/Intervention	Result
NORTHERN INDIA				
4.	Pala Maneri Hydro Electric Project, Uttaranchal	<ul style="list-style-type: none"> - No access to EIA prior to and during the public hearing (Violation of procedure laid down in Schedule IV) - Information in the Executive Summary also inadequate (invoking action as per Section 4). 	<ul style="list-style-type: none"> - Letters written to concerned authorities - Legal notice by community representatives and NGO to the project proponent (NTPC)⁸ - Critique of Executive Summary prepared 	Response received from SPCB denying allegations made in the legal notice
5.	Allain Duhangan Hydro Electric Project, Himachal Pradesh ⁹	Insufficient and inadequate data in two EIA reports (invoking action as per Section 4).	<ul style="list-style-type: none"> - First EIA inadequate - Opposition from local people - Letters written to MoEF and the proposed funding agency, International Finance Corporation (IFC) - Second EIA commissioned by funding agency - Detailed critique of second EIA report 	<ul style="list-style-type: none"> - Environmental Clearance granted in 2000 based on first EIA - Funding Agency (IFC) commissioned fresh EIA and also a series of public hearings. Has agreed to fund the project.
SOUTHERN INDIA				
1.	Bangalore-Mysore Infrastructure Corridor, Karnataka ¹⁰	<ul style="list-style-type: none"> - Inadequate and incomplete information in the EIA reports (invoking action as per Section 4). Misconduct at public hearing (Violation of various clauses of Schedule IV) 	<ul style="list-style-type: none"> - Opposition by local people and NGOs - Critique of EIA prepared - Submissions made at public hearings - Letters written to MoEF and other authorities - Intervention in the High Court 	Environmental clearance granted on August 8, 2001 Final decision on the High Court case pending
2.	Athirapally Hydro Electric Project, Kerala ¹¹	Inadequate information in the EIA reports (invoking action as per Section 4).	<ul style="list-style-type: none"> - Opposition by local people and NGOs - Environmental clearance challenged in Kerala High Court 	<p>Court ordered fresh EIA to be prepared and public hearing to be conducted.</p> <p>Court also stated that government must ensure maximum benefits from existing projects before planning for new projects.</p> <p>Fresh EIA was redone, but was still inadequate. Environmental Clearance granted.</p>

⁸ Source: Legal Notice issued on 15th October 2004 to Uttaranchal State Pollution Control Board by Prashant Bhushan, Advocate, Supreme Court of India.

⁹ Source: Comments on the ESIA of the proposed Allain Duhangan HEP by South Asia Network on Dams, Rivers and People (SANDRP); Letter to Himachal Pradesh Pollution Control Board by Himanshu Thakkar, SANDRP dated 12th May 2004

¹⁰ Press Release by Environment Support Group, Bangalore dated 14th August 2001; emails posted on eiawatch@yahoogroups.com and www.esgindia.org/campaigns/bmic/bmic.html

¹¹ Source: Kerala High Court Judgement dated 17th October 2001 in O.P.No. 3 5 8 1 of 2001 by Chalakudy Puzha Samrakshna Samithy and S.Unnikrishanan; letter dated 25th September 2003 by Chalakudy Puzha Samrakshna Samithy to Secretary, MoEF; emails on eiawatch@yahoogroups.com and newspaper report in Malyala Manorama on 12th June 2004 titled, *Athirappilly: Recommended for clearance by toppling public hearing.*

S.No.	Development Project	Violations	Citizens' Response/Intervention	Result
	SOUTHERN INDIA			
3.	Expansion of Bajpe Airport, Karnataka ¹²	<ul style="list-style-type: none"> - EIA not prepared for the project (Violating Section 2 I a) Construction at project site prior to environmental clearance being granted (Violation of Section 2 III). 	<ul style="list-style-type: none"> - Opposition by NGOs and local people to be affected by the project - Concerns raised with relevant authorities Legal action in High Court and Supreme Court 	High Court ordered that all legal formalities need to be completed before commencement of the project. Supreme Court did not interfere with the order. However, project authorities have started the alignment work of the second runway without getting an environmental clearance.
4.	Dandeli Mini Hydel Project, Karnataka ¹³	<ul style="list-style-type: none"> - Fraudulent EIA report, it was plagiarized. Second EIA a rapid one based on single season data.¹⁴ 	<ul style="list-style-type: none"> - Opposition by local people and NGOs - Communication with MoEF and other officials - News of fraudulent practice of the consultants Ernst and Young splashed in leading newspapers and magazines - Demand for fresh EIA 	Fresh EIA conducted after the MOEF rejected the first one (following a people's campaign). This too was inadequate in its assessment.
5.	Sethusamudram Ship Canal Project, Tamil Nadu ¹⁵	<ul style="list-style-type: none"> - Biased statements, false and inadequate information in the EIA report. Rapid EIA not a comprehensive one - Concerned citizens and NGOs prohibited from attending the public hearings (Violation of Point (2) (ii) of Schedule IV) 	<ul style="list-style-type: none"> - Opposition by communities to be affected by the project and NGOs - Letters sent to Pollution Control Board and other Authorities Public Interest Litigation (PIL) in High Court 	<ul style="list-style-type: none"> - Public Hearings rescheduled on account of 'disruption' by people - High Court rejected the petition as being premature¹⁶. Environmental clearance granted.

¹² Source: www.esgindia.org/campaigns/bajpe/press/bajpePR8.htm; www.esgindia.org/campaigns/bajpe/current/current.htm; and www.esgindia.org/campaigns/bajpe/docs/BAJPE%20SC%20ORDER%20070203.htm

¹³ Source: <http://www.esgindia.org/campaigns/dandeli/dandeli.html>

¹⁴ As per the Explanatory Note Regarding the Impact Assessment Notification Dated 27th January 1994: "As a Comprehensive EIA report will normally take at least one year for its preparation, project proponents may furnish Rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project. Comprehensive EIA report may be submitted later, if so asked for by the IAA."

¹⁵ Source: Evaluation of the EIA of the Proposed Sethusamudram Ship Canal Project by Staff Scientists of Environmental Law Alliance Worldwide; Letter dated 16th September 2004 to Tamil Nadu Pollution Control Board by Aarthi Sridhar and Mahalakshmi Parthasarthy; postings on eiawatch@yahoo.com

¹⁶ The Bench observed that in the name of environment protection, scientific and technical progress of the country should not be obstructed. "No doubt environment has to be protected, but at the same time, we must never overlook the basic aim of our country, which is to make India a powerful and modern industrial State." (<http://www.hindu.com/2004/12/18/stories/2004121807760100.htm>)

S.No.	Development Project	Violations	Citizens' Response/Intervention	Result
	SOUTHERN INDIA			
6.	Uranium Mining and Processing Project at Nalgonda District, Andhra Pradesh ¹⁷	<ul style="list-style-type: none"> - EIA report based only on single season data though it claims to be a full EIA - Inadequate and incomplete analysis of impacts and misleading information - Persons opposing the project not allowed to attend the public hearing held (Violating 2 ii of Schedule IV) <p>EIA report not made available prior to the public hearing, and refused on the grounds of it being an internal document.</p>	<ul style="list-style-type: none"> - Opposition by local people and NGOs. - Submission made to public hearing panel <p>Communication to Andhra Pradesh Pollution Control Board (APPCB).</p>	<ul style="list-style-type: none"> - APPCB rejected the project on grounds that drainage from the mine area will flow into the Nagarjuna Reservoir. - The APPCB then changed its opinion. - The Public Hearing for the processing plant conducted on March 3, 2005.¹⁸
7.	Prototype Fast Breeder Nuclear Reactor, Kalapakkam, Tamil Nadu ¹⁹	<ul style="list-style-type: none"> - EIA based on single season data - Inadequate, incomplete and incorrect information in the EIA report. <p>Alternatives to the project not considered.</p>	<ul style="list-style-type: none"> - Stiff opposition by local communities and NGOs, also at the public hearing - Letters sent to MoEF and other relevant authorities <p>Detailed critique of EIA on scientific and technical grounds prepared and circulated. This highlighted the discrepancies in the EIA report.</p>	Environmental Clearance granted by MoEF without providing scientific and clear explanations to the fears raised by communities and NGOs
	WESTERN INDIA			
1.	Human Dam, Maharashtra ²⁰	<ul style="list-style-type: none"> - Public Hearing conducted before the completion of the EIA report <p>Inadequate data in EIA report.</p>	<ul style="list-style-type: none"> - BNHS conducted independent studies on ecological and social viability of the project and submitted to MoEF²¹ - Application filed before the Central Empowered Committee (CEC) of the Supreme Court seeking to stop the project 	MoEF commissioned studies by Wildlife Institute of India (WII) not shared with public MoEF response on the questions raised during the CEC hearing awaited.

¹⁷ Comments on the EIA and public hearing for Proposed Uranium mining and processing in Lambapur and Peddagattu by Sunita Dubey, Environmental Justice Initiative; Evaluation of Uranium Processing Project at Mallapuram, Dr. Mark Cherniak; Draft Affidavit highlighting the issue; and postings on eiawatch@yahoo.com

¹⁸ Source: <http://www.khojhyderabad.com/News/Fullstory.asp?q=50594>

¹⁹ Critique of the EIA by Doctors for Safer Environment; postings on eiawatch@yahoo.com

²⁰ Forest Case Update, Issue 5, October 2004 (<http://www.geocities.com/forestcase/forestcaseupdate.html>)

²¹ Apte, Deepak. Ecological and Social Viability of the Human dam project in Vidharba (<http://www.bnhs.org/bo/documents/HumanDam.pdf>)

S.No.	Development Project	Violations	Citizens' Response/Intervention	Result
	WESTERN INDIA			
2.	Loxim Color Pvt. Ltd, Vadodara District, Gujarat). ²²	Inadequate and incomplete data in EIA report. Concealment of critical data on toxicity and technical anomalies. Rapid EIA.	Submission to Gujarat PCB highlighting the problems with the EIA report along with photographs of actual pollution. Data on violation of known parameters also provided.	No communication from GPCB or MoEF on the issue with NGOs concerned. More information and data requested by NGOs based on their submission.
3.	Expansion of Atul Ltd., Valsad district ²³	– Inadequate and incomplete data in EIA report. NGO representatives manhandled by the company during the public hearing	– Submission to GPCB and Public Hearing Panel, highlighting the discrepancies in the EIA report. – Opposition during the public hearing	Clearance for expansion granted
4.	Mining project of Gujarat Mineral Development Corporation, Kutchh district, Gujarat ²⁴	– Information discrepancies between the public hearing notice and the EIA. Inadequate data in the EIA report, which itself was outdated and concealed facts.	Submission highlighting all the discrepancies made to the public hearing panel.	Clearance granted by MoEF.
5.	Expansion of lease for mining project of Gujarat Mineral Development Corporation, Bharuch district, Gujarat ²⁵	– Inadequate, incomplete and false data in the EIA report, along with technical anomalies.	– Objections raised at the public hearing. – Submissions highlighting discrepancies during and after the public hearing	Not known
6.	Setting up of a Distillery in Surat district, Gujarat ²⁶	Inadequate and incomplete information in EIA report	Response on EIA report sent by an NGO to SPCB, highlighting that the information is not enough for a public hearing to be conducted	Public Hearing was announced and then postponed.
7.	Mining in 5 villages, Jamnagar district Gujarat ²⁷ (for ex post facto clearance under EIA notification) ²⁸	Inadequate and incomplete information in 5 EIA reports for 5 villages where mining is going on	– Response on the EIA reports sent by NGO – Participation in public hearing	District Environmental Public Hearing Committee ordered for setting up of a committee to study impact on religious / historical monuments before grant of ex-post facto clearance.

²² Letter by Paryavaran Suraksha Samiti to Chairman, Public Hearing Panel and Regional Officer, Gujarat Pollution Control Board, dated 6th May 2004.

²³ Letter by Paryavaran Suraksha Samiti to Chairman, District Public Hearing Panel and Chairman, Pollution Control Board dated 12th August 2002

²⁴ Letter by Paryavaran Suraksha Samiti to Chairman, District Level Public Hearing Panel dated 12th November 2002

²⁵ Letter by Paryavaran Suraksha Samiti to Chairman, Environment and Public Hearing Committee, dated 22nd October 2004

²⁶ Letter dated 11th October 2003 by Paryavaran Mitra (Centre for Social Justice-Janvikas) to District Level Environmental Public Hearing Committee including critique of the EIA report

²⁷ Letter dated 3rd October 2003 by Paryavaran Mitra (Centre for Social Justice-Janvikas) to District Level Environmental Public Hearing Committee, Observations and objections to the five EIA reports.

²⁸ According to a MoEF circular dated 14th May 2002, it was decided to extend the deadline upto 31 March 2003 (earlier 30th June 2001) for defaulting units to avail of the last and final opportunity to obtain ex-post-facto environmental clearance. This would apply to all such units, which had commenced construction activities/operations without obtaining prior environmental clearance in violation of the EIA Notification.

S.No.	Development Project	Violations	Citizens' Response/Intervention	Result
	WESTERN INDIA			
8.	Exploratory Drilling for Oil and Gas in Kutch, Gujarat ²⁹	Inadequate and incomplete data in EIA report.	<ul style="list-style-type: none"> - Opposition by local people and NGOs prior to and at the public hearing - Letters to Gujarat Pollution Control Board 	Status not known
	CENTRAL AND EASTERN INDIA			
1.	Mining in Lanjigarh, Orissa ³⁰	Construction at project site prior to environmental clearance being granted (Violation of Section 2 III) False information in Environmental Clearance letter, with no mention of forest land involved.	<ul style="list-style-type: none"> - Opposition at local level and by NGOs - Legal intervention before the Central Empowered Committee and around 250 petitions to the two member committee during site visit 	<ul style="list-style-type: none"> - Site visit by committee appointed by CEC. Case ongoing
2.	Port at Dhamra, Orissa	State government claims that this is a port expansion, and therefore does not require environmental clearance under the EIA notification (as per the interpretation of the Coastal Regulation Zone Notification)	<ul style="list-style-type: none"> - Opposition by NGOs - Environmental clearance challenged before the NEAA - Process ongoing 	NEAA accepted the grant of environmental clearance by the Ministry of Surface Transport
3.	Mining at Noamundi, Jharkhand ³¹	Few thousand community representatives and peoples' groups were not allowed to attend the public hearing. Police force employed to prevent the same (Violation of 2 ii of Schedule IV).	<ul style="list-style-type: none"> - Opposition by local people - Letters written to MoEF Attempts at seeking a stay order are on. 	Not known
4.	Teesta Low Dam Project, West Bengal ³²	Inadequate and incomplete data in EIA report. Concealment of critical data (Violation of Section 4) 30 day notice not given prior to public hearing	<ul style="list-style-type: none"> - Opposition by local people - Letters written to MoEF, Pollution Control Board and other authorities - Environmental Clearance challenged before the NEAA - High Court intervention being planned 	Environmental Clearance granted NEAA rejected admission of the petition on the grounds that there was a day's delay in filing the application. There was no discussion on any substantive issue or concern.

²⁹ Undermining India by Neeraj Vaghlikar, Kaustabh Moghe with Ritwick Dutta, Kalpavriksh 2003

³⁰ Reference: Forest Case Update, Issue 7, December 2004, Issue 9, February 2005 (www.geocities.com/forestcase/forestcaseupdate.html)

³¹ Postings on eiawatch@yahoo.com

³² Application by NESPON, Siliguri before the National Environment Appellate Authority; Press Release dated 21st April 2003 by NESPON, South Asia Network on Dams, Rivers and People and Kalpavriksh

S.No.	Development Project	Violations	Citizens' Response/Intervention	Result
	CENTRAL AND EASTERN INDIA			
5.	Barh Thermal Power Project, Bihar ³³	Inadequate and incomplete data in EIA report (Violation of Section 4)	<ul style="list-style-type: none"> - Thermal Projects Expert Committee members advised against clearance - Letters to MoEF by NGOs 	Environmental Clearance granted, project under construction
	NORTHEAST INDIA			
1.	Lower Subansiri Hydro Electric Project, Arunachal Pradesh ³⁴	<ul style="list-style-type: none"> - Inadequate and incomplete data in EIA report (Violation of Section 4) - Construction prior to grant of environmental clearance (Violation of Section 2 III) 	<ul style="list-style-type: none"> - Opposition by environmental groups. Concerns raised at public hearing - Media outreach Intervention in Supreme Court challenging environmental clearance granted to the project 	<ul style="list-style-type: none"> - Environmental Clearance granted. Case argued in Supreme Court. NHPC allowed to go ahead with the construction, provided it complies with conditions of clearance including payment of Rs.300 crore as Net Present Value of forestland being diverted for non-forest use.
2.	Middle Siang Hydro Electric Project ³⁵	<ul style="list-style-type: none"> - 30 day notice not given prior to public hearing (Violation of Section 2 (i) of Schedule IV) - EIA not available before public hearing (Violation of Section 4 of Schedule IV) Inadequate and incomplete information in the EIA report (Violation of Section 4) 	<ul style="list-style-type: none"> - Opposition by local people - Critique of some aspects of the EIA report. Submission made prior to and at the public hearing - Letters written to MoEF 	Environmental Clearance granted

³³ <http://www.toxiclink.org/mediapr-view.php?pressrelnum=7>; <http://timesofindia.indiatimes.com/articleshow/183039.cms>

³⁴ Large Dams in North East India : Rivers, Forests, People and Power, Ecologist Asia, Vol 11, No.1, January-March 2003

³⁵ NHPC faces public criticism over projects, The Assam Tribune, June 12, 2004; Report on the Middle Siang Public Hearing by Brahmaputra - Barak rivers Watch, Akajan, Dhemaji District, Assam.

Undermining People's Participation¹

by Neeraj Vagholikar²

In August 2001 the Environment Impact Assessment (EIA) Notification, 1994, was amended for the fifth time, waiving the need for public hearings as a part of the environmental clearance procedure for a certain section of projects. As per the new notification, "...Public Hearing is not required in respect of (i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities; (ii) widening and strengthening of highways; (iii) **mining projects (major minerals³) with lease area up to 25 hectares**, (iv) units located in Export Processing Zones, Special Economic Zones and (v) modernisation of existing irrigation projects."

The EIA notification

While certain development projects in India have required environmental impact assessment and clearance since the late 1970s under the directives of the Central Government, the first comprehensive legislation for environmental impact assessment and clearance for a listed category of projects was the EIA notification, 1994, under the Environment (Protection) Act (EPA), 1986. This not only applies to new projects, but also to the expansion and modernisation of certain categories of existing projects.

The process entails the submission of an application

form with a certain set of documents, including the Environment Impact Assessment report, to the Impact Assessment Agency (IAA) by the project proponent. The IAA is the Ministry of Environment and Forests (MOEF), which may consult a committee of experts to evaluate the proposal for environmental clearance.

The process of Environmental Public Hearing as a part of the EIA notification was earlier optional but was made mandatory in 1997 and since then it has served as a crucial legal platform for environmental and social groups and local residents to voice their concerns about a project. Besides actually raising environmental concerns about the projects, this process has enabled to bring to light the shoddy quality of environmental impact assessment being done by many of the consultants hired by project proponents. This includes inadequate information, very often inaccurate information and sometimes even plagiarized EIAs! For instance 'renowned' consultants Ernst and Young while conducting the environmental impact assessment for the Dandeli Mini hydel Project in Karnataka copied an EIA report of another hydel project close by! This was brought to light by environmental groups during the environmental public hearing for the project after which the EIA document was withdrawn. The EIA notification clearly states that the application for environmental clearance would be rejected if it is found that data has been concealed, is not factual etc. But the

¹ This piece was written soon after the amendment to the Environment Impact Assessment (EIA) in August 2001, which exempted mining projects for major minerals with lease area up to 25 ha from the requirement of mandatory environmental public hearings as a part of the environmental clearance process. It has subsequently appeared in the *Update Collective*, Issue No. 136, December 10, 2001, brought out by the Delhi Forum on the occasion of the 2nd National Convention of the 'mines, minerals and People (mmp)' network. It was also reproduced in the 2003 Kalpavriksh report, *Undermining India – Impacts of mining on ecologically sensitive areas*.

² Neeraj Vagholikar is a member of the environmental action group, Kalpavriksh.

³ All minerals other than those notified as "minor minerals" by the Central Government are major minerals. In Indian mining law "minerals" includes all minerals except mineral oils (natural gas and petroleum). The Mines and Minerals (Development & Regulation) Act, 1957, defines "minor minerals" as:

"3 (e) "minor minerals" means building stones, gravels, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral."

Apart from the minerals already listed in the above clause the Central Government has declared 15 other minerals as minor minerals. No exhaustive definition of minor mineral which states the criteria for declaring any mineral as minor mineral has been given in any law. But minor minerals have generally been minerals used for building and construction purposes. The State governments have considerable powers to regulate the mining of minor minerals, including grant of mining leases. Generally these minerals are somewhat of local importance and can be developed on the small scale. After the 73rd amendment of the Constitution in 1993, Panchayats too have a greater role to play with respect to the minor mineral sector.

quality of EIA reports still remains largely abysmal.

This is a serious issue. Environmental decision making is very often being made based on inadequate and inaccurate information. It was not as if individuals/groups were unaware of the quality of EIAs or gaps in the clearance procedures before the era of public hearings. But the public hearing space has enabled more citizens to be involved in the demand for greater environmental accountability and given more visibility to the obvious violations of both the letter and spirit of environmental legislation in India. But increasing demands by citizen groups for environmental accountability has led to a lot of discomfort within project proponents and for some time now there have been very intense efforts to undermine the space for people's participation in the environmental clearance procedures.

The January 2001 draft notification

The MoEF issued a draft notification on 3rd January 2001, proposing the amendment to the EIA notification. This said: "... it has been found that Small Scale Industrial Units, **Mining Projects with lease area up to twenty five hectares**, widening and strengthening of Highways, and modernization of existing Irrigation Projects cause minimal impacts, both on the environment and people living in the vicinity.... the environment impacts of such projects can be assessed on the basis of the information provided by the project proponents to this Ministry even without a public hearing". Using this justification it proposed the following insertion in the EIA notification: "'However, public hearing is not required in respect of Small Scale Industrial Units (as defined in the

Mining and the EIA notification

- .. The EIA notification specifies the following clearances for the mining sector:
 - a) Site clearance* for prospecting and exploration of major minerals in areas above 500 ha
 - b) Site clearance for mining projects involving major minerals with leases in excess of 5 ha in area
 - c) Environmental clearance for mining projects involving major minerals with leases in excess of 5 ha. in area.
- .. Mining projects also require consent under the Water (Prevention and Control of Pollution) Act and the Air (Control and Prevention of Pollution) Act from the State Pollution Control Boards (SPCBs). The forms under the above acts are to be submitted to the SPCBs prior to the environmental public hearing.
- .. From April 1997 to August 2001 public hearings were compulsory for all mining leases requiring environmental clearance under the EIA notification. i.e. Major minerals with leases more than 5 hectares. After the recent amendment of August 2001, public hearings are only required for mining leases of major minerals above 25 ha.
- .. Environmental clearance and public hearings are not required for leases of major minerals below 5 ha and for all leases of minor minerals.
- .. A Committee of Experts has been appointed by the MOEF specifically to assist it in the evaluation of mining projects for environmental clearance.
- .. **For mining projects requiring environmental clearance under the EIA notification, separate clearance is also required under the Forest (Conservation) Act (FCA), 1980, if diversion of forest land is involved.** In fact all mining projects involving diversion of forest land (irrespective of size of lease or classification as major or minor mineral) require clearance under the FCA. For projects requiring clearances under both the EPA and the FCA, a project is deemed cleared only after receiving clearances under both Acts. For a mining project being considered under the FCA but not coming under the list of projects requiring environmental clearance under the EIA notification, the MOEF can still consider it for environmental clearance if it feels necessary.

** Certain site-specific projects (as in the case of mining or mineral prospecting) require a site clearance from the MoEF. For mining projects requiring environmental clearance, the EIA notification thus demands two clearances: site clearance and environmental clearance. For site clearance the project authorities will intimate the location of the project site to the MOEF before initiating any investigations and surveys. The MOEF will then convey the suitability or otherwise of the site. A site clearance only gives permission to carry out surveys and investigations to prepare the prefeasibility and other reports (such as the EIA) and does not indicate any commitment on the part of the MoEF to grant environmental clearance. No construction, preliminary or otherwise, relating to the setting up of the project may be undertaken till both the clearances (environmental and site) are obtained. A project can be denied environmental clearance by the MoEF based on evaluation of information (such as the EIA report) generated after obtaining site clearance.*

Industrial Policy from time to time), widening and strengthening of highways, **mining projects (major minerals) with lease area up to twenty-five hectares** and modernisation of existing irrigation projects”.

It is not clear on what basis the MOEF has decided that the projects mentioned above have ‘minimal impacts’ and that the impacts of these projects can be assessed without a public hearing. Even if the environmental impacts were to be ‘minimal’ in a particular case, it is the right of communities and citizens groups to have a say on developmental activities which affect them. While one can counter the MoEF argument for each of the projects mentioned above, I will briefly touch upon the issue of mining.

As mentioned earlier, only mining leases for major minerals above 5 ha require environmental clearance under the EIA notification and now public hearings are required for only those leases which are above 25 ha. While looking at the ecological impacts of mining, “where mining” and “how mining” are questions which should come before “how much area under mining”. Leases below 25 ha can cause tremendous damage in ecologically and culturally sensitive areas and under no circumstances can we make assumptions that these have “minimal impacts” and that public hearings are not required.

This is especially true for us in India as we have a considerable overlap between biologically rich areas and areas where our mineral wealth is found. These areas are also home to traditional communities, which are dependent on these ecosystems for their livelihoods. 25 ha is large if one is to consider the impact which could be caused to an area which is a biologically-rich pocket or has cultural or religious significance (such as a sacred grove). Depending on the mining process a mine could have tremendous impacts on the surrounds and downstream/downwind (waterways, agricultural lands etc.), which is independent of the actual size of the mining lease. Besides, small mining leases in ‘clusters’ can also be very environmentally destructive. Thus it is crucial that citizens have an opportunity to participate in the environmental decision-making process and voice their concerns.

There are umpteen examples of leases under 25 ha for both minor and major minerals from around the country which have caused or will cause significant social and ecological impacts. We have the marble mines in the Alwar district of Rajasthan, the iron ore mines in Sundur in the Bellary district of Karnataka, the bauxite

mines in the tribal areas of Anantagiri in the Eastern Ghats in Andhra Pradesh, the coal mines in the Jaintia Hills of Meghalaya etc. We also have examples of both the Doon Valley and the Aravallis where smaller leases have caused extensive environmental damage and mining activities have now been regulated by both the judiciary and the MoEF. In fact it is important that public hearings are held for all mining leases irrespective of size of lease or classification of the mineral as major or minor.

A recent Indian Bureau of Mines publication⁴ gives a vital piece of information: “It is interesting to note that though there are over 9,000 mining leases for major minerals with a cumulative lease area of over 0.7 million hectares (as on 01.01.95) excluding notified minor minerals for civil and construction purpose, a little less than 50% of them have individual lease area of 25 hectares in size and less.”

So, in effect, we are excluding almost 50 % of mining leases of major minerals from the purview of the public hearing process. In addition to this all the leases for minor minerals do not require environmental clearance under the EIA notification and hence no public hearings. This gives a rather good idea about how serious we as a country are in involving people in environmental decision making, at least as far as the mining sector is concerned.

Groups respond

The January draft 2001 notification gave a period of sixty days for people to respond. Individuals and environmental and social groups, sent in their written submissions. On April 23rd the MOEF called for a meeting in New Delhi to discuss this notification and all those who had sent in written submissions were invited for the meeting. The NGOs highlighted the fact that the public hearings are the only legal space within the environmental clearance process in which people can participate and raise their concerns and it is very important that this forum remains available to people. A key issue raised was the fact that the impacts of projects are so crucially dependent on their siting and one cannot merely remove the need for public hearings based on an argument that they are smaller in scale. A serious concern was raised about the moves to dilute the environmental legislations rather than strengthen them.

On the other hand the industry representatives, larger in number, focussed on various aspects which according to them made public hearings undesirable: e.g. they caused time delays in environmental clearance,

⁴ Indian Bureau of Mines, 2000. Reclamation/ Restoration – Techniques & Strategy for Mined Out Areas.

were a burden on small scale investors, etc.

The NGOs present were concerned with the effectiveness of this process conducted by the MOEF and it was decided to additionally give in a joint memorandum on behalf of groups/individuals from around the country to the MOEF. On May 10th members of three groups (Kalpavriksh, Toxics Link and the Environment and Human Rights Law Initiative) met up with the Joint Secretary (Impact Assessment), MOEF and submitted a memorandum on behalf of 38 individuals/organisations from around the country. The memorandum principally dealt with three aspects:

- the need for processes, such as the public hearing held for discussing the EIA notification amendment, to be more participatory and allowing scope for debate
- concerns over the status of implementation of the EIA notification – the poor quality of EIAS, procedural shortcomings in the public hearing process, etc.
- specific objections with respect to the 3rd January draft notification.

When the amended version of the EIA notification came through in August 2001, it was obvious that the viewpoint of NGOs had been totally ignored. The notification had come through with a few minor changes to the proposed amendments, unrelated to any of the NGO responses. No explanation was given as to why serious points of concern raised had not been considered and is again indicative of the level of transparency in such processes. Some groups have sent in letters protesting this amendment, but there is a need for a larger campaign on this.

The larger picture

The undermining of spaces available to citizens to intervene in the developmental planning process is an issue of serious concern. Since the early 1990s we have seen two parallel processes working in opposite directions with respect to people's participation in developmental planning. On the one hand are the following positive developments:

- the 73rd amendment of the Constitution which came in 1992 and seeks to move towards more decentralised governance by empowering village panchayats.

- the 74th amendment of the Constitution, 1992, which seeks to empower urban communities.

- the Panchayat (Extension to Scheduled Areas⁵) Act, 1996, which is one of the most revolutionary laws of independent India and seeks to considerably empower tribal communities in some parts of India and give them greater control over their natural resources. The village Gram Sabhas have to be consulted for developmental activities in the area.

- provisions such as the environmental public hearings which became a mandatory part of the EIA notification in 1997.

- a significant circular under the FCA, 1980, was circulated by the MoEF in 1999. This circular⁶, now an annexure under the FCA, amongst other things states:

“5. It has been observed that in respect of a large number of proposals the Central Government is receiving representation from NGOs/ local public bodies against the diversion of forest land on environment and ecological grounds. Therefore the Central Government feels that it is essential to have the opinion of the local people whenever a project is coming up in that area. Therefore, it has been decided that whenever any proposal for diversion of forest land is submitted, it should be accompanied by a resolution of the ‘Aam Sabha’ of Gram Panchayat/ Local Body of the area endorsing the proposal that the project is in the interest of people living in and around the proposed forest land.”

While there may be problems with the effective functioning and implementation of the above mentioned provisions, the important fact is that a space has been provided. Communities and citizens groups need to recognise the potential of these spaces and lobby for the improvement and effective implementation of the provisions which have created these.

On the other hand, the post-1991 liberalisation scenario has seen the opening up of various sectors to corporate interests (both Indian and global) through several policy and legal changes. In such a situation the ‘spaces’ for people are being seen as a hindrance which are holding up investments and ‘development’. The

⁵ The “scheduled areas” here refers to the “fifth schedule” of the Indian constitution. Article 244 (i) provides for tribal dominated areas in the country to be declared as fifth schedule areas (except the North East which has a separate provision in the sixth schedule of the constitution). The Governors of the concerned states have been given extensive powers and may prevent or amend any law enacted by Parliament or the State assembly that could harm the tribal interests. It is a tool of “positive discrimination” to protect the interests of tribal communities which have been exploited over the years. One of the most significant provisions for these areas is the prevention of land transfer to non-tribals in these areas. The Panchayat (Extension to Scheduled Areas) Act, 1996, applies to these areas and seeks to give the communities greater control over their natural resources and developmental planning in the area. This also makes it mandatory to consult the Gram Sabha/ Panchayat prior to grant of prospecting licenses/ mining leases/ concessions by auction for minor minerals.

⁶ Circular No. 11-30/96-FC (Pt.) dated 26.02.1999

National Mineral Policy, 1993, has brought with it a lot of changes, facilitating increased participation of the private sector and also foreign investment. While the mining interests are happy about this, they are of course intolerant of anything holding up their possibilities of mining anywhere they wish. The most illustrative example of this is the tremendous pressure to amend the fifth schedule of the constitution, as it has come in the way of the reckless opening up of these areas for mineral exploitation. These areas which are home to significant tribal populations, also house a considerable amount of mineral wealth and the moves to amend the fifth schedule were prompted because of a historic Supreme Court judgement in 1997 in a case filed by the group Samatha⁷, which was a victory for tribal rights in the fifth schedule areas, but affected mining interests. Amongst other things the implications of this judgement were that both governmental and non-governmental lands in scheduled areas cannot be leased out to non-tribals or private industries for mining purposes. Hence the vested interests are keen to amend the very constitutional basis which provided this victory!

As far as the recent amendment in the EIA notification goes, an examination of some of the published material and events after public hearings became mandatory in 1997, gives us an idea of how opinion within the mining industry has been shaping up on 'public participation' and how it has led to the recent amendment.

The Annual Review 1998 of the Journal of Mines, Metals & Fuels has a piece on the "Status of environment in Mining Industry in India" and has the following to say about public hearings: "This is a good idea, wherein the views of the local people and administrators will be taken into account by the Impact Assessment Agency (MOEF), whereas in the earlier system there was no such arrangement. However, it will cause delay and additional cost to the lessee." It is important to note that the "delay" and "additional cost" have been the chief arguments against the public hearings.

Two specific events are significant to look at in this respect:

1) The National Workshop on Environment and Forestry in Mining Areas held on 21-22 August, 1998, in Jaipur. This workshop was jointly organised by the MOEF and the Federation of Indian Mineral Industries,

with the active support of 27 mining companies/associations from around the country. Besides several members of various ministries and departments of the central government and many state governments, participants included over 100 representatives from mining companies/associations/consultants, and only one member of an environmental NGO (WWF-India, Rajasthan State Office)!

The proceedings of this workshop indicate the mood of the industry with respect to public hearings. There is a repeated focus on the non-feasibility of public hearings and the fear of involving people in decision making is reflected in the presentations of one of the participants in which he says: "What happens if the project is rejected at public hearing stage?"

The Conclusions and Recommendations of the workshop were called "The Jaipur Declaration" and some of the recommendations on the EIA notification were as follows:

"2.6 (c) Project clearance

The Ministry of Environment and Forests may consider raising the project threshold limit for obtaining clearance under EIA notification of 1994 to 50 hectares."

"2.6 (e) Mandatory public hearings

The National Workshop suggests that with regard to new leases, the requirement of public hearing should be insisted upon only in the cases covering larger areas. For smaller mining leases up to 50 ha. the requirement of public hearing is not feasible from logistical and economic point of view and therefore unnecessary."

While there is certainly a need for a debate on the procedural aspects of how public hearings are conducted and the importance to work on issues such as "who bears the cost" in the case of small investors, it is illogical to thereby conclude that public hearings are "therefore unnecessary"!

2) In April 1998 the Ministry of Mines (MoM) set up a committee whose terms of reference are: "It will be the apex Advisory Committee for monitoring and reviewing the environmental aspects of mining activities." The committee consists of the Secretary, MoM, as chairman and Secretary, MOEF, as co-chairman. Its members include seven representatives of mining related bodies (official and private), the chairperson of the Central Pollution Control Board, Principal Secretaries of several states and members of three environmental NGOs (Development

⁷ The Civil Appeal Nos. 4601 and 4602/97 in the Supreme Court were filed by the group Samatha working on tribal issues in Andhra Pradesh. The litigation was pertaining to the grant of mining leases to private parties in the scheduled areas of Vizag district in Andhra Pradesh. Besides the social impacts and the violation of tribal rights which this mining would have caused, it also had tremendous environmental implications, as this area falls in an ecologically fragile portion of the Eastern Ghats.

Alternatives, WWF-India and INTACH).

The agenda notes for the first meeting circulated in 1999 had the following “suggestions for consideration” under the “measures for simplifying procedures and reducing delays”:

- “(i) No environmental clearance be mandatorily insisted upon in case of mining projects up to 50 hectares.
- (ii) Public hearings be made mandatorily only for mining leases of major minerals covering an area of 500 hectares or more.”

This is shocking and totally unacceptable. The IBM document I have referred to earlier states that out of the over 9000 mining leases for major minerals only 20% have an area over 100 ha. A much smaller percentage will have areas over 500 ha. Thus the MoM wants to virtually eliminate public hearings! Fortunately this committee, though setup in 1998, has not had any meetings as yet and one must wait and watch whether it will become functional.⁸

The future?

It is very clear what industry and certain sections of the establishment want. We will need to be as organised and networked as they are if we want to

protect our ‘spaces’ from being undermined. There is an urgent need for communities and groups around the country to rally together and respond to this latest amendment of the EIA notification. It was not as if all was well before this amendment happened...there are problems with the EIA procedures, the effectiveness of the public hearing process, etc. There is a considerable amount of work to be done to make the environmental provisions more meaningful and effective. But what amendments such as the recent one do is to make that step forward that much more difficult by taking us two steps back. One will have to of course consider the genuine problems some of the procedural aspects of environmental legislation have created for project proponents and work towards streamlining procedures so that nobody bears an unfair cost. But we need to make it very clear to both the industry and the government that diluting environmental provisions and the space for citizens’ participation is unacceptable. We have a fight on our hands and the future of many of our ecologically and culturally sensitive areas depends on how we take this up in a strong and sustained manner.



⁸ This committee did finally meet in late 2001 after this piece was written.

INSTITUTIONS FOR REDRESSAL OF ENVIRONMENTAL CLEARANCE

National Environment Appellate Authority, High Courts, Supreme Court, Central Empowered Committee

Over the last few years, redressal mechanisms have been created in existing and new institutions to challenge environment clearances granted to development projects¹. The single institution created specifically for this purpose, yet least used, is the National Environment Appellate Authority (NEAA). It has been in existence since 1997 and has had only 15 grievances brought to it since then. Out of these, many have been rejected on grounds of lack of jurisdiction, presentation of the case in a wrong format and so on. Environmental clearances of projects have also been challenged in High Courts and the Supreme Court, which have often been long drawn out and expensive processes. There have been some critical and landmark judgments of the High Courts. Some cases have also been brought to the notice of the Central Empowered Committee (CEC) of the Supreme Court (See Section on CEC below for more details on the committee). Although EIA violations might not be the primary focus of these petitions, they may be one amongst several issues.

4.1. National Environment Appellate Authority (NEAA)

The NEAA was constituted under the National Environment Appellate Authority Act, 1997 (Act no. 22 of 1997) on 26th March 1997. The purpose specified in the Act is to *"provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto."*

The NEAA is based in Delhi and is to be constituted of three members, including a Chairperson, Vice Chairperson and member. In the absence of a Chairman, the vice-chairman, Shri Vishwanath Anand¹, has been acting as chairman. The Act prescribes the functions, powers and jurisdiction of the Authority.

The Act lays down time limits under which an environmental clearance of a project can be challenged by applying to the authority. It states, *"Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed: Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."*

A total of 15 appeals to the NEAA have been filed. The filing of cases has substantially reduced in the last few years, with only two case filed in 2003 and none in 2004. The following are details of some of these:

"These are times when the Courts are invited or compelled to play a constructive and positive role even in matters relating to public expenditure... The lack of concern or lukewarm attitude of the authorities towards environment and its protection and in the matter of adhering to the norms prescribed in that behalf have also to be borne in mind while dealing with such approaches to this Court by citizens who may or may not be personally affected. In that context, subject to specific consideration of those matters at the appropriate stage, we must proceed on the basis that the petitioners prima-facie have locus-standi to invite this court to look into these aspects... We are, therefore, not satisfied that the Original Petition ought to be thrown out at the threshold as urged on behalf of the respondents."

From the Kerala High Court Judgment on the petition filed by Chalakudy Puzha Samrakshna Samithy against the environmental clearance of the Athirapally Hydro Electric Project

¹ Since this report pertains to aspects related to the EIA notification only, this section elaborates on only those institutions, which offer a space to challenge the environmental clearance granted to developmental projects under the EIA notification from the Central government.

² Also the Chairperson of the National Biodiversity Authority constituted in mid-2004 under the Biological Diversity Act, 2002.

Grievances Presented before the National Environment Appellate Authority

S.No.	Date/Year	Applicant/Respondent	Issue	Final Status
1.	1998	Bhushan Bros (P) Ltd v/s Union of India & Ors	Company challenged the non grant of environmental clearance for setting up stable bleaching powder industry.	The application was rejected as it was not in the mandate of the NEAA.
2.	1998	Akhil Simlote, Advocate (Jaipur) v/s Rajasthan Pollution Control Board		Case was not admitted as incomplete in appeal. Was sent to Central Pollution Control Board.
3.	1998	Charman Industries (Delhi)	Appeal against a Central Pollution Control Board order.	Not admitted as not in the jurisdiction of the authority.
4.	1998	Nellalam Beypore Janakeeya Samithy (Kerala) v/s Union of India & Ors	Appeal against 128 MW Diesel Generator Power Plant by Kerala State Electricity Board.	Notices were issued to respondents, case heard. Final order issued in July 1998 and case was dismissed.
5.	1998	Chandrakala Resorts Hotels Ltd (Chennai)	Appeal against non grant of environmental clearance by MoEF.	Appeal incomplete, rejected for default.
6.	1999	A.P. Pollution Control Board, v/s M. V. Nayudu	Case referred to NEAA by the Supreme Court (See Details after the listing).	Opinion sent to Supreme Court in June after site visit earlier.
7.	1999	Dakshin Kannada Parisarasakta Okoota (Karnataka)	Against the grant of environmental clearance to a Barge Mounted Power Plant (BMPP), Tannirbhavi, Karnataka.	Notices issued, case heard. The final order issued in favour of the respondents. It pointed out that the appeal was filed after the stipulated time period, and questioned whether the applicant was eligible to file the appeal. It also stated that this is the first BMPP being considered from an environmental angle and that it is permissible. Arrangements have been made to avoid adverse impacts, risk analysis has been done, state clearances sought, etc.
8.	2000	Beach Protection Council of Orissa	Appeal against environmental clearance by Ministry of Surface Transport (MoST) for expansion of Dhamra Port project.	MoEF was directed to give a detailed response on why the clearance was granted. Site visit in April-May 2000. Detailed judgment on this matter issued in May 2000, stating that the MoST had the powers to grant clearance. The NEAA also said that it found no infirmity with the environmental clearance procedure adopted. The monitoring committee for overseeing the compliance of

S.No.	Date/Year	Applicant/Respondent	Issue	Final Status
				the project shall include the Beach Protection Council of Orissa.
9.	2000	Aparant Iron & Steel Pvt. Limited, Panaji, (Goa)	Challenged the suspension of environmental clearance by MoEF.	Petition admitted. Notices issued. Final judgment in May 2000.
10.	2001	Shri Pradeep Chaudhary, Janadhikar Sangharsh Morcha/ Iqbal Singh, SAVE, Himachal Pradesh	Appeal related to the clearance of Parbati Hydro Electric Project.	Notices issued, heard, final order issued in December 2001 and case disposed.
11.	2002	Navbharat Seeds Pvt Ltd with NEAA and MoEF as respondents	Appeal under Rule 19 of the Rules for Manufacture, Use, Import of Hazardous Wastes.	This appeal came to the NEAA while it was still pending in the Gujarat High Court. It was forwarded to Secretary, MoEF as was not within the jurisdiction of the NEAA.
12.	19.8.02	Swayamdas, Indian Rare Earth Limited, (Tamil Nadu)	Against order of the Department of Environment, Govt. of Tamil Nadu regarding the construction of a compound wall. Had reference to the State Coastal Zone Authority.	Appeal returned as it was beyond the jurisdiction of the NEAA.
13.	1.11.02	Suresh Bali, Belgaum	Objected to the commissioning/permitting of Shri Renuka Sugar Distillery at Manoli village.	Appeal came in the form of a letter, and not in correct format. Papers returned in November 2002 asking applicant to send application in prescribed format.
14.	2.7.03	Kalyaneshwari, Kolkatta v/s Jt. Secy MoEF	Against manufacturing of asbestos.	Rejected for default in August 2003.
15.	14.10.03	North Eastern for the Preservation of Nature and Wildlife (NESPON), Siliguri v/s Union of India and ors	Appeal against the grant of environmental clearance to Teesta Low Dam Hydro Electric Project Stage III, in North Bengal (See Box below for details).	Notices issued, but case not admitted on the grounds that the time limit had been crossed.

With the limited use of the NEAA, there has been discussion on whether it should be dissolved. The Law Commission on India in its 186th Report on Proposal to Constitute Environmental Courts (<http://www.lawcommissionofindia.nic.in/reports.htm>) states, "the National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had

very little work. It appears that since the year 2000, no Judicial Member has been appointed. So far as the National Environmental Tribunal Act, 1995 is concerned, the legislation has yet to be notified despite the expiry of eight years. Since it was enacted by Parliament, the Tribunal under the Act is yet to be constituted. Thus, these two Tribunals are non-functional and remain only on paper."

It further questions whether "the National Environment Tribunal Act, 1995 and the National

A.P. Pollution Control Board vs. M.V. Nayudu

M/s Surana Oils and Derivatives (India) Limited, a public limited company applied to the Andhra Pradesh Pollution Control Board (APPCB) for a No Objection Certificate for the setting up of an industry for the production of Castor Oil derivatives. The APPCB rejected the application on the grounds of it being a polluting industry and stated that it thus should not be located in the Himayat Sagar Lake catchment. "Aggrieved by the rejection, the company appealed to the appellate authority under S. 28, Water Act. The appeal was allowed and the Pollution Control Board was directed to give its consent subject to any conditions it chose to impose. The company then filed a Writ Petition before the High Court for a direction to the Pollution Control Board to implement the Order of the appellate authority under the Water Act. The High Court allowed the Writ Petition." Following this the APPCB appealed to the Supreme Court.

While this case was being heard in the Supreme Court, the court itself referred the matter to the NEAA for its opinion (Refer to the List of Grievances mentioned above).

The Supreme Court judgement refers to (among other points), "the scope for the Supreme Court or the High Courts to refer environmental matters to the National Environmental Appellate Authority, 1997 for investigation and opinion."

The Supreme Court also surveyed the judicial and technical inputs in environmental appellate authorities/tribunals and stated that "Things are not quite satisfactory and there is an urgent need to make appropriate amendments so as to ensure that at all times, the appellate authorities or tribunals consist of Judicial and also Technical personnel well versed in environmental laws. Such defects in the constitution of these bodies can certainly undermine the very purpose of those legislations. The Court opined that the Government of India should bring about appropriate amendments in the environmental statutes, Rules and Notification to ensure that in all environmental courts, tribunals and appellate authorities there is always a Judge of the rank of a High Court Judge or a Supreme Court Judge -sitting or retired- and a scientist or a group of scientists of high ranking and experience so as to help a proper and fair adjudication of disputes relating to environment and pollution..."

It further concluded that to ensure that there is no danger to environment or ecology, and there is sustainable development the court can refer scientific and technical aspects for investigation and opinion to expert bodies such as the NEAA.

[Source: Website of Centre for Environment Education Research and Advocacy, National Law School of India University, Bangalore
http://www.nls.ac.in/CEERA/ceerafeb04/html/documents/allcases_230800.htm]

Environment Appellate Authority Act, 1997 [should] be repealed and powers and jurisdiction of the tribunals thereunder be vested in the proposed State Environmental Courts"

4.2. High Courts

While several petitions in different parts of the country have been filed in the High Court on EIA grounds, there are two which presented very critical judgments: firstly by the Gujarat High Court on the procedure of Public Hearings, and secondly by the Kerala High Court with reference to the Athirapally Hydro Electric project. Both these are critical and rare examples of the proactive role that High Courts can play in environmental clearance redressal.

• Kerala High Court Order on the Athirapally Hydro Electric Project hearing on October 17, 2001

A petition with reference to the construction of Athirapally Hydro Electric Project by the Kerala State Electricity Board (KSEB) was filed in the name of Ravi. S.P, Secretary of the Chalakudy Puzha Samrakshna Samithy, and S. Unnikrishnan (O.P.No.1774 of 2001).

A very significant and detailed judgment on this case was passed on 17th October 2001.

Three petitions (O.P.No.1774 of 2001, O.P.3581 of 2001, and O.P.7713 of 2001) were filed, questioning the environmental clearance and also expressing concern about the various impacts of the Athirapally project. These include impacts on drinking water, loss of flora and fauna, and displacement of tribals. Since all the three petitions related to the same hydro electric project, conceived and to be executed by the Kerala State Electricity Board, they were heard together. The respondents, comprising of the KSEB and the consortium which was to be awarded the contract, stated that the petitioners had no locus-standi to question the contract, environmental clearance, technical feasibility or the financial viability of the project. They went on to say that the petitions were not in the public interest.

A very interesting observation on this was made in the 17th October 2001 order, which stated the need for courts to play a constructive and positive role even in matters relating to public expenditure. It also referred to the lack of concern or lukewarm attitude of the

NESPON v/s Union of India

This application was filed on 14th October 2003 challenging the environmental clearance granted to the Teesta Low Dam Hydro Electric Project Stage III on 16th July 2003. The project proponent in this case was the National HydroElectric Power Corporation Limited (NHPC). The petition highlighted the point that the impact of the dam is going to be very severe unless mitigating and precautionary measures are taken. It presented facts on several discrepancies in both the public hearing process as well as the content of the Environment Impact Assessment (EIA) Report. In fact the public hearing of the project had to be rescheduled due to the non-availability of the documents at the specified places as per the EIA notification. The petition pointed out how the EIA report actually ignored the report of the Geological Survey of India, which highlights that the dam is being constructed in an area that is landslide prone. The area is highly seismic, and the EIA report ignored the downstream impacts of the project. The application also highlighted the fact that local communities from the area and environmental groups have objected to the project.

However, instead of delving into these substantive matters, the NEAA refused to admit the petition on the grounds that there was a 'one day' delay in filing the application. In fact, the application was filed on the 90th day from the day of the environmental clearance, but the Vice Chairman of the NEAA took the view that the application was not admissible.

Thus the project is under construction today, despite submitting a faulty EIA report and violating norms of the EIA notification.

authorities towards the environment and its protection.

The judgment delves into the details of the financial and technical aspects of the project. One of the comments in the order states, "we have no doubt that the Government will insist on the Board coming forward with more precise details regarding the mode of raising finances for the intended project."

While looking at whether the environmental clearance obtained for the project is valid and is even otherwise proper, it presents the details of the procedure by which environmental clearance was granted wherein the public hearing was not conducted: "even though the original application for clearance was rejected and the Board had carried on correspondence seeking a review of the earlier decision, before such a decision was taken by the authority, the amendment notification dated 10-4-1997 had come into force. It maybe noted that the clearance was granted only by order dated 20-1-1998. The order in that behalf did not take note of the impact of the amendment to the notification in 1997." It further states, "lot of materials have also been produced to support the argument that there has been no proper investigation or assessment at the stage of planning or at the stage of taking a final decision to go ahead with the Hydro Electric Project at Athirampilly"

The two-judge bench then finally directed the KSEB and Central Government:

– "...to specifically consider the question whether the Board was justified in dropping the financial package while accepting the bid of the Consortium and whether it would be advisable in the circumstances and practicable to take up the project as now proposed by the Board and take a decision thereon and communicate

it to the Board....

– ...to comply with the requirements of Environment Impact Assessment Notification, 1994 as amended by the notification of 1997...

– ...to send up to the Authority concerned the report of public hearing also as mandated by the amended notification...

– ... to reconsider the question of grant of environmental clearance in terms of the Environment Impact Assessment Notification, 1994 as amended by notification dated 10-4-1997 on the basis of all the materials including the report of public hearing.

Till fresh decisions are taken on these two aspects, the finalisation of the contract and the starting of the work will stand suspended or stayed and the finalisation, construction and commissioning will abide by the result of the reconsideration ordered."

The order concluded, "since we are concerned with public interest in these proceedings, we think it is just and proper to issue a direction to the Board to take all the necessary steps to repair and restore to full capacity, all the existing Hydro Electric Projects to ensure that the generation of power as envisaged is obtained and also to take steps to ensure that transmission losses are minimised and that theft of energy is prevented and to the extent possible eliminated altogether."

● Gujarat High Court judgment on Public Hearings

The Centre for Social Justice (Jan Vikas) filed a case in the Gujarat High Court challenging the manner in which environmental clearances were being granted to projects (Special Leave Application No.8529 OF 1999). In particular, the petition prayed before the High Court to issue directions to the authorities on the

The Athirapally Saga Continues...unfortunately!

Following the judgment, a public hearing was conducted and a fresh EIA ordered by the Public Hearing Panel. The fresh EIA was as inadequate as the first one. However, the environmental clearance of the project has been granted by the MoEF for the second time.

A letter by Chalakudy Puzha Samrakshna Samithy, dated 25th September 2003 to the Secretary, MoEF says it all:

"This is to bring to your notice, sir, that we have received information through the Malayalam 'daily 'Varthamanam' as dated above that the Proposed 163 MW Athirappilly Hydro Electric Project has again obtained fresh clearance from the Ministry of Environment and Forests based on the study report of WAPCOS. This is very unfortunate because as your office is aware, the public rejected the proposed project at the Public Hearing conducted by the Kerala State Pollution Control Board on February 6th 2002 as the project is not environmentally feasible and recommended to drop the proposal. Even if WAPCOS has conducted a study neither the Panchayath in the river basin nor the Public nor we who had approached the court have been consulted.... In June 2003 we had received reply to a legal notice forwarded to the Honourable Ministry through our counsel indicating that the Ministry has asked the KSEB to submit information on six aspects of the project...to which no response had been received by the Ministry up to 18th June 2003.... We are surprised and pained as to how the Honourable Ministry could grant clearance to a Project that was rejected by the people themselves in whose name it was proposed."

manner in which public hearings should be conducted and made effective and meaningful. The petition made a series of suggestions in this regard. It also challenged the environmental clearance for the Dhuvaran Thermal Power project at Anand, given to the Gujarat Electricity Board by the state government.

The March 2000 order in this case reinstated several points prescribed in the public hearing procedure, some of which include:

– *Venue of the public hearing* needs to be as close as possible to the project or affected site. The court directed the Committee responsible for holding a hearing, to keep in mind the central observations dated 17.7.1998 for fixing the venue and number of public hearings for certain projects, which require environmental clearance. The observations state, "in respect of certain projects such as laying of pipelines, highways and projects located in inaccessible regions, clarification has been sought whether the public hearing should be conducted in one place or number of places etc. The matter has been examined. It has been decided that venue and number of public hearings to be conducted for a particular proposal may be left to the discretion of the State Pollution Control Board. State Pollution Control Boards/Pollution Control Committees may take a decision on the venue and number of public hearings for projects which require environmental clearance as per provisions of EIA Notification keeping in view the nature of the project,

its environmental ramification and feasibility of grouping of people at nearest convenient locations"

– *Issue of notices by Gujarat State Pollution Control Board:* One of the two newspapers where the public hearing notice is to be issued needs to be in the vernacular language. It further specified that 'widely circulated' would not only imply that the newspaper is published from the project region; it could be from outside the region but widely circulated in the region.³ The GPCB will need to send a copy of the public notice to the Gram Panchayat/Nagar Panchayat/Municipality of each of the villages/towns likely to be affected by the project.

– *Date of the public hearing and availability of documents:* At least 30 days from the date of publication of the notice in the newspapers. The order directed that the executive summary of the project and the EIA document (on demand)⁴ in the local language should be made available.

– *Minimum members in the panel:* At least half of the members of the "Committee to hold a valid hearing", need to be present at the public hearing. Further, a GPCB officer, officer from the Department of Environment and Forests of the state government and one of the three senior citizens nominated by the collector have to be present at the hearing.

– *Minutes:* The minutes of the public hearing shall be furnished by the GPCB on demand and on payment of reasonable charges as expeditiously as possible and

³ For the purposes of finding out the figures of circulation, the GPCB may, of course, treat the taluka in which the project is coming up or the taluka in which the affected villages fall, as a region around the project, but it is the circulation which matters and not the place of publication as already stated above.

⁴ It is important to note that it was only in June 2002 that the EIA notification was amended to allow for the availability of the EIA report prior to the public hearing.

in any case within one fortnight from the date on which they have been sent to the Environment Impact Agency or MoEF.

– *Multiple hearings for a project:* There would be no hard and fast rule on the number of public hearings that can be held for a project.

● **Judgement in the case of Forum for a Better Hyderabad v/s State of Andhra Pradesh, related to construction of an International Airport in Andhra Pradesh.**

This Writ.Petition.No. 1297 of 2003 was filed in the Andhra Pradesh High Court against the proposed construction of an international airport within the catchment area of Himayat Sagar Lake and Osman Sagar Lake in Rangareddy District of Andhra Pradesh. These two lakes are sources of drinking water for Hyderabad and Secunderabad. The petition highlighted that there is a G.O of the Andhra Pradesh State Government dated 8.3.1996 stating that there can be no polluting activity within 10 kms. of these lakes.

The state government in its contention stated, “since the petitioner failed to avail the affective alternative remedy of appeal available under the National Environment Appellate Authority Act, 1997, the Writ Petition deserves to be dismissed in *limini*.” (*limini*-without merit). It attempted to suggest that the High Courts are not the appropriate forum to challenge environmental clearance, as the NEAA has been constituted for this purpose, and that therefore the High Court should not admit this matter.

However, the High Court admitted the case and while doing so dismissed the above argument on the ground that the issues raised relate to the Right to Life and specifically various dimensions of Article 21 of the Indian Constitution, and that therefore the High Court is within its power to admit such a case and hear it.

Ironically, the order of 24.11.2003 dismissing the petition stated, “...It is well settled that this court in exercise of its jurisdiction under Article 226 cannot sit in appeal over expert bodies as Appellate Authority and give opinion unless the authorities fail to discharge statutory duty cast upon them under the relevant statutes.”

This order seems to indicate that the High Court will only consider cases where existing clauses of the EIA notification and conditions for environmental clearance are violated. It will not hear cases where the content in the EIA report and decisions for environmental clearance are to be challenged.

4.3. Supreme Court

The Supreme Court has been approached at various instances for redressal on EIA related issues. In some

Essar Oil Limited v/s Halar Utkarsh Samiti*

This Supreme Court case dealt with mitigation of damages in National Parks and Sanctuaries, with reference to the construction of oil pipeline in the Marine National Park in Gujarat. Although the Supreme Court allowed for the pipeline to be constructed the order makes a significant observation. In respect of National Parks the project proponent “has to publish its proposal to the public so that the public, particularly those likely to be affected, are made aware of the proposed action through a sanctuary or a National Park. This will ensure transparency in the process and at least safeguard against a decision of the state government based solely upon narrow political objectives.” It was also the first time that the Supreme Court took into consideration the Right to Life and the Right to Know particularly “when a secret government decision may affect the health, life and livelihood” of people.

* For full text of order refer to law journal 2004 (1) SCALE 584

cases, matters have been filed directly before the Apex court and at other times it has been to further an appeal heard in a lower court or authority. For example:

● **Mangalore (Bajpe) Airport Expansion**

The Airports Authority of India proposed to expand the Mangalore Airport during 1987. Despite land acquisition having been completed, the project did not progress for various reasons. A total area of 190 acres adjoining the existing Mangalore Airport was identified to build a second runway and Terminal Tower to enable Airbus 320 class of aircraft to land, and also allow for international flight movements. The *Vimana Nildhana Vistharana Virodhi Samithi* (Citizens Alliance Against Airport Expansion), a committee of project affected communities largely constituting Dalit families, have been resisting the expansion of the airport. This campaign has been supported by Environment Support Group, Bangalore. It has been highlighted that the location chosen was technically inappropriate as per international standards laid down in ICAO (International Civil Aviation Organisation), putting the life of the passengers at risk. Project authorities have paid no consideration to these concerns and are continuing with the project. At the same time the procedural and environmental norms are being violated. An EIA has not been prepared for the expansion and neither has a public hearing been conducted. There are other contentious issues as well.

“Pressing these points a case was made before the High Court of Karnataka first during 1997 in Writ Petition No. 37681. The Hon’ble Court dismissed the petition on grounds that it was premature. Thereafter,

another Public Interest Petition was filed in Writ Petition 20905 during 2002. The Hon'ble Court dismissed this petition stating that the petitioners have not been able to show how the construction of a second runway and terminal tower in Mangalore Airport will be against the public interest. The Court however ordered that the Authorities concerned have to complete all formalities as per law before commencement of the project." Accordingly, this Writ Petition was also dismissed.

Environment Support Group and Ors filed a Special Leave Petition (SLP) before the Supreme Court in 2003 challenging this High Court order. However, the Supreme Court dismissed this stating, "we see no reason to interfere with the impugned order" and with an explicit clarification that the Government shall comply with all applicable laws and also with environmental norms.

However, the project authorities have started the alignment work of the second runway without getting an environmental clearance as per procedures established by law⁵.

4.4. Central Empowered Committee (CEC) of the Supreme Court

The CEC was constituted on 17 September 2002 through a Gazette Notification issued by the Ministry of Environment and Forests. It has been constituted as an Authority under the provision of Sub section (3) of section 3 of the Environment (Protection) Act, 1986 in pursuance of the order of the Supreme Court dated 9-5-2002 and 9-9-2002 in W.P. 202/95 and 171/96 for a period of five years. The broad task of this five member body is to monitor and ensure the compliance of the orders of the Supreme Court concerning the subject matter of forests and wildlife and other issues arising out of the said order.

The Notification did not limit the CEC only to the Forest (Conservation) Act, 1980 but also to the

implementation of the Indian Forest Act, 1927, Wild Life (Protection) Act, 1972, the Environment (Protection) Act, 1986 including Notifications and Rules, and the National Forest Policy, 1988 including the Rules, Regulations and Guidelines framed under these laws and any other conservation issue. Many of the applications filed have reference to the violations of environmental clearance procedures.

Following are some examples of applications filed:

- **Proposed Human River Project, Chandrapur, Maharashtra.**

The Bombay Natural History Society (BNHS) filed an application to highlight the threat of the proposed Human River Project to an important wildlife habitat. The application highlights the fact that the proposed project is a major irrigation project to be built across the Human River (a tributary of Andhari River). The project has been granted environmental clearance which is challenged in the application. The main concern of the application is that the dam threatens to wipe out the only existing wildlife corridor between the Chandrapur forest division and the Brahmapuri Forest Division.

Point 15 of the application highlights that the mandatory public hearing (under the Environment Impact Assessment Notification, 1994) was reportedly held in November 1999 and the Environment Impact Assessment (EIA) for the same was prepared only in December 2001. This is a violation of the EIA Notification, 1994 according to which an EIA for the project needs to be completed before a public hearing is held. The application goes on to present several discrepancies in the EIA as well.

The application seeks the intervention of the CEC in order to direct the respondents to take steps to immediately stop the proposed project along with its ancillary and associated activities.

In a hearing on this matter in July 2004, the CEC raised concerns on how the River Valley Expert Committee of the MoEF agreed to grant environmental clearance to the project which is in close vicinity of a significant tiger habitat (Tadoba National Park). This is especially critical when all the previous expert committees had rejected the proposed project. The CEC asked the MoEF to respond to several issues, including the exact status of the environmental clearance⁶.

- **Mining by Sterlite Industries in Lanjigarh, Orissa.**

M/s Sterlite Industries Limited has set up an alumina refinery through the exploitation of bauxite

Members of the Central Empowered Committee	
● P.V. Jayakrishnan (Chairperson), Former Secretary, Ministry of Environment and Forests	
● N.K. Joshi (Member), Director General of Forests, MoEF	
● Valmik Thapar (Member), Ranthambhore Foundation	
● Mahendra Vyas (Member), Advocate, Supreme Court of India	
● MoEF	M.K. Jiwrajka (Member Secretary), Inspector General of Forests, MoEF

⁵ Source <http://www.esgindia.org/campaigns/bajpe/press/bajpePR8.htm>; <http://www.esgindia.org/campaigns/bajpe/current/current.htm>; and <http://www.esgindia.org/campaigns/bajpe/docs/BAJPE%20SC%20ORDER%20070203.htm>

deposits at Lanjigarh in the Kalahandi and Rayagada district of Orissa. The project has two components, the refinery component and the mining component. The environmental clearance for the refinery component only has been procured by the company.

Three applications have been filed against Sterlite Industries Limited before the Central Empowered Committee (CEC) of the Supreme Court. Application Numbers 564, 571 and 579 deal with a range of issues, including illegal diversion of forest land in a wildlife sanctuary; it appeals against illegal bauxite mining in forest areas and the clearance for setting up an alumina refinery. The applications have been filed by Biswajit Mohanty, Secretary, Wildlife Society of Orissa; Prafulla Samanta; and R. Shreedhar, Academy for Mountain Environments.

The applications attempt to highlight the blatant violation of the provisions of the Forest (Conservation) Act, 1980 and the EIA Notification, 1994. Firstly, the environmental clearance letter for the refinery states that there is no forest land involved, but the EIA and many other supporting documents present a contrary picture. Secondly, if the mining and refinery are part of the same project, then the company should not have sought clearances separately?

The EIA report of the project acknowledges that almost all of the area is classified as 'Reserve Forest' and also has a rich faunal and floral diversity within 10 kms from the project site. On Page 22, the Rapid EIA carried out by the Tata AIG group clearly states that the proposed project will result in change in land use pattern in the area. The EIA also recognises the integral

link between the mining and refinery components of the project.

One of the points of contention in the application is that despite the pending environment clearance for the entire project, the project proponents have started clearing significant portions of the Reserve Forest and have also started work in non-forest areas. This involves construction of dwelling units, preliminary construction work and excavation, among other activities. Forest clearance has also not been granted.

In December 2004, the CEC appointed a two-member team to conduct a site visit and submit a report. The team comprised of Assistant Inspector General of Forests, S.K. Chaddha and former Additional Director General of Forests (Wildlife), S.C. Sharma. The report of this committee states that there are several violations pertaining to mining and processing of bauxite. It also pointed out the detrimental impacts of the mining activity on the flora/fauna and the water resources of the region.

During the hearing of the CEC on February 28, 2005 on this matter, the MoEF was directed to respond to the questions which included: would the environmental clearance accorded by the MoEF for the refinery still be valid if it had been done without forest clearance? In this light, would the MoEF take any steps to stop the activity or would Sterlite be allowed to continue? Also, if the mining and the refinery activities are an integral part of the same project, then why was the refinery allowed? A letter (F.No.2-1/CEC/SC/2005, dated: March 2, 2005) has been issued to the MoEF by the CEC⁸.



⁷ Source: Forest Case Update, Issue 5, October 2004, <http://www.geocities.com/forestcase/forestcaseupdate.html>

⁸ Source: Forest Case Update, Issue 7, December 2004; and Forest Case Update Issue 9, February 2005. <http://www.geocities.com/forestcase/forestcaseupdate.html>

PROPOSED REFORMS IN THE ENVIRONMENTAL CLEARANCE PROCESS:

A Critique

On November 29, 2004, at a meeting with NGOs, the Ministry of Environment and Forests (MoEF) distributed a draft format for a new environmental clearance (EC) process. This note, titled 'Reforms in Grant of Environmental Clearances' (annexed at the end of this chapter), states that "in order to further improve the EC process and to make it more effective and time bound, the MoEF had undertaken a comprehensive review of the existing EC process as a sub-component of the World Bank Assisted Environmental Management Capacity Building (EMCB)¹. This project which had started in 2001 has been completed on 30th June 2004." It also states that "The draft report submitted by the consultant in this regard was further reviewed intensively in the MoEF in the light of recommendations of the Govindarajan Committee set up by the Central Government for reforming regulatory approval features for investment in development activities". These suggested reforms negate some critical checks that were put into place in the EIA notification through the dialogue between civil society groups and the Ministry of Environment and Forests.

The Environmental Impact Assessment (EIA) notification 1994 has been used to demand environmental accountability from project developers and the government towards the protection of the environment. The notification has been the backbone of environmental action especially when development imperatives have been pitted directly against environmental concerns. It has also been the only space in project decision-making, which looks into social issues like displacement, loss of livelihood, possibility of health problems, creation of work opportunities and training of local people by the project.

So it comes as no surprise that this notification is on the verge of being turned on its head to safeguard the interests of project developers, builders and contractors and development investors.

5.1 Issues of Process:

1. The document delineating the changes in the environmental clearance process governed by the EIA notification is based on the findings of a World Bank-funded project implemented by a Delhi based consultancy group, Environment Resources Management (ERM) India, on behalf of the MoEF. At least two of the consultations organised by ERM in Nagpur and Bangalore during the process of implementing this project saw NGOs voice serious concerns and walk out in disagreement with the process and the proposed changes. As expected, the consultative meeting that MoEF organised with NGOs on November 29, 2004 to discuss this document, also resulted in NGO representatives walking out in protest. The proof is evident in the statement made in the MoEF's reform document, which states, "the consultant held extensive consultations with representatives of the industry, central Ministries and State Governments". Local communities and civil society groups were not in the picture.

At the consultation on November 29, 2004, out of the many groups that had been invited by the MoEF, only two of them knew of the EIA notification and its importance and uses. The rest of them were unable to contribute to the consultation. Unfortunately, several groups who know of the EIA notification and have used it in several instances, were not allowed to participate in the meeting despite having requested that they be allowed. The reason given to them for not being allowed to participate was that the venue was

¹ There were several processes carried out under this World Bank Assisted programme. These include a review of the Environmental Clearance process by ERM, and preparation of a 'National Guidance Manual on EIA Practice with Support Manuals on Select Developmental Projects for Enhancing the Quality and Effectiveness of Indian EIA' by National Environmental Engineering Research Institute (NEERI). Also part of this programme is the Environmental Economics component looking at the application of economic principles and tools to environmental management in India in partnership with Madras School of Economics, Indra Gandhi Institute of Development Research, Institute of Economic Growth and Indian Statistical Institute, as well as through a network of interested institutes. The National Law School under the Environmental Law Component, has organized a number of trainings /workshops/ seminars. MoEF has set up the Environmental Information Centre (EIC) promoted by the Infrastructure Leasing and Financial Services as a professionally managed clearing-house for environmental information.

too small to accommodate them! The groups who were left out of the consultation clearly articulated their disgust with MoEF's efforts to subvert the cause of the environment, in a note drafted soon after.

2. *Only One Reference:* MoEF's document refers only to the Govindarajan Committee report on investment reforms, which recommended the reform of approval procedures to enhance investments in developmental projects. The last decade has seen an extensive collection of well researched and analysed arguments being put out by several organizations – large and small, local and national - based on their experiences of engaging with the EIA process. It would be unfair to name only a few and too much to name them all. The suggestions and recommendations from these seem to be lost on the MoEF's document. There have also been many consultations and meetings, including several funded and supported by the MoEF itself. Even these reports and outputs have not been referred to while developing a new process.

5.2 Issues of Content

1. *Flawed Categorization:*

The categorization proposed in the document works on two premises: firstly regarding impact, and secondly regarding who would have the power to clear a project. It is proposed that “proposals which are likely to have a higher impact on the environment or have impact on more than one state or neighbouring country, will fall in Category A which will be cleared by the MoEF. All other projects are in Category B which will be cleared at the state government level.” Through this it is assumed that category B projects are likely to have fewer impacts. And it is alarming that the MoEF can arbitrarily assume that the scale of impacts of a Cement Industry or Sponge Iron Manufacturing will be ‘less’ on a region. The very logic behind this categorization seems flawed as it is not based on siting of an industry at all. For instance, roads/highways of more than 30 km length passing through environmentally sensitive areas or oil and gas transportation through pipelines also in environmentally sensitive areas do not find a place in Category A. These activities are listed in yet another category of A/B projects which, if sponsored by state government or entities controlled by them, will require clearance by the MoEF. They are not in the Category A list, so one needs to presume that if there is no state government investment, then they will fall in Category B, i.e. defined as projects with less impact and to be cleared by state governments.

The categorization also does not address some of the existing issues of the EIA notification. For instance, mining activities up to 25 hectares do not need to go through a process of environmental clearance. There are enough arguments from civil society groups arguing that this should not be the case, especially if the mine adds to the cluster of already existing ones and therefore adds to the cumulative impact of mining in the area.

2. *Screening and Scoping:*

According to the new reform process there will be two stages of the environmental clearance process: screening and scoping. It is assumed that the introduction of this will bring about a radical shift in the clearance process, but this is unlikely because:

- The screening process is directed towards finding out whether the proposed project can be “excluded from any sort of environmental appraisal requirement”. This is unfortunate coming from the MOEF when, in fact, we should be moving towards efficiently and methodically assessing all projects/processes/activities at the central, state or regional/local levels.
- Screening leaves the main decision of who should clear projects in list A/B (the centre or the state), to be taken in a very arbitrary manner. Projects from this list are to be categorised as A or B at the outset of the process on the basis of potential impacts. It is impossible for anyone to arrive at this decision without having any information about the project as the EIA is not expected to be done until much later. Further, projects in category B are also to be divided into B1 and B2 based on preliminary information and B2 projects would actually obtain clearance only on the basis of the data presented in the preliminary report.
- A Screening and Scoping Expert Committee (SSEC) is expected to take this decision based on the preliminary form filled out by the project proponent. If EIAs done by supposedly knowledgeable environmental consultants is anything to go by, these forms would contain very inadequate and misleading data. Otherwise the SSEC will need to have the expertise of the kind that can detect scams and frauds.

3. *Public consultation and participation:*

- Public Hearings by Project Proponents: The most regressive step in this newly proposed process is the handing over of the entire public hearing process to the vested interest party, the project proponent. This nullifies any semblance of objective and unbiased decision-making. There are numerous examples to indicate the power that has been wielded by the project developer even in the existing situation where the State Pollution Control Board is responsible for the process.

At the public hearing in Noamundi held at the premises of Tata and Sons, tribals of Jharkhand were held back from attending the hearing using police force. In several hearings in Gujarat, Karnataka and Andhra Pradesh, NGO workers and activists have been manhandled and ill-treated.

– No Access to EIA report: Secondly, this process reverses a significant space that the notification had provided in the 13th June 2002 amendment, making the entire EIA report available to the public prior to the public hearing. This legal provision, wherever used, marked a huge improvement in the level of information that became available to communities who were likely to be impacted by a proposed project. MoEF's latest format proposes to only make available the executive summary of the project rather than the entire EIA report. Executive summaries of past projects have been useless in communicating the environmental and social impacts of proposed projects and in most cases have been a few pages of only statistical information on the engineering aspects of the project.

4. Decision-making agencies:

– Two agencies emerge as key players in the decision-making process in the newly proposed format: One is the Expert Committee (EC) at the central level and the other is a corresponding regulatory body at the state level to assess projects other than those in Category B. The former will be part of the screening and scoping exercise and will also review the EIA report of scoped projects and make its recommendations to the MoEF. These recommendations will be final if the MoEF does not respond to these within 60 days. At the state level, the regulatory authority will perform this function. But the new format does not lay out the necessary qualifications that this EC and regulatory body need to have, to be able to perform this important function. In the present format, the composition and environmental expertise of the advisory EC has already come under question (see Part 2 on Practice and Implementation of the EIA Notification). It has no social scientists, local community or NGO representatives and only a few biodiversity specialists among more than 50 experts.

– The regulatory body at the state level is not defined at all in the new format. Will this be the State Pollution Control Board, or the relevant state departments or the environment department of

the state? It is obvious that allocating to the state, the task of granting environmental clearances to projects will be very detrimental, if done without building its capacity to perform this task.

– This new format also indicates that the process followed at the central level for Category A will be followed by the states for Category B1² projects as well. If followed, this will mark a huge shift in the manner in which projects at the state level are cleared. It will be interesting to watch if the states are amenable to following a clearance process similar to the centre's which includes making project impact data available to citizens and following a mandatory public hearing process. As per the new format, the Centre will be responsible for clearance of only 19 kinds of projects and activities as against the present 32.

5.3 *Shorts Cuts to save time:*

The main purpose of these reforms seems to be to cut down the time taken by the MoEF to decide on the clearance of projects and thereby not 'hold up investments'. Such a cutting down on time may necessitate the preparation of quick EIAs, a rapid glance through them by the Expert Committees and inadequate time for discussions and debates regarding the clearance of the project. It is also likely to affect the process of public hearing, which is the only step in which citizens can be involved. In the present framework, these problems already exist. These are likely to get accentuated with this emphasis on a predefined timeframe for clearances of projects.

The MoEF identifies reasons for delays in the EC process as being due to 'cumbersome procedures', inadequate information furnished by the project proponent, poor quality of EIA/ EMP, piecemeal collation of relevant information and details by the regulatory agencies, and irregular scheduling of Expert Committee meetings. However, the reforms do not address the most significant reason for delays, which is the high level of unscientific and unauthenticated data furnished by project proponents and consultants. In several cases even today, these inadequacies are overlooked by the Expert Committees and the MoEF and are brought up by local people and NGOs in the public hearing process. This problem is directly related to the MoEF's inaction to penalise agencies and proponents who furnish false data, even though it is empowered to do so by the notification. The notification has been relegated to a mere

² Category B for clearance by State Governments is further split into B1 and B2. All proposals which require an EIA will be in category B1, and this will be judged on the basis of a scoping exercise done at the state government level. This in turn means that there are likely to be some activities which will be exempt from the EIA notification.

administrative requirement and this is evident in the case of project proponents such as the National Hydroelectric Power Corporation (NHPC) who have made a habit of furnishing inaccurate and engineered data and then complaining about their projects being delayed while the Expert committee or officials in the MoEF are kept busy trying to figure the inaccuracies in their EIA reports (refer to Part 2 and Table on Violations).

The MoEF also justifies the short cuts which are applied by project proponents and consultants with regard to impact assessment studies by stating that it

only expects some projects like river valley projects to present comprehensive EIAs. The others, which include nuclear projects, are allowed to be assessed on the basis of rapid EIAs!

This document seems to send out the message that a participatory process, detailed assessments, detailed information generation and an objective decision-making process can be compromised for the sake of quick clearances. It is surely the most dangerous message that could have gone out from an agency that is mandated to uphold the environmental security of the country and the livelihoods of its people.



Reforms in grant of Environmental Clearance

Reforms in grant of Environmental Clearances

Currently, prior Environmental Clearance (EC) based on Environmental Impact Assessment (EIA) and its appraisal by the Central Government has been made mandatory for 32 notified developmental projects in the sectors of industry, thermal power, mining, river valley, infrastructure and nuclear power under the Environmental Impact Assessment (EIA) Notification 1994 (and its subsequent amendments). This notification also provides for two-stage clearance for site-specific projects such as mining, pit-head thermal power projects, river valley projects, ports and harbours.

Existing Procedure

Under the existing procedure, a project proponent is required to submit an application in the prescribed form to the Ministry of Environment and Forests (MoEF) along with detailed questionnaire, a project feasibility report, Environmental Impact Assessment (EIA) Report, Environmental Management Plan (EMP), details of the Public Hearing (PH) and a "No Objection Certificate" from the State Pollution Control Boards (SPCBs) given after the PH. This proposal is then examined in the MoEF and placed before the relevant Sectoral Expert Committee for appraisal. Thereafter based on the recommendations of this Committee, MoEF decides whether to grant EC for the project or not. Specified time limits have been prescribed under the EIA Notification for completing the entire process: 60 days for completing the PH by the SPCBs (also one month for review by SPCBs); 90 days for completing appraisals by the MoEF and 30 days for communicating a decision to the project proponent by the MoEF. Thus, according to the existing statute a project proponent should be able to get a decision on an application for the grant of EC for a new project, within 210 days of the preparation of the EIA Report. However, the real time taken in most cases is far more than the prescribed period. Some studies have shown that environmental clearance perhaps, causes maximum delays in the implementation of the projects.

Reasons for delays

Some of the reasons identified for the delays are: cumbersome procedures, inadequate information being furnished by the project proponent initially, poor quality of EIA/EMP, piece meal collation of

relevant information and details by the regulatory agencies, and irregular scheduling of the Sectoral Expert Committee meetings.

Re-engineering of environmental clearance process

In order to further improve the EC process and to make it more effective and time-bound, the MOEF had undertaken a comprehensive review of the existing EC process as a sub-component of the World Bank assisted Environmental Management Capacity Building (EMCB). This project which had started in 2001 has been completed on 30th June, 2004.

During the course of this review, the Consultant held extensive consultations with the representatives of the Industry, Central Ministries, and State Governments and also studied the best international practices. The Draft Report submitted by the Consultant in this regard was further reviewed intensively in the MOEF in the light of the recommendations of the Govindarajan Committee set up by the Central Government for reforming regulatory approval procedures for investment in developmental activities. Accordingly a revised environmental clearance process has been worked out for expediting the EC process with improved quality of environmental appraisal. This revised process is summarized below:

Revised Environmental Clearance Process (Proposed)

The stages of the proposed new EC process will be: Screening; Scoping; Public Consultation; Appraisal and Post Project Monitoring.

- Screening

The revised EC process will entail an initial process of screening, which will primarily determine whether the proposed developmental activity is excluded from any sort of environmental appraisal requirement from the concerned regulatory authorities or not. The project proponent will carry out the initial process of screening. This will enable him /her to see whether the proposed activity requires prior EC or not. The activities which require prior EC have been categorized in two: an 'A' list and 'A/B'. For the list of developmental activities grouped as Category 'A' the project proponent will have to obtain environmental clearance from the MoEF. The revised notification will also contain a list of activities grouped as Category A/B, which will require screening by the MoEF as per the screening criteria to be mentioned in the proposed notification to determine whether they fall in Category 'A' or Category 'B'. A **Screening and Scoping Expert Committee (SSEC) at MoEF** will carry out this screening on the basis of the preliminary information provided in a prescribed form. For this purpose comprehensive guidelines will be framed. SSEC will associate a representative of the State Government

concerned while screening a proposal. Proposals which are likely to have a higher impact on the environment or have impact on more than one State or a neighbouring country will fall under Category 'A' requiring EC from the Govt. of India. The remaining projects will fall under Category – B and will require prior EC from the concerned State Government. However, all 'A/B' projects sponsored by State Governments, or entities controlled by them, will require MoEF EC.

The proposed list of projects falling under Category 'A' and Category 'B' is enclosed as Annexure –A. It may be noted that the threshold levels are proposed to be independent of the investment proposed to be made on the project. While certain activities require EC irrespective of any threshold levels, other activities will require EC from MoEF only above a certain level.

In the case of Category – B proposals there will be another screening at the State level similar to the screening procedure proposed at the MoEF level, to determine the tools such as EIA, REIA (Rapid EIA), SIA (Strategic IA) etc., for environmental decision making. All proposals which require EIA etc will fall under Category- B1 and will have to undergo EC- process very much similar to Category- A. but the EC will be granted by the State level regulatory authority. The remaining proposals will fall under Category-B2 and the EC will be granted on the basis of the preliminary information furnished by the proponent. The categorization of B 1 and B 2 project proposals will depend on the potential impacts to be assessed by the State level SSEC.

- Scoping

All proposals whether in Category 'A' or Category 'B' will be 'scoped' after the initial screening is done. The scoping exercise will result in detailed terms of reference (TOR) for the required environmental studies in the case of Category 'A' and Category 'B1' proposals. SSEC will do the scoping at the MoEF level for Category 'A' projects. The respective State level regulatory authority will do scoping for the Category 'B1' proposals. The scoping of the TOR's for the recommended environmental studies will have to be comprehensive addressing all concerns, including forestry, bio-diversity, and wildlife, coastal resources etc. and appropriate check lists would be ensuring this without any exception.

A time period of 45 days is mandated for screening and scoping, with an additional 15 days if a site visit is undertaken by the SSEC.

- Public Consultation

After the preparation of the Draft EIA report as per the TOR's spelt out in the scoping exercise, the project proponent will submit the summary of the draft EIA report (hard copy as well as soft copy) to MoEF, the concerned and nearest (from project site) Block/Panchayat/State Pollution Control Board /District Magistrate /MoEF's Regional Offices and invite comments/suggestions/objections over a period of 30 days. The proponent will also advertise the public hearing in one National daily, one regional newspaper along with the date, time and venue of Public Hearing (PH). The Summary of the EIA will also include social issues like resettlement, employment etc. MoEF will display the Summary of Draft EIA and the final EIA on its web site. Upon completion of 30 days time inviting comments etc, the project proponent will initiate action for conducting the PH. Project proponent will have to ensure that the PH will be chaired by the concerned Panchayat President, DM, Local MLA, MP, an Expert from a notified panel, high level official of the concerned SPCB or any prominent recognized citizen from the local area.

After the PH, the project proponent will incorporate necessary changes based on comments received in PH in the Draft EIA and submit it to MoEF for Category -A proposals and to the State level regulatory authority for Category - B1 proposals. The PH should be videotaped to ensure authenticity.

The entire exercise is expected to take six months including mandated time period of 60 days for Public Hearing process.

- Appraisal

Appraisal of the Final EIA Report within the scope provided to the project proponent would be undertaken by the relevant Environment Appraisal Committee (EAC) at MoEF level. The basic principle of the proposed EC process is that the appraisal of a proposal should be done by the Committee which had screened and scoped the proposal initially. Therefore, the EAC should be the same as the SSEC. However for the sake of administrative convenience and for expediting the clearances, sector specific EAC's could be constituted out of the SSEC.

After the preliminary scrutiny of the EIA Report, MoEF will convey the inadequacies noted to the project proponent and the EAC Members in a single lot within a time frame of 30 days. The EAC meeting will be held within 60 days of the submission of the Draft EIA Report, to consider the proposal. The minutes of the EAC meeting, will be finalized within 5 working days of the meeting and will be displayed on the MoEF's web site and a copy sent to the project proponent. The MoEF would take the final

decision on the EAC's recommendation within 60 days of its receipt. At the expiry of 60 days if no final decision is conveyed to the project proponent, the recommendations of the EAC will be conveyed as the final decision of MoEF.

In the case of Category – B1 proposals, the State level authorities would be required to adopt the same process of appraisal as at MoEF for Category – A proposals.

Highlights of the Revised Environmental Clearance Process (Proposed)

- The time taken in the existing environmental clearance process is 21 to 28 months with no certainty, whereas in the proposed environmental clearance process, it will be 10.5 to 12 months with certainty. A flow sheet depicting the existing and proposed EC process is enclosed as Annexure - B.
- The activities requiring environmental clearance from MoEF (Category-A proposals) will be reduced to 19 items.
- The quality of EIA /EMP will improve and the cost of its preparation will be minimized.
- There will be greater delegation of powers to the State level regulatory authorities.

Issues for Discussion

- i) Shortcomings of the existing EC process
- ii) The stage –wise Revised Environmental Clearance Process as proposed.
- iii) Introduction of an Accreditation system for Consultants to undertake EIA studies.
- iv) Introduction of an application fee for processing environmental clearance proposals.
- v) Capacity Building at the State level .

State Governments /UT Administrations are invited to furnish their respective comments on the proposed Revised Environmental Clearance Procedure and other issues for discussion noted above.

ANNEXURE-A

S.No.	Proposed Development Activities- Category A	Remarks
1.	Asbestos and Asbestos products	
2.	Chemical Fertilisers (Nitrogenous and Phosphatic other than single super phosphate)	
3.	Common <ul style="list-style-type: none"> • Effluent Treatment Plants • Hazardous Waste Treatment, Storage and Disposal Facility (TSDF) 	
4.	Distillery (Molasses Based Alcohol)	
5.	Industrial Estates/Parks, Export Processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Knowledge Parks	
6.	Integrated Paint Complex including manufacture of resins and basic raw materials required in the manufacture of paints	
7.	River Valley Projects having more than 1000 ha. of Command Area or Hydroelectric Projects (More than 20 MW)	Comprehensive EIA will be required
8.	Nuclear Power Projects	
9.	Offshore and Onshore Oil and Gas Development & Production	
10.	Pesticides & Pesticide Intermediates (excluding Formulation)	

** For expansion projects, any increment or total meeting the criteria*

ANNEXURE-A

11.	Petrochemical complexes (Both Olefinic and Aromatic) and Petrochemical intermediates such as DMT, Caprolactam, LAB etc. and production of basic plastics such as LLDPE, HDPE, PP, PVC etc.	
12.	Petroleum Refining Industry	
13.	Ports, Harbours Jetties All Ship breaking yards	Insert cargo tonnage threshold Insert lower cargo tonnage threshold
14.	Primary Metallurgical Industries, (Integrated Iron, Sponge Iron & Steel Plants, Copper Smelter, Zinc smelter, Aluminium smelter, Lead Smelting) including standalone Coke Oven Plant	
15.	Pulp and Paper Industry	
16.	Mining of major minerals	>25 ha. area or >0.3 million ton per annum of production of major mineral
17.	Airports	
18.	Isolated storage & handling of hazardous chemicals	As per MAH criteria of MSIHC rules 1989 as revised in 2000
19.	Thermal Power Plants *	500 MW

** All co-generation power plants are exempted*

ANNEXURE-A

S.No.	Developmental activities proposed under Category A/B	Remarks
1	Automobile manufacturing units (Scooters, Motorcycles, Cars, Trucks and other Heavy Duty Vehicles)	-
2	Basic Organic Chemicals Manufacturing including Leather, Textile, Rubber, Photographic and Coal Tar fine chemical manufacturing	-
3	Cement (more than 200 tpd capacity)	
4	Chlor-alkali (Membrane Cell Based - more than 100 tpd capacity)*	
5	Distillery (Cane Juice/Grain Based) more than 60 KLD	
6	Dyes & Dye intermediates (located other than in an Industrial Estate or Complex)	
7	Fertiliser (Single Super phosphate) more than 50,000 tpa	
8	Leather/skin hide processing industry (located other than in an Industrial Estate or Complex)	
9	Man Made Fibres Manufacturing	
10	Mining of major minerals	Area - 5 to 25 ha.
11	Coal washeries	>Coal throughput of coal of 1 million ton/annum
12	Mineral beneficiation	>Coal throughput of coal of 1 lakh ton/annum
13	Construction of all projects in urban areas (housing complexes, commercial complexes, hospitals, office complexes, hotels etc.)	Generating wastewater more than 50 KLD
14	Offshore and Onshore Oil and Gas Exploration	
15	Oil and Gas transportation through pipeline (crude and refinery/petrochemical products) in environmentally sensitive areas	

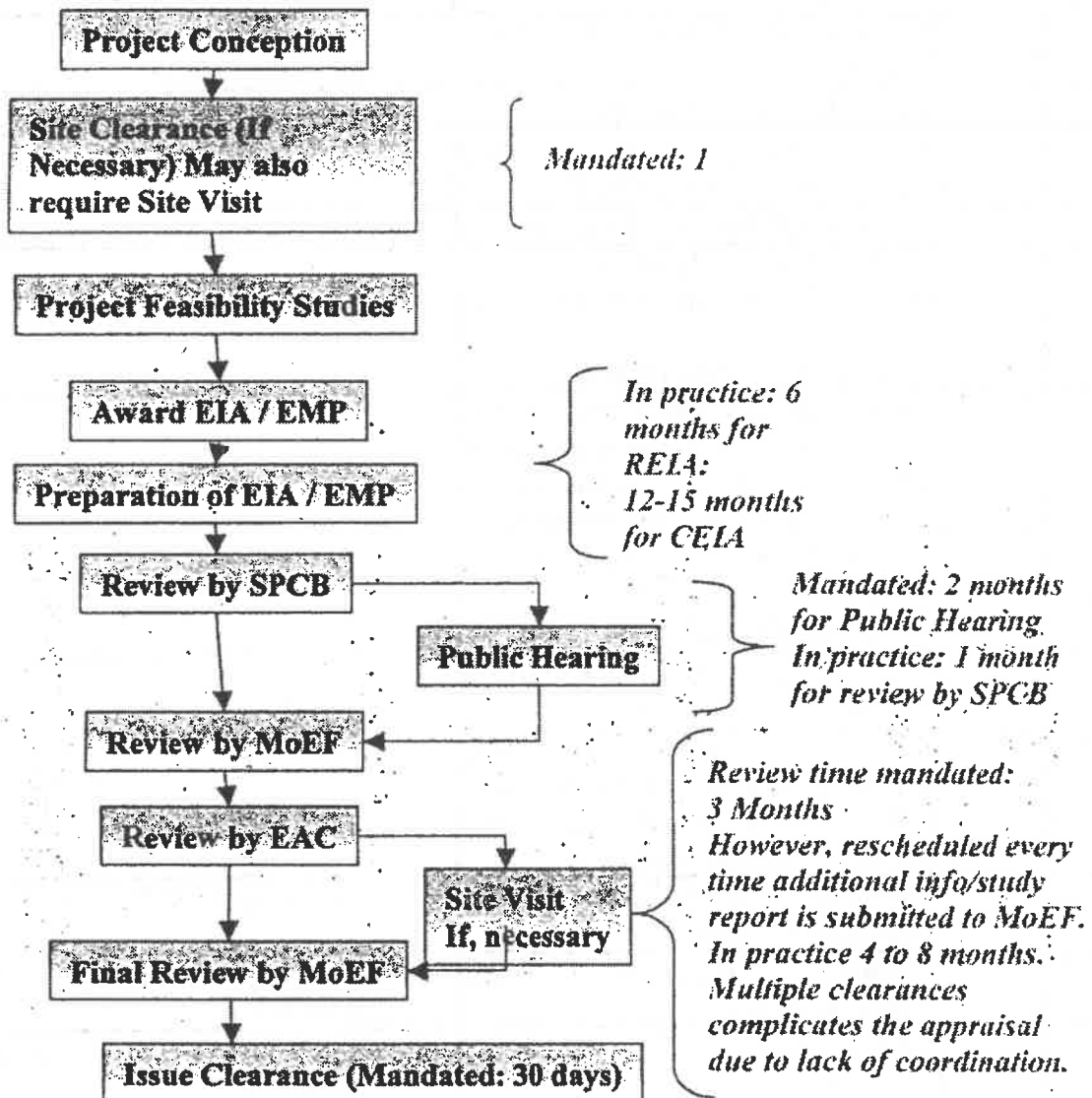
Mercury cell based and asbestos membrane cell based technology not permitted

ANNEXURE-A

16	Pharmaceutical Industry (Drug & drug intermediates, excluding formulation)	
17	Pulp and Paper Industry (Base Paper Based)	
18	Sponge Iron Manufacturing	
19	Sugar Industry (Cane Crushing Capacity more than 2500 tpd)	
20	Synthetic Rubber Manufacturing	
21	Thermal Power Generation <ul style="list-style-type: none"> • 50 to 500 MW (any fuel other than diesel) • 20 to 500 MW (diesel based) 	
22	Roads/Highways (more than 30 km. Length for new highways/bypasses irrespective of any threshold, if passing through environmentally sensitive areas)	
23	Railways (including All urban rail systems such as MRTS, metro rail)	
24	Acids manufacturing (200 tpd or above)	
25	Construction projects requiring mining of natural mineral resources such as stone, sand* and if the quantity > 1,00,000 tonnes.	
26	Common Biomedical Waste Management Facility	Handling 5 TPD
27	Common Municipal Waste Management facility	Catering to > 1 million population
28	Ports, Harbours	Insert cargo tonnage threshold
29	Jetties	Insert lower cargo tonnage threshold
30	All Fishing harbours	-

Separate notification for not permitting beach sand mining, except for rare earths

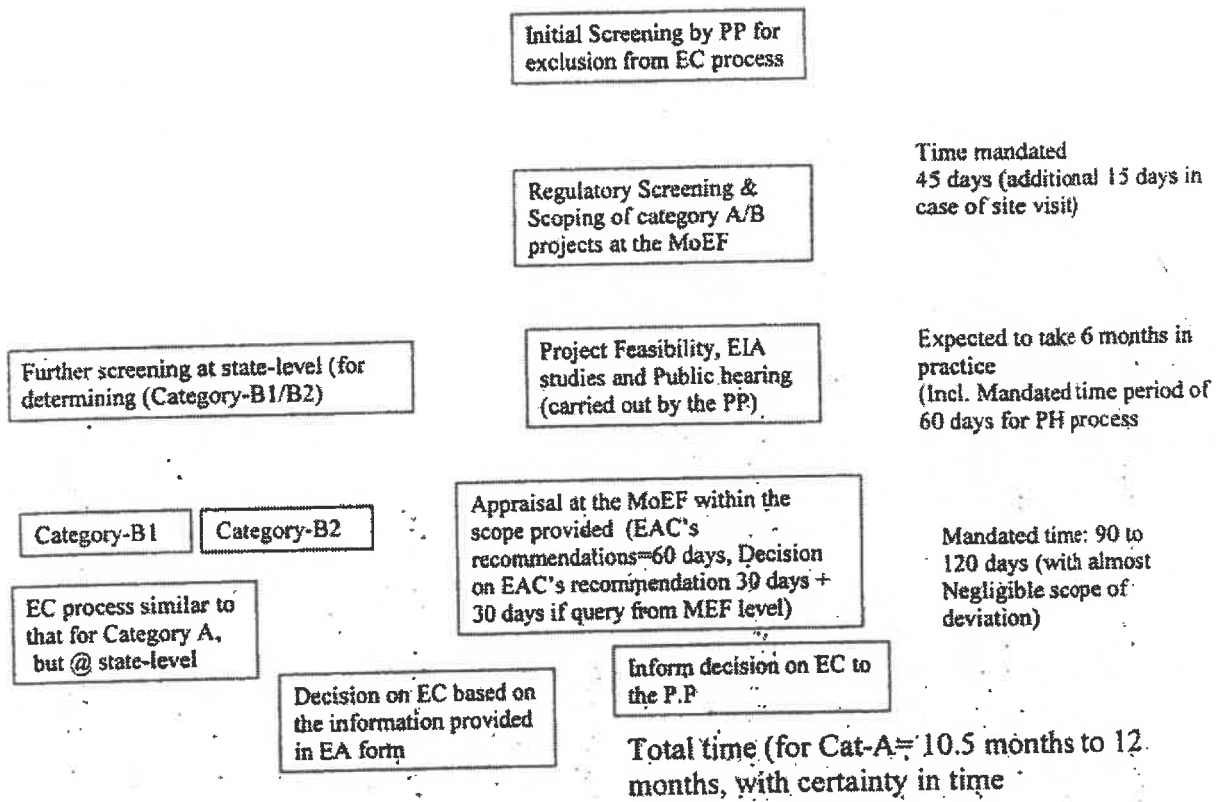
Existing EC Process in practice



Total average time = 14 to 19 months with REI + Time required for project feasibility studies
 & 21 to 28 months with CEIA

Over view of the proposed EC Process

Annexure-B



RECOMMENDATIONS¹

Environment Impact Assessment (EIA) can prove to be a very progressive tool in development planning. However, this can only happen if reports are honest in the representation of facts and are based on as full an understanding of the impacts of a proposed project as the current level of knowledge offers. Unfortunately, most EIAs that are conducted today do not consider rejection of the project on environmental or social grounds as an option. In instances where the EIAs have concluded that a project is to be rejected, subsequent interventions have succeeded in 'modifying' these conclusions.

As has been discussed in the previous sections of this document, the manner by which EIAs are carried out is dismal and disappointing. The information they contain is often incomplete, false or inadequate; when the information is good, the conclusions drawn are inconsistent with it, resulting in a biased outcome. The series of dilutions to the EIA notification over the last eleven years has largely weakened its scope, both in letter and in spirit. There are some positive amendments like the availability of the EIA report prior to a public hearing, but these are few and far between. Also, as pointed out repeatedly by environmentalists, there is little point in dynamic and positive changes in the EIA notification when more and more activities are gradually being excluded or removed from its purview.

There are several inadequacies plaguing the content and implementation of the EIA notification. Some of these are as follows:

- There is an exclusion of many kinds and sizes (determined by investment limits) of development/industrial projects and activities from the list of projects requiring EIAs, many of which have a significant potential for negative environmental impacts;
- There is no stated requirement of an assessment of the combined or cumulative impacts of projects related to a principle project (e.g. a series of dams in the same river basin) in the notification;
- The EIA notification is not applied to assessment of policies and sector-wise programmes². In fact, environmental and social impact assessment of these are not undertaken;
- EIAs are funded by project proponents rather than by an independent agency, which considerably increases the chances of a biased and subjective EIA report;
- There is very little scope for the participation of affected people in the environmental assessment and overall clearance process, especially at the stage of final decision-making on the project. Though public hearings provide a limited space for participation at the assessment stage, they are hindered by:
 - the lack of will to encourage participation;
 - poor and incorrect implementation; and
 - the absence of clear post-hearing clauses in the notification due to which groups that participated at public hearings are not kept informed about the follow up, the final decision and the basis on which the final decision has been made.
- There is a serious 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. This

¹ This section is based on the ongoing work of several non-governmental organisations and community groups to understand and effectively use available legal spaces for peoples' participation in decision-making processes of developmental projects. The authors would particularly like to acknowledge the recommendations presented in the Final Technical Report of the National Biodiversity Strategy and Action Plan, India, November 2003, and a paper titled Public Involvement in Environmental Decision Making by Leo Saldanha, Environment Support Group, August 2002.

² National Environmental Engineering Research Institute (NEERI) has produced a 'National Guidance Manual on EIA Practice with Support Manuals on Select Developmental Projects for Enhancing the Quality and Effectiveness of Indian EIAs under a World Bank project implemented through the MoEF.

encourages several incorrect and unethical practices by project proponents and EIA consultants, such as presenting fraudulent and fudged reports.

● Redressal mechanisms available to the public are weak and inadequate (e.g. mechanisms to raise problems with implementation of the notification and bring these to the notice of the concerned authorities). The only specific forum for redressal is the NEAA, which has several limitations.

Undoubtedly, these and many more inadequacies in the environmental clearance process need to be dealt with. Citizens' groups and NGOs have repeatedly pointed these out, but there is little evidence of these suggestions being taken on board by the MoEF.

RECOMMENDATIONS

6.1 General

√ *Independent EIA Authority:* Civil society groups have suggested the need for an independent Environment Impact Assessment Authority headed by a judicial officer and comprising of representatives from communities, peoples' groups, scientists, sociologists and environmentalists. Such a body would be independent of the Ministry of Environment and Forests. The decisions of this authority would be binding on the MoEF.

√ *Sector Wide EIAs Needed:* There is a need 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 macro-economic, developmental, and other policies, schemes, and programmes.

√ *Conduct Options Assessment:* EIAs should follow only after an Options Assessment and a Least Cost Plan for a project is done by the state or central government. For this the following steps are of relevance for both public and private sector projects:

- In the case of projects proposed by PSUs and the state/central governments, the Options Assessment preceding the EIA should provide information on the best strategies to meet the needs of the region, be it power, irrigation, employment, or some other stated benefit.
- In case of private sector projects, the project proponent's project justification statement should be accompanied by a mandatory Project Justification Report prepared by the State or Central Government. This Project Justification Report would provide information assessing the need for the project and the benefits accruing from it for the state/nation and the people of the area.
- The Options Assessment or Project Justification Report should also state how the proposed project fits into the existing developmental plans of the state or the region.
- The information should be included in a computation of environmental and social costs, apart from other project costs such as technical and financial costs. Based on this, a set of options should be put forth from which the least expensive and least damaging option is selected.
- The EIA for the project should follow only after this option is decided.

√ *Creation of an Information Desk:* An information dissemination desk may be assigned within the MoEF which anyone can write to regarding the status of clearance of projects. This desk should be mandated to respond within a maximum of ten days by post/courier and a maximum of two days by email, to the contact information that has been furnished by the person seeking the information. Since all meetings and discussions are documented as electronic data, the officer should furnish this information regarding the status of clearance, with a record of the discussions in the Expert Committee on the project.

√ *Environmental Risk Assessment:* New approaches such as Environmental Risk Assessment which enable more flexible and dynamic assessments of direct and indirect ecological impacts must be explored. As part of this process, recognised Safety and Environmental Auditors must compulsorily meet local populations and submit a detailed report of potential risks due to the project.

√ *Issue a Complete Notification:* The MoEF must issue and maintain on its website at all times, a consolidated notification incorporating all the amendments till date. As of now what is available on the MoEF website is the notification updated up to 13th June 2002 and copies of subsequent amendments, which are not incorporated within the main text of the notification. In the absence of this critical document, it is difficult for implementing agencies and stakeholders in general to understand the position of the law.

6.2. Applicability of the EIA Notification

Key Concerns

As it stands today, there are several projects with significant environmental impacts that are exempt from the notification either because they are not listed in Schedule 1, or their investments are less than what is provided for in the notification. Importantly, several projects located in zones covered by other notifications such as the CRZ Notification are exempt from the provisions of the EIA Notification. For example, proposed minor ports located in the CRZ areas like Tadri (Karnataka) do not need to undergo the procedures mandated by the EIA Notification. Other projects such as defence-related road construction and railway projects are explicitly exempt from the EIA notification altogether.

Following is a set of recommendations towards ensuring applicability of the environmental clearance process to all categories of projects:

√ The provisions of the EIA notification, including public hearings should be applicable to all hitherto exempt categories of projects (including large scale agriculture/ monoculture plantation projects) which have environmental impacts.

√ As an immediate measure, it needs to be ensured that all those projects where there is likely to be a significant alteration of ecosystems like rivers, lakes, wetlands, forests, grasslands, coastal and marine ecosystems, need to go through the process of environmental clearance, without exception. This should apply if they are likely to reduce the biodiversity of the region (both wild and cultivated); if they are likely to affect regions that have not been studied adequately for flora, fauna, or socially/culturally fragile human communities, or if they are likely to displace people or disrupt livelihoods, temporarily or permanently.

√ No industrial or large-scale 'developmental' activity should be permitted in ecologically sensitive areas. Only developmental activities/processes, which do not alter the basic ecological characteristics of such an area or do not cause destruction of the fragile ecosystems, should be allowed. Separate and specific notifications issued for each of these areas clearly listing out the range and kinds of activities permitted, prohibited and restricted in identified areas would help in effective implementation of this clause.

6.3. Quality of EIA Reports: preparation and content

Key Concerns

One of the biggest concerns with the environmental clearance process is related to the quality of EIAs that are being carried out. As presented in the Table on Violations of the EIA Notification, one of the clear violations has been with reference to inadequate, incomplete, and false data in the EIA reports. This includes presenting fraudulent data and the concealment of facts. EIA reports ignore several aspects while carrying out assessments and significant information is very often omitted. Many EIAs are based on single season data and are not adequate to determine whether environmental clearance should be granted. All this makes the entire exercise contrary to its very intent. These aspects require immediate attention and reform.

As things stand today, it is the responsibility of the project proponent to commission the preparation of the EIA for its project. As a result, the EIA is actually funded by an agency or individual whose primary interest is to procure clearance for the project proposed. There is little chance that the final assessment presented is unbiased; even if the consultant

may provide an unbiased assessment that is critical of the proposed project, as the project proponent could force changes that work positively for the project. Examples where this has taken place are in the EIA process for Teesta Low Dam III (W. Bengal), Lower Subansiri (Assam- Arunachal Pradesh) hydel projects.

Some recommendations to address the problems regarding the quality of EIA reports are:

√ *Shift the focus to conservation:* The focus of EIAs needs to shift from utilization 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 from a process that provides insights into the viability and desirability of the project, to one that finds justification for the project and on rare occasions one that offers simplistic solutions on minimizing impacts of projects already declared 'important'.

√ *Strongly Integrate Biodiversity into the Assessment process:* At present EIA reports are extremely weak when it comes to assessment of biological diversity of a project area and the consequent impacts on it. This is particularly so when it comes to domesticated (both livestock and agriculture) biodiversity, aquatic biodiversity other than commercial fish, 'lesser' or non-endangered plants and animals (i.e. those other than mega fauna like tigers and elephants or charismatic plants like orchid species), ecosystem benefits and services (including supporting livelihood needs of communities, essential hydrological functions, soil conservation etc), and flora-fauna inter-relationships. This gap needs to be plugged through specific guidelines and, if necessary, through amendments to the EIA notification.

√ *Elaborate the 'Checklist for Ecological Impact Assessment', in the MoEF's EIA Manual:* This checklist needs to include impacts on agricultural biodiversity, biodiversity-related traditional knowledge, and livelihoods. Further, cumulative impacts of projects that are technically linked or located in the same ecological region, and impacts of the eventual closure of the project or components of the project should also be incorporated into the checklist. Finally the list should contain details on a full exploration of alternatives, especially decentralised alternatives, to mega-projects. The checklist also needs to cover various kinds of impacts resulting from a particular activity. For instance, EIAs for deep-sea mining only study how deep-water nutrients are affected by an activity and no other components of marine biodiversity.

√ *Understand Cumulative Impacts:* Comprehensive EIAs need to be undertaken for industries and operations working in clusters such as in zones identified for chemical industries or export oriented units. For instance, the present EIA notification states that assessments do not need to be conducted for mining activities up to 5 hectares, and do not need to hold public hearings for mining up to 25 hectares. However, it is recognized that many mining activities take place in clusters (several leases for small mining projects allowed in close proximity to each other in one geographical area) and that EIAs need to assess their cumulative impacts on the environment and biodiversity.

√ *Adverse Impacts to be Spelt Out:* All EIA reports should clearly state what are the adverse impacts that a proposed project will have. This should be a separate chapter and not hidden within the technical details. Based on this, the Environment Management Plan (EMP) should include a specific set of measures, which are identified to mitigate these impacts, with costs and time frame included. This requirement should be built into the EIA notification and be legally enforceable.

√ *Make Methodology Clear and Transparent:* EIAs should contain details of the assessment process as annexures such as:

- Full information regarding all the parties involved in assessments, including sub-consultants so that there is no scope for anonymity and parties can be held accountable for their findings and recommendations.

- The Terms of Reference of every group/individual involved in any aspect of the assessment process.
- Full references for all information sourced from secondary sources so that they can be independently verified by anyone interested in doing so.
- Details of the time spent and activities carried out in the field for the assessments such as names of villages, names of interviewees, number of days spent in each area.
- Details of expenses incurred for various activities for preparing the EIA report, including who was paid and for what activities.

√ *Make all EIA-related Reports Public:* The sub-components or subsidiary reports of EIA reports (e.g. Assessment of Biodiversity Impacts done by a sub-consultant)³ should be made publicly accessible as stand-alone reports along with the EIA. To begin with, these should be available on the websites of the MoEF and the project proponent (where a website exists). This is important to maintain the integrity of the information as well as for agencies doing EIAs to gain and retain the trust of people. Agencies such as the Bombay Natural History Society have maintained this policy for EIAs/ sub-components of EIAs done by them.

√ *Discourage rapid EIAs:* EIAs should be 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.

√ *Provide Full Autonomy in the Preparation of EIA Reports:* It is critical that the preparation of an EIA is completely independent of the project proponent. One option for this could be the creation of a central fund for EIAs, which contains fees deposited by project proponents while seeking that an EIA be done for their proposed project. The Central EIA Fund can also support the cost of organizing public hearings. This is also important because one of the reasons behind the provision for public hearings being removed for certain categories of projects was the financial load on small investors.

√ *Prepare a Preferred and Blacklisted Roster of EIA Consultants:* State and central governments should maintain a list of credible, independent, and competent agencies that can carry out EIAs. Conversely, EIA consultants who have been engaged in preparing plagiarised and false reports, or whose work has been found to be repeatedly substandard, need to be blacklisted and not allowed to undertake EIAs. Such lists can be maintained by the Ministry of Environment and Forests with citizens' groups providing information available to them.

6.4. Public Hearings

Key Concerns

Discussions in the previous chapters have pointed out several lacunae in the way public hearings are being conducted all across the country. A number of projects with significant environmental or social impacts have been excluded from the mandatory public hearing process. There are also concerns on how much value is given to opinions expressed during the public hearing. In many cases minutes of public hearings or recommendations of the public hearing panel do not reflect the actual proceedings and objections raised. Further, the recommendations of the public hearing panel are only advisory and it is not mandatory for the Impact Assessment Agency to even consider these while granting environmental clearance to projects.

³ Very often an EIA consultant further sub-contracts specific portions of an EIA report to agencies. For instance, the Geological Survey of India or National Institute of Oceanography might be requested to carry out one part of the assessment based on their expertise. These are compiled by the EIA consultant into the EIA report, and accordingly conclusions are drawn. This results in distortions and omissions in the suggestions and conclusions of the experts or sub-consultants; observations regarding high risks or conclusions seeking rejection of the project may not appear in the final EIA report.

Keeping the range of issues related to public hearings in mind, it is important to accept the following:

√ *Public Hearings for all Projects*: Ensure that public hearings are held for all projects which are likely to have environmental and/or social impacts. No project is to be considered by MoEF for environmental clearance if the public hearing has not been carried out as per clearly laid out guidelines.

√ *Scope of Public Hearings to be Widened*: As an immediate measure the scope of the public hearings needs to be widened to at least those projects which require forest clearance under the Forest Conservation Act, 1980, but are not listed in Schedule 1 of the EIA notification (e.g. railway projects).

√ *More than one public hearing*: Public hearings need to be conducted in at least three phases/stages.

– The preliminary hearing may be required to explain the process of conducting the assessment so that the scope of the assessment is decided with the participation of the public. This could be done with the help of local NGOs in the area. Independent funds need to be allocated for the same.

– The second can be with a purpose of presenting and discussing all aspects of the assessment's findings, with the help of booklets/presentations in local languages. Some of these aspects can include environmental impacts; costs and benefits of the project (including environmental and social costs); whether alternatives have been considered; displacement and rehabilitation aspects and so on.

– The third hearing can be held after a week but no later than a month following the second meeting, this period being intended to give people a chance to analyze the information and points they have heard at the earlier hearing. This can be primarily to record the views and objections of the people.

√ *Democracy and Transparency in the Conduct of Public Hearings*: It needs to be ensured that full information related to the EIA is provided to all concerned citizens. For this it is critical to provide translations of the EIA and relevant documents in the local language(s), to conduct the hearing in the local language(s) and to proactively advertise the public hearing to as many people as possible. For instance, gram panchayat offices can be used to display notices of the public hearing, rather than using only newspapers as is the practice now. Hearings should also be conducted at a time and venue convenient for project affected people.⁴

√ *Critical Place for the Public Hearing Process*: It must be ensured that the views expressed in public hearings, especially from affected populations, are given a more central place in environmental decision-making. Some ways by which this could be done are:

– Recording all viewpoints and presenting them to the expert committees and MoEF. This can be done by appointing independent rapporteurs.

– A video recording of the proceedings could be made mandatory.

These aspects also need to be formally built into Schedule IV of the EIA notification.

√ *Accountability within the Public Hearing Process*: Accountability needs to be built into the public hearing procedure. This is with reference to the conduct of the hearing as well as access to information after the hearing. For instance;

– *The minutes of the public hearing should be compulsorily available at designated places to be specified in Schedule 1 of the EIA notification.*

– *The project proponent should be asked to explain during and after the hearing as to how they propose to deal with the concerns raised at the public hearing.*

⁴ There are many significant suggestions related to the conduct and procedure of public hearings that have been specified in the Gujarat High Court Order of March 2000, in Special Leave Application No.8529 of 1999 (See Section on Institutions for Redressal of Environmental Clearance).

√ *Composition of the Public Hearing Panel:* Ensure that the three representatives of the local communities on the panel are those who have demonstrated commitment towards social and environmental concerns. It needs to be specified that none of these people are from political parties or are directly/ indirectly linked with the project proponent.

√ *Direct Access to Expert Committees to be facilitated:* The local communities, NGOs and civil society groups must be allowed a chance to place their opinions and concerns directly to the Expert Committee and the MoEF. Although this is partly possible since anyone is allowed to write to the MoEF after the public hearing is announced, an opportunity to make a presentation before the MoEF and the Expert Committee should be given to these constituencies just as it is given to project proponents and consultants. This would also help the MoEF and Expert Committees to understand the concerns directly from these parties rather than indirectly from the minutes of a public hearing or from a letter. This could also ensure that their concerns and opinions are better incorporated into the decision-making process.

√ *Guidelines for Public Hearings:* MoEF should incorporate the above points and any others, into a set of Guidelines on Conducting Public Hearings, to be issued to all state governments, district collectors, and other relevant agencies. A number of suggestions on Public Hearings and their conduct already exist, one of them being the March 2000 order of the Gujarat High Court in Special Leave Application No.8529 OF 1999 (See Section on Institutions for Redressal of Environmental Clearance). Such documents can form the basis of the guidelines. A draft of the guidelines must be opened for public comments before being finalised.

6.5. Grant of Clearance

Key Concerns

There are several concerns with reference to the granting of environmental clearance of projects.

Firstly, for projects that require site clearance it is often assumed by project proponents that once site clearance is granted, environmental clearance will follow. As a result, many project proponents begin construction of the project components (like housing colonies, roads), even before the environmental clearance is granted. This is despite the fact that it has been specified in the EIA notification that this should not be done.

At another level, when environmental clearance is granted despite public objection/rejection, the reasons for the same are not conveyed to all those who have sent in written objections and/or attended the public hearing.

There are very few ways to get information regarding project clearances. For those with access to the internet, the MoEF website seems to be of some help. However, very often the information on the website is updated much after the decision is taken. For citizens and communities who do not have access to the Internet, this information is not available. The availability of this information immediately after a decision on the clearance is taken is of crucial importance, in case it needs to be challenged before the National Environment Appellate Authority.

The following measures are needed to address the above concerns:

√ *Clarification on Site Clearance:* The notification needs to make it clear that the provision for 'site clearance' does not imply any commitment on the part of the Impact Assessment Agency to grant full environmental clearance. The following can be added in clause 2 II: '*grant of site clearance only allows for conducting investigation and survey for preparation of pre-feasibility report and would not ipso facto imply any commitment on the part of the Impact Assessment Agency to grant environmental clearance.*'

√ *Prior Informed Consent Mandatory:* The prior informed consent of local communities and urban wards or residents' associations needs to be made mandatory before the grant of

environmental clearance. The consent should be from the full general body, not only from the sarpanch/ pramukh /head.

√ *Disclosure of Reasons for Clearance:* The reasons for the grant of clearance despite objections or rejection of a project need to be communicated to the project-affected communities. This can be done by written communication in the same places designated in Schedule IV where project related documents are to be made available prior to the public hearing. In addition, a public meeting can be organized with the purpose of sharing the reasons behind the grant of clearance of a project. This needs to be done, within two months of the grant of clearance.⁵ A document outlining the reasons for clearance in detail should also be posted on the MoEF's website.

√ *Access to Expert Committee discussions:* Minutes of the expert committees' meetings and other related documents indicating the rationale for grant of clearance must be made available on request to civil society, at the concerned district headquarters and at the concerned sub-divisional headquarters (also see to section 6.6 on Expert Committees below).

√ *Specificity in Clearance Conditions:* Language used for specifying conditions of clearance must be clear and specific. Often the language used in clearance conditions is ambiguous and subject to convenient interpretation. For instance terms such as 'strict compliance', 'regular monitoring', 'sufficient funds', 'appropriate measures', allow for subjective implementation. Therefore, it is critical that conditions are much more clear in their statement and as specific and exhaustive as possible.

6.6. Composition of Expert Committees

Key Concerns

Although the EIA notification provides for a fairly balanced composition of the Expert Committees (Schedule III of the notification), the current composition does not fulfill those criteria. Yet clearances of projects are being recommended by these committees. The following need to be undertaken to ensure that the committees can take appropriate decisions on the clearance of projects.

The section on Practice and Implementation of the EIA Notification in this report discusses these concerns in detail.

Some recommendations to address the key concerns are as follows:

√ *Dissolve Existing Committees:* The present Expert Committees need to be dissolved and reconstituted with experts and experienced people from various stakeholder groups, who are reputed in environmental and other relevant fields.

√ *Process of Selection:* Make the process of selection of these committees open and transparent, making public the expertise/ experience of all nominated members.

√ *Access to Minutes and Discussions of the Expert Committee Meetings:* Make the minutes of all committee meetings, decisions and advice provided by these committees open to public scrutiny, to show that they are taken on the basis of sound science, adequate information, and the criteria of ecological sustainability and social justice, and to make committee members accountable for the recommendations they give to the MoEF (Also see to section 6.5 on Grant of Clearance above).

6.7. Monitoring, Compliance and Institutional Arrangements

Key Concerns

Projects are granted clearances based on certain conditions, which the project authorities need to comply with. These are both related to the construction phase and post construction phase of a project. For instance, conditions may be imposed on muck disposal or affluent

⁵ It needs to be kept in mind that the NEAA Act gives a period of 30 days to challenge environmental clearance of a project. The period is extendable to 90 days with justified reasons.

discharge to be confined to certain areas and within specified limits. The regional offices of the MoEF are to monitor the compliance of these conditions and prepare reports.

However, the local population does not even know of these conditions and are not a part of its monitoring. It is not known if project authorities reflect the true status of compliance in their reports to the MoEF.

Access to these compliance reports is only 'subject to public interest'. The lack of access to compliance reports has severe repercussions on the rights of people who were opposed to the project and for whose benefit some conditions may have been laid out for the project to follow.

In a few cases where it has come to the notice of citizens or community groups that the clearance conditions are being flouted by project authorities, it has also become obvious that monitoring mechanisms of the MoEF are inadequate and that the penal action for non-compliance is not adequate for forcing compliance in future projects.

Some recommendations to address these concerns are:

√ *Automatic Withdrawal of Clearance on Non-compliance:* The EIA notification needs to build within it an automatic withdrawal of clearance if the conditions of clearance are being violated, and introduce more stringent punishment for non-compliance. At present the EIA notification limits itself to the stage when environmental clearance is granted. There is a need to extend the scope beyond that stage as the record on compliance of environmental clearance conditions is extremely dismal (See Section on Practice and Implementation of the EIA Notification).

√ *Jurisdiction of Regional Offices:* The MoEF should set up more regional offices, each with smaller areas of jurisdiction, to effectively monitor the compliance of clearance conditions. At present the area under the jurisdiction is very large, comprising several hundred ongoing projects and the MoEF regional offices are unable to cope with it.

√ *Expert Committees in Regional Offices:* It would be useful to have advisory Expert Committees at the MoEF regional offices, comprising of ecologists, sociologists, local community members, government officials, and representatives of local institutions, to help with the clearance of projects at the regional level and monitoring of compliance of conditions.

√ *Compliance and Monitoring Reports to be made available:* The annual compliance reports of the MoEF regional offices must also be made available to people at the sub-divisional, district, state, regional and national levels. All the compliance and monitoring reports of the MoEF should be uploaded on the MoEF website, to allow public access to them.

√ *Active Role of State Departments:* In central projects where forest clearances are also involved along with environmental clearance, a robust monitoring mechanism that includes state departments needs to be established. Such a monitoring body should be given powers to address compliance of both sets of clearance conditions together and to take punitive action against the project proponent in case of non compliance of any of the conditions.

√ *People's Participation in compliance of conditions:* Local communities should be brought into the formal monitoring and reporting process of the compliance of conditions presently done by the regional offices of the MoEF. This would help the regional office as well since the geographical areas and number of projects that come under each office is vast which affects the efficiency and regularity of the monitoring process. Involving the communities will also bring in an element of transparency into the compliance, which it lacks completely as of now.

6.8. Redressal

Key Concerns

The present redressal mechanism meant exclusively for challenging environmental clearance is extremely weak and limited in its scope. The National Environment Appellate Authority

has heard only 15 cases in the last eight years.

The process of seeking redressal from courts requires a fair amount of energy and financial allocation. It is not possible for all those with grievances to take on legal battles against large and powerful project proponents.

The limitations could be dealt with in the following manner:

√ *Expand the Scope of the Appellate Authority:* The scope of the National Environment Appellate Authority (NEAA) needs to be expanded to deal with more than just challenging environmental clearance of projects. Citizens should be able to access the Authority for redressal of all violations of the EIA notification as well as issues relating to non-compliance of conditions. As of now there is no forum other than the MoEF or the formal courts to seek redressal for non-compliance of clearance conditions.

√ *No rejection on minor delays:* Cases must be heard at least once on substantive grounds, rather than being dismissed at the first hearing simply on procedural grounds such as delay in filing an application (as is currently the practice under the NEAA Act). This is necessary as there are communities and citizens' groups in remote areas who would need to bring their cases before the NEAA. Information on clearance reaches them very late. Besides, the MoEF itself is not in a position to update its website immediately after clearing a project, which is the only communication link maintained in this regard by them.

√ *Changes in the composition of the NEAA:* The composition of the NEAA needs to be changed to include more NGO and civil society representatives as well as professionals from the field of environment. It may thus be necessary to increase the number of representatives that is presently allowed for the Authority. The duration of the authority can be three years, after which it can be reconstituted. However, during this period it should be ensured that the position of the members of the authorities must not be left vacant for long periods. E.g. the position of Chairperson of the NEAA continues to be vacant till date. It also needs to be ensured that Authority does not constitute an MoEF official who has very recently retired, as some of his or her own decisions might come to be challenged before the NEAA.

√ *Provision for Special Invitees:* The NEAA hearings should also have a provision for special invitees who can give insights into specific cases. The Central Empowered Committee (constituted by the Supreme Court) has been effectively practicing this for some of its hearings.

6.9. Capacity Building

Key Concerns

There is an urgent need to build capacities of government agencies, communities, NGOs and the judiciary with regard to the implementation of the existing EIA notification. Even in the instances where the provisions allow for people's participation or monitoring, the lack of information and capacity are great hindrances in implementation. For instance, the Public Hearing Panel often has no clue on the scope of their role in the environmental clearance process. If one takes the case of the judiciary, which is involved in redressal, it is comprised of judges who may not be clued into the environmental issues and their interface with laws. No matter how good the provisions of the law are, their implementation hinges on the capacities of officials who are meant to do it.

Some steps towards addressing capacities of implementers are as follows:

√ *Build the Capacity of Pollution Control Boards:* As of now the state Pollution Control Boards (PCBs) need to organize and facilitate the public hearing process. However in several states, the PCBs are not aware of their role and responsibility resulting in problems with implementation. State government departments could also use the learning from the experiences of the central level environment clearance process. The positive elements of public participation and access to information could be incorporated into state clearance processes too.

√ Enhance capacities of Civil Society and Local Communities: NGOs, civil society groups and local communities need to build their capacities to use the EIA notification towards better decision-making on projects that can impact their local environments and livelihoods. Capacities can be built to proactively and effectively use the notification rather than respond in a manner that is seen as 'negative' or 'unproductive'.

√ Build capacity of the Judiciary: Several organisations and environmental NGOs have already taken up projects and activities for building capacities of the judiciary, including communicating the significance of understanding environmental issues and struggles along with knowing the law. This has been done through orientation sessions, regular discussions and sharing of specific case studies. This is essential since the judiciary is integral to the redressal of conflicts with regard to EIAs in the existing framework.

√ Regional Focus: The MoEF has undertaken capacity building programmes for various constituencies such as state functionaries. These programmes need to draw participants from all regions. For example, officials from regions such as Northeast India are mostly unable to attend these programmes due to logistical problems or lack of information. . Secondly, there needs to be rigorous follow-up to capacity building programmes, through meetings, sharing of updated information, and discussions at local levels.



Annexure

[Note: The updated notification available on the MoEF website had changes incorporated up to 13th June 2002 amendment. Copies of five amendments following this date are also available separately on the website. The version of the notification presented below incorporates all the changes of these amendments and is updated to the 13th June 2002 amendment.]

MINISTRY OF ENVIRONMENT AND FORESTS ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION S.O.60(E), dated 27/01/1994

(incorporating amendments vide S.O. 356(E) dated 4/5/1994, S.O. 318(E) dated 10/4/1997, S.O. 319 dated 10/4/1997, S.O. 73(E) dated 27/1/2000, S.O. 1119(E) dated 13/12/2000, S.O. 737(E) dated 1/8/2001, S.O. 1148(E) dated 21/11/2001, S.O. 632(E) dated 13/06/2002, S.O. 248(E) dated 28/2/2003, S.O. 506(E) dated 7/5/2003, S.O. 1087(e) dated 22/9/2003, S.O. 891(E) dated 4/8/2003, S.O. 801 (E) dated 7/7/2004.)

1) S.O. 60 (E)- Whereas a notification under clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 inviting objections from the public within sixty days from the date of publication of the said notification, against the intention of the Central Government to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in that notification was published as SO No. 80(E) dated 28th January, 1993;

And whereas all objections received have been duly considered;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette, expansion or modernization of any activity (if pollution load is to exceed the existing one) or new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification;

2) Requirements and procedure for seeking environmental clearance of projects:

I.(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

The application shall be made in the proforma specified in Schedule-II of this notification and shall be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of (i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities; (ii) widening and strengthening of highways; (iii) mining projects (major minerals) with lease area up to twenty-five hectares, (iv) units located in Export Processing Zones, Special Economic Zones (v) modernisation of existing irrigation projects (vi) offshore exploration activities, beyond 10 kilometres from the nearest habitated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m.), corals, coral reefs, national parks, marine parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life.

Provided that for pipeline projects, Environmental Impact Assessment report will not be required:

Provided further, that for pipeline and highway projects, public hearing shall be conducted in each district which the pipeline or highway passes through.

(b) Cases rejected due to submission of insufficient or inadequate data and Plan may be reviewed as and when submitted with complete data and Plan. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact Assessment Agency to reject the case summarily.

II. In case of the following site specific projects:

- a. mining;
- b. pit-head thermal power stations;
- c. hydro-power, major irrigation projects and/or their combination including flood control;
- d. ports and harbours (excluding minor ports);
- e. prospecting and exploration of major minerals in areas above 500 hectares;
- f. greenfield airports, petrochemical complexes and refineries

The project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining.

III. (a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a committee of Experts, having a composition as specified in Schedule-III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorised by the Impact Assessment Agency in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project.

No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.

IV. In order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given, the project authorities concerned shall submit a half yearly report to the Impact Assessment Agency. Subject to the public interest, the Impact Assessment Agency shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities.

3) Nothing contained in this Notification shall apply to:

a. any item falling under entry Nos. 3, 18 and 20, 31 and 32 of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No.102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; S.O. No. 416 (E) dated 20th June, 1991 and S.O. No.319 (E) dated 7th May, 1992.

b. any item falling under entry no.1,2,3,4,5,7,9,10,13,14,16,17,19,21,25,27 of Schedule-I if the investment is less than Rs.100 crores for new projects and less than Rs. 50 crores for expansion / modernization projects.

c. any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.

d. Defence-related road construction projects in border areas.

e. any item falling under entry no. 8 of Schedule-I, if that product is covered by the notification G.S.R. 1037(E) dated 5th December 1989.

f. Modernization projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores.

g. any construction project falling under entry 31 of Schedule-I including new townships, industrial townships,

settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.

h. any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high

Explanation.—

(i) New construction projects which were undertaken without obtaining the clearance required under this notification, and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from the 7th day of July, 2004.

(ii) In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.

(iii) Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification;

4) Concealing factual data or submission of false, misleading data/reports, decisions or recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data, would also be revoked. Misleading and wrong information will cover the following:

- o False information
- o False data
- o Engineered reports
- o Concealing of factual data
- o False recommendations or decisions

SCHEDULE-I

(See paras 1 and 2)

LIST OF PROJECTS REQUIRING ENVIRONMENTAL CLEARANCE FROM THE CENTRAL GOVERNMENT

1. Nuclear Power and related projects such as Heavy Water Plants, nuclear fuel complex, Rare Earths.
2. River Valley projects including hydel power projects, major Irrigation projects and their combination including flood control project except projects relating to improvement work including widening and strengthening of existing canals with land acquisition up to a maximum of 20 meters, (on both sides put together) along the existing alignments provided such canals do not pass through ecologically sensitive areas such as national parks, sanctuaries, tiger reserves and reserve forests.
3. Ports, Harbours, Airports (except minor ports and harbours).
4. Petroleum Refineries including crude and product pipelines, isolated petroleum product storages.
5. Chemical Fertilizers (Nitrogenous and Phosphatic other than single superphosphate).
6. Pesticides (Technical).
7. Petrochemical complexes (Both Olefinic and Aromatic) and Petro-chemical intermediates such as DMT, Caprolactam, LAB etc. and production of basic plastics such as LLDPE, HDPE, PP, PVC.
8. Bulk drugs and pharmaceuticals.
9. Exploration for oil and gas and their production, transportation and storage.
10. Synthetic Rubber.
11. Asbestos and Asbestos products.
12. Hydrocyanic acid and its derivatives.

- 13 (a) Primary metallurgical industries (such as production of Iron and Steel, Aluminium, Copper, Zinc, Lead and Ferro Alloys).
- (b) Electric arc furnaces (Mini Steel Plants).
14. Chlor alkali industry.
15. Integrated paint complex including manufacture of resins and basic raw materials required in the manufacture of paints.
16. Viscose Staple fibre and filament yarn.
17. Storage batteries integrated with manufacture of oxides of lead and lead antimony alloys.
18. All tourism projects between 200m–500 metres of High Water Line and at locations with an elevation of more than 1000 metres with investment of more than Rs.5 crores.
19. Thermal Power Plants.*
20. Mining projects (major minerals) with leases more than 5 hectares.
21. Highway Projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger Reserves, Reserve Forests.
22. Tarred Roads in the Himalayas and or Forest areas.
23. Distilleries.
24. Raw Skins and Hides
25. Pulp, paper and newsprint.
26. Dyes.
27. Cement.
28. Foundries (individual)
29. Electroplating
30. Meta amino phenol
31. New construction projects
32. New industrial estates

[* Category of Thermal Power Plants requiring environmental clearance from the State Government]

I. Cogeneration Captive Plants

- | | |
|--|---|
| <p>(i) Co-generation Captive Plants,
(ii) Captive Power Plants</p> | <p>All cogeneration plants irrespective of installed capacity up to 250 MW (both coal and gas/naphtha based) separately and not along</p> |
|--|---|
- coming up
the main industry.

II. Utility projects like:

- (i) Coal based plants upto 500 MW using fluidized bed technology subject to sensitive areas restrictions
- (ii) Coal based Power Plants upto 250 MW using conventional technologies
- (iii) Gas/Naphtha based plants upto 500 MW

Note: Every project proposed to be located in –

- a) a critically polluted area; or
 - b) within a radius of fifteen kilometers of the boundary of –
 - reserved forests,
 - ecologically sensitive areas which include national parks, sanctuaries, biosphere reserves; and
 - any state,
- shall require environmental clearance from the Central Government.]

SCHEDULE-II

[See Sub-para I (a) of para 2]

Procedure for seeking environment clearance of projects.

1. (1) Any person who desires to establish a thermal power plant of any category mentioned in Schedule-I, shall submit an application to the Department of the State Government dealing with the subject of environment.

(2) The application shall be made in the Form 'A' specified in Schedule-II annexed to this notification and shall be accompanied by a detailed project report which shall, inter alia, include an Environmental Impact Assessment Report and an Environment Management plan prepared in accordance with the guidelines issued by the State Department of Environment from time to time.

(3) Cases rejected due to submission of insufficient or inadequate data and Action Plans may be reviewed as and when submitted with complete data and Action Plans. Submission of incomplete data for the second time would itself be a sufficient reason for the State Government to reject the case summarily.

2. In case of the pit-head thermal power plants, the applicant shall intimate the location of the project site to the State Government while initiating any investigation and surveys. The State Government will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said site clearance will be granted for a sanctioned capacity and it will be valid for a period of five years for commencing the construction or operation of the project.

3. (1) The applicant shall obtain a No Objection Certificate from the concerned Pollution Control Board. The State Pollution Control Board shall issue a No Objection Certificate to establish, only after completing public hearing as specified in Schedule-IV annexed to this notification.

(2) The reports submitted with the application and No Objection Certificate from the State Pollution Control Board shall be evaluated and assessed by the State Government, in consultation with a Committee of experts which shall be constituted by the State Government as specified in Schedule-III appended to this notification.

(3) The said Committee of experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the preparations relating to the plant.

(4) The State Government Department dealing with the subject of Environment shall prepare a set of recommendations based on technical assessment of documents and data furnished by the applicant supplemented by data collected during visits to sites, if undertaken and interaction with affected population and environment groups, if necessary.

(5) The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the applicant and decision conveyed within thirty days thereafter.

(6) The environmental clearance granted shall be valid for a period of five years from commencement of the construction or operation of the project.

4. Concealing factual data or submission of false, misleading data reports, decisions of recommendations, would lead to the project being rejected. Approval, if granted earlier on the basis of false data, can also be revoked.

(FORM A) APPLICATION FORM

1. (a) Name and Address of the project proposed :

(b) Location of the project:

Name of the Place:

District, Tehsil:

Latitude/Longitude:

Nearest Airport/Railway Station :

(c) Alternate sites examined and the reasons for selecting the proposed site:

(d) Does the site conform to stipulated land use as per local land use plan:

2. Objectives of the project:

3. (a) Land Requirement:

Agriculture Land:

Forest land and Density of vegetation.

Other (specify):

(b) (i) Land use in the Catchment within 10 kms radius of the proposed site:

(ii) Topography of the area indicating gradient, aspects and altitude:

(iii) Erodibility classification of the proposed land:

- (c) Pollution sources existing in 10 km radius and their impact on quality of air, water and land:
 - (d) Distance of the nearest National Park/Sanctuary/Biosphere Reserve/Monuments/Heritage Site/Reserve Forest:
 - (e) Rehabilitation plan for quarries/borrow areas:
 - (f) Green belt plan:
 - (g) Compensatory afforestation plan:
4. Climate and Air Quality:
- (a) Windrose at site:
 - (b) Max/Min/Mean annual temperature:
 - (c) Frequency of inversion:
 - (d) Frequency of cyclones/tornadoes/cloud burst:
 - (e) Ambient air quality data:
 - (f) Nature & concentration of emission of SPM, Gas (CO, CO₂, NO_x, CH_n etc.) from the project:
5. Water balance:
- (a) Water balance at site:
 - (b) Lean season water availability;
- Water Requirement:
- (c) Source to be tapped with competing users (River, Lake, Ground, Public supply):
 - (d) Water quality:
 - (e) Changes observed in quality and quantity of groundwater in the last years and present charging and extraction details:
 - (f) (i) The quantum of existing industrial effluents and domestic sewage with incremental load to be released in the receiving water body due to the proposed activities along with treatment details:
 - (ii) The quantum and quality of water in the receiving water body before and after disposal of solid wastes including municipal solid wastes, industrial effluents and domestic sewage:
 - (iii) The quantum of industrial effluents and domestic sewage to be released on land and type of land:
 - (g) (i) Details of reservoir water quality with necessary Catchment Treatment Plan:
 - (ii) Command Area Development Plan:
6. Solid wastes:
- (a) Nature and quantity of solid wastes generated including municipal solid wastes, biomedical wastes, hazardous wastes and industrial wastes.
 - (b) Solid waste disposal method:
7. Noise and Vibrations:
- a. Sources of Noise and Vibrations:
 - b. Ambient noise level:
 - c. Noise and Vibration control measures proposed:
 - d. Subsidence problem, if any, with control measures:
8. Power requirement indicating source of supply: Complete environmental details to be furnished separately, if captive power unit proposed:
9. Peak labour force to be deployed giving details of:
- o Endemic health problems in the area due to waste water/air/soil borne diseases:
 - o Health care system existing and proposed:
10. (a) Number of villages and population to be displaced:
- (b) Rehabilitation Master Plan:
11. Risk Assessment Report and Disaster Management Plan:
12. (a) Environmental Impact Assessment:
- (b) Environment Management Plan:
 - (c) Detailed Feasibility Report:
 - (d) Duly filled in questionnaire:

Report prepared as per guidelines issued by the Central Government in the MOEF from time to time:

13. Details of Environmental Management Cell:

I hereby give an undertaking that the data and information given above are due to the best of my knowledge and belief and I am aware that if any part of the data/information submitted is found to be false or misleading at any stage, the project be rejected and the clearance given, if any, to the project is likely to be revoked at our risk and cost.

Signature of the applicant
With name and full address

Given under the seal of Organisation
on behalf of Whom the applicant is signing.

Date:

Place:

In respect to item for which data are not required or is not available as per the declaration of project proponent, the project would be considered on that basis.

SCHEDULE-III

[See Sub. Para(2), Para 3 of Schedule- II]

COMPOSITION OF THE EXPERT COMMITTEES FOR ENVIRONMENTAL IMPACT ASSESSMENT

1. The Committees will consist of experts in the following disciplines:
 - i. Eco-system Management
 - ii. Air/Water Pollution Control
 - iii. Water Resource Management
 - iv. Flora/Fauna conservation and management
 - v. Land Use Planning
 - vi. Social Sciences/Rehabilitation
 - vii. Project Appraisal
 - viii. Ecology
 - ix. Environmental Health
 - x. Subject Area Specialists
 - xi. Representatives of NGOs/persons concerned with environmental issues.
2. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector.
3. The representative of Impact Assessment Agency will act as a Member-Secretary.
4. Chairman and Members will serve in their individual capacities except those specifically nominated as representatives.
5. The Membership of a Committee shall not exceed 15.

SCHEDULE IV

(See para 3, subparagraph (2) of Schedule- II)

PROCEDURE FOR PUBLIC HEARING

(1) **Process of Public Hearing:** - Whoever applies for environmental clearance of projects, shall submit to the concerned State Pollution Control Board twenty sets of the following documents namely: -

i. An executive summary containing the salient features of the project both in English as well as the local language along with Environmental Impact Assessment (EIA). However, for pipeline project, Environmental Impact Assessment report will not be required. But Environmental Management Plan including risk mitigation measures is required.

ii. Form XIII prescribed under Water (Prevention and Control of Pollution) Rules, 1975 where discharge of sewage, trade effluents, treatment of water in any form, is required.

iii. Form I prescribed under Air (Prevention and Control of Pollution) Union Territory Rules, 1983 where discharge of emissions are involved in any process, operation or industry.

iv. Any other information or document which is necessary in the opinion of the Board for their final disposal of the application.

(2) **Notice of Public Hearing:** - (i) The State Pollution Control Board shall cause a notice for environmental public hearing which shall be published in at least two newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned. State Pollution Control Board shall mention the date, time and place of public hearing. Suggestions, views, comments and objections of the public shall be invited within thirty days from the date of publication of the notification.

(ii) All persons including bona fide residents, environmental groups and others located at the project site/sites of displacement/sites likely to be affected can participate in the public hearing. They can also make oral/written suggestions to the State Pollution Control Board.

Explanation: - For the purpose of the paragraph person means: -

- a. any person who is likely to be affected by the grant of environmental clearance;
- b. any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;
- c. any association of persons whether incorporated or not likely to be affected by the project and/or functioning in the field of environment;
- d. any local authority within any part of whose local limits is within the neighbourhood wherein the project is proposed to be located.

(3) **Composition of public hearing panel:** - The composition of Public Hearing Panel may consist of the following, namely: -

- (i) Representative of State Pollution Control Board;
- (ii) District Collector or his nominee;
- (iii) Representative of State Government dealing with the subject;
- (iv) Representative of Department of the State Government dealing with Environment;
- (v) Not more than three representatives of the local bodies such as Municipalities or panchayats;
- (vi) Not more than three senior citizens of the area nominated by the District Collector.

(4) **Access to the Executive Summary and Environmental Impact Assessment report:-** The concerned persons shall be provided access to the Executive Summary and Environmental Impact Assessment report of the project at the following places, namely:-

- (i) District Collector Office;
- (ii) District Industry Centre;
- (iii) In the Office of the Chief Executive Officers of Zilla Parishad or Commissioner of the Municipal Corporation/Local body as the case may be;
- (iv) In the head office of the concerned State Pollution Control Board and its concerned Regional Office;
- (v) In the concerned Department of the State Government dealing with the subject of environment.

5. Time period for completion of public hearing:

The public hearing shall be completed within a period of 60 days from the date of receipt of complete documents as required under paragraph 1.

Note: The principal notification was published in the Gazette of India vide number S.O.60 (E) dated 27-1-1994 and subsequently amended *vide*:

- 1) S.O. 356 (E) dated 4th May, 1994,
- 2) S.O. 318 (E), dated 10th April, 1997,
- 3) S.O. 73 (E) dated 27th January, 2000,
- 4) S.O. 1119 (E) dated 13th December, 2000,
- 5) S.O. 737(E) dated 1st August, 2001,
- 6) S.O.1148 (E) dated 21st November, 2001,
- 7) S.O. 632 (E) dated the 13th June, 2002,
- 8) S.O. 248 (E) dated the 28th February, 2003,
- 9) S.O. 506 (E) dated the 7th May, 2003,
- 10) S.O. 891(E) dated the 4th August, 2003,
- 11) S.O. 1087(E) dated the 22nd September, 2003,

12)S.O. 801 (E) dated 7th July 2004

**EXPLANATORY NOTE REGARDING THE IMPACT ASSESSMENT NOTIFICATION
DATED 27TH JANUARY, 1994**

1. Expansion and modernisation of existing projects

A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the existing levels. The words "pollution Load" will in this context cover emissions, liquid effluents and solid or semi-solid wastes generated. A project proponent may approach the concerned State Pollution Control Board (SPCB) for certifying whether the proposed modernisation/expansion activity as listed in Schedule-I to the notification is likely to exceed the existing pollution load or not. If it is certified that no increase is likely to occur in the existing pollution load due to the proposed expansion or modernisation, the project proponent will not be required to seek environmental clearance, but a copy of such certificate issued by the SPCB will have to be submitted to the Impact Assessment Agency (IAA) for information. The IAA will, however, reserve the right to review such cases in the public interest if material facts justifying the need for such review come to light.

2. Availability of Summary Feasibility Report, EIA/EMP Report etc. to concerned parties or groups

The project proponent will have to submit an executive summary incorporating in brief the essence of project details and findings of environmental impact assessment study which could be made available to concerned parties or environmental groups on request.

3. Clarification about concerned parties or environmental groups

The concerned parties or environmental groups will be the bonafide residents located at or around the project site, or site of displacement, or site of alleged adverse environmental impact.

4. Public Hearing

Public hearings could be called for in case of projects involving large displacement or having severe environmental ramifications.

5. Requisite information required for site clearance/project clearance

(a) Site Clearance:

Site clearance will be given for site specific projects as mentioned in para-2(ii) of the notification. Project proponents will be required to furnish information according to the environmental appraisal questionnaires for site clearance, as may be prescribed by the IAA from time to time. Additional information whenever required by the IAA will be communicated immediately to the project proponents who will then be required to furnish the same within the time frame specified.

(b) Project clearance :

In addition to the application form as mentioned in Schedule II to the notification, project proponents are required to furnish the following information for environmental appraisal:

- (i) EIA/EMP report (20 copies);
- (ii) Risk Analysis report (20 copies): however, such reports, if normally not required for a particular category of project, then project proponents can state so accordingly, but the IAA's decision in this regard will be final;
- (iii) NOC from the State Pollution Control Board;
- (iv) Commitment regarding availability of water and electricity from the competent authority;
- (v) Summary of Project report/feasibility report (one copy);
- (vi) Filled in questionnaire (as prescribed by the IAA from time to time) for environmental appraisal of the project;
- (vii) Comprehensive rehabilitation plan, if more than 1000 people are likely to be displaced. Otherwise, a summary plan would be adequate.

As a Comprehensive EIA report will normally take at least one year for its preparation, project proponents may furnish Rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project. Comprehensive EIA report may be submitted later, if so asked for by the IAA.

The requirement of EIA can be dispensed with by the IAA, in case of projects which are unlikely to cause significant impacts on the environment. In such cases, the project proponent will have to furnish full justification for such exemption, for submission of EIA. Where such exemption is granted, project proponents may be

asked to furnish such additional information as may be required.

6. Submission of insufficient or inadequate data

Regarding cases liable to be rejected due to inadequacy of data, it is clarified that the IAA will make such rejection within 30 days from the date of submission of the proposal. While rejecting a proposal due to insufficient or inadequate data after the first evaluation, the IAA may also stipulate additional requirement of information/clarification for impact assessment purposes if deemed essential due to the specific nature of location of the proposed project, whose data as prescribed is not available, the IAA can examine the project on the basis of available data.

7. Application Form

(i) In order to remove any hardship to the project proponent in providing any information, the project proponent may, where some information is not available or would cause inordinate delay, mention this in their application form. The IAA may consider the project proposal based on the information available.

(ii) Quality and quantity of ground water

(iii) If 15 years data on the quantity and quality variation of ground water is not available with the concerned Department or Authorities, the project proponent may mention this accordingly in the application form prescribed in Schedule-II to the notification. Further, in case of projects where ground water is not to be used, and effluents are not to be discharged on the land, the requirement of ground water variation data for the previous 15 years will be dispensed with.

(iv) A project proponent may write the words "Not Applicable" while filling the application form as mentioned in Schedule-II to the notification in respect of items which are not relevant for the purposes of the proposed project.

8. Exemption for projects already initiated

For projects listed in Schedule-I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Boards have been obtained before 27th January, 1994, a project proponent will not be required to seek environmental clearance from the IAA. However those units who have not as yet commenced production will inform the IAA.

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KALPAVRIKSH

Kalpavriksh (KV) is an environmental action group based in New Delhi and Pune, India, working on environmental education, research, campaigns, and direct action. It began in 1979, with a students' campaign to save Delhi's Ridge Forest area from encroachments and destruction. Starting with these roots in local action, Kalpavriksh has moved on to work on a number of national, and global issues. Its activities are directed to ensuring conservation of biological diversity, challenging the current destructive path of 'development', helping in the search for alternative forms of livelihoods and development, assisting local communities in empowering themselves to manage their natural resources, and reviving a sense of oneness with nature.

KV has also had a deep involvement with peoples' movements such as the Narmada Bachao Andolan and has close associations with local community initiatives for conservation such as those from the Garhwal Himalayas.

KV's work on impacts of large dams and other developmental projects and their environmental and social impacts has resulted in the following reports/publications:

- The Narmada Valley Project: Development or Destruction, Ashish Kothari, Rajiv Bhartari, Pallava Bagla, et al.
- The Environmental Impacts of the Sardar Sarovar Project, Ashish Kothari and Rahul Ram.
- Muddy Waters: A Critical Assessment of the Benefits of the Sardar Sarovar Project, Rahul Ram.
- Watery Dreams and Unfulfilled Promises: How Beneficial are Large Scale irrigation projects?, Rohan D'Souza, Pranab Mukhopadhyay and Ashish Kothari.
- River of Stories, Orijit Sen.
- Undermining India: Impacts of Mining on Ecologically Sensitive Areas, Neeraj Vagholikar and Kaustubh Moghe with Ritwick Dutta.
- Important Bird Areas And Development Projects In Northeast India, Neeraj Vagholikar and Manju Menon.

For information or a catalogue of all Kalpavriksh publications, please write to kvbooks@vsnl.net, or the address mentioned on the front (inside) cover.

JUST ENVIRONMENT TRUST

The Just Environment Charitable Trust is a not for profit, public interest group working on issues related to environment justice. It has two initiatives, Toxics Link, working on toxics and waste issues and the Environment Equity and Justice Partnership, which aims at helping groups and individuals foster lasting involvements in the area of environmental justice.

ENVIRONMENTAL JUSTICE INITIATIVE

The Environmental Justice Initiative (EJI) works towards ensuring the right of people to a clean and healthy environment as enshrined in various articles of the Constitution (Articles 21, 47, 48 & 51) and other relevant environmental legislations and policies. One of the focal areas of the EJI is the 'Environmental Impact Assessment (EIA) Watch' that empowers grass root organisations with essential know-how to critically analyse EIAs and EMPs (Environmental Management Plans) of various industrial establishments and developmental projects that affect them. The initiative undertakes objective research and documentation, relevant to environmental issues. EJI is also involved in legal action through filing public interest litigations to uphold environmental rights, especially of the underprivileged and socio-economically disadvantaged sections of society.

Eleven Years Of The Environment Impact Assessment Notification, 1994

How Effective Has It Been?

The Environment Impact Assessment (EIA) Notification was issued under the Environment Protection Act, 1986, in January 1994. The notification made it mandatory for 29 industrial and developmental activities (increased to 32 by subsequent amendments) to get environmental clearance from the central government before establishing or starting operations.

The EIA process was introduced with the purpose of identifying / evaluating the potential beneficial and adverse impacts of developmental projects on the environment, taking into account environmental, social, cultural and aesthetic considerations. All of these considerations are critical to determine the viability of a project and to decide if a project should be granted environmental clearance. And if yes, on what conditions.

After eleven years of the notification, citizens' experiences of the EIA notification and decision-making process of development projects is filled with disappointment, anger and frustration. Throughout this period NGOs, citizens' groups and activists have raised concerns about the inherent flaws and discrepancies in the notification as well as the problems with its implementation. However, apart from a few positive amendments and some good initiatives, the actual potential of the notification is yet to be realised.

This report attempts to take the reader through the developments in the EIA notification and its implementation over the eleven years of its existence. The information is based on experiences of communities and environmental groups across the country.

The report has six sections. These sections deal with the details of the twelve amendments to the EIA notification that have taken place over the last eleven years; issues related to the practice and implementation of the EIA notification; and also look at the institutions for redressal of environmental clearance.

As this report goes to print, the Ministry of Environment and Forests (the nodal ministry for the implementation of the EIA notification), is in the process of revamping the environmental clearance procedure. The report takes a critical view of these proposed reforms based on the limited information available to the public.

The report concludes with a set of recommendations based on the issues that have emerged over the last eleven years.