

Manthan Adhyayan Kendra
मंथन अध्ययन केंद्र

29 April 2020

To,
Secretary,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road,
Aliganj,
New Delhi-110 003

SENT BY: EMAIL to eia2020-moefcc@gov.in

Subject: Comments on the Draft Environment Impact Assessment Notification, 2020
PART 2 of 3: "Comments related for restructuring of the EIA/EC process and amendments needed in Draft 2020 Notification for that."

Dear Sir,

Please find enclosed the PART 2 of 3 part comments by Manthan Adhyayan Kendra, Pune on the Draft Environment Impact Assessment Notification, 2020. Manthan Adhyayan Kendra is an organization researching and monitoring issues of water, environment and development.

With this email / letter, we are enclosing the PART 2 of our comments, namely "Comments related to restructuring of the EIA/EC process and amendments needed in Draft 2020 Notification for that."

The other two parts are:

Part 1: "Comments specific to provisions related to Inland Waterways." (Already sent on 29 Apr 2020)

Part 3: Additional comments on specific clauses / section of the Draft Notification 2020 (To be sent)

We hope these comments will be considered and incorporated in the final Notification. We request you to please send us acknowledgement of the receipt of these comments.

Sincerely,



Shripad Dharmadhikary,
Coordinator,
Manthan Adhyayan Kendra, Pune

Comments from Manthan Adhyayan Kendra, Pune on Draft Environment Impact Assessment Notification, 2020

PART 2 of 3: Comments related to restructuring of the EIA/EC process and amendments needed in Draft 2020 Notification for that

Introduction: Need for Complete Restructuring

The Draft Environment Impact Assessment Notification, 2020 (Draft 2020) is proposed to replace the extant EIA Notification 2006. The existing EIA Notification 2006 has many shortcomings and problems, which has resulted in its failure to protect the environment in many cases. There has been extensive analysis of the reasons for this, and many experts, environmental activists, people affected by projects and concerned citizens have given a number of suggestions to address this failure.

Given this, what is needed is restructuring the entire framework of India's law and regulation for environmental impact assessment (EIA) and environmental clearances (EC). We give below a few key changes that are needed to the Draft 2020 to initiate this shift.

At a time when the COVID-19 induced global crisis is calling for us to fundamentally re-examine the very foundations of our entire development paradigm, and shape it to align more along environmental principles, this is the need of the hour.

Enshrining Basic Environmental Principles – Bring in Higher Level Impact Assessments

The entire process of environmental clearance in the Draft 2020 is focussed on an individual project or an individual activity. However, on ground, felt environmental impact is determined by a whole set of activities and factors. So it is crucial to locate environmental clearances to individual projects within a larger context that can be either regional or sectoral. That is why a basic principle of environmental impact assessment is that first one has to carry out strategic impact assessments or sectoral impact assessments or regional impact assessments, as necessary. But there is no plan or even thought about this in the entire EIA / EC framework, either within or outside the Draft 2020 notification.

A strategic impact assessment would analyse impacts of a policy or program, while a sectoral impact assessment would look at an entire sector. Regional EIAs would be critical in understanding the cumulative impacts of a number of projects / activities coming up or likely to come up in an area, assess its carrying capacity and help decide whether or not additional projects could be permitted. An EIA/EC process as in the Draft 2020 looks at an individual plant oblivious of what all is likely to happen around it (the provision for looking at cumulative impacts in the current Notification 2006 as well as in Draft 2020 is weakly worded, virtually unimplemented and in any case, cumulative impact assessment as a part of project specific EIA is different from a regional EIA.)

To address this requires a fundamental restructuring of the Draft 2020 (and the approach to EIA/EC in the country), by incorporating into the Draft 2020 a process and structure for carrying out these higher level impact assessments, and the EIA/EC for individual projects to be located within these higher level impact assessments.

Making the Expert Appraisal Committee Effective

The Expert Appraisal Committee (EAC) is the most important body in the entire EC process as it is the one that sets the Terms of Reference (ToRs) for the EIAs and appraises projects to recommend or (very rarely) reject EC.

The EAC examines a large number of projects, often looking at 10-12 projects in each of its monthly meetings. To effectively apply its mind to these projects, members need to be able to study all project related documents and information, may be make field visits in critical cases, and be able to discuss amongst themselves in detail. Yet, since none of the members of the EAC are full-time members, they are not able to devote the required time to study the projects. Moreover, there is very limited preparatory support and background analysis from the MoEFCC/Secretariat.

Second, the Draft 2020 requires that for a candidate to be considered for the Chair of the EAC, she/he should be an “eminent person having experience in environment policy related issues, in management or in public administration dealing with various developmental sectors.” Such a broad eligibility that does not give primacy to environmental expertise, has led to retired bureaucrats or public officials being appointed as Chair on many or most of the EACs. Environmental knowledge has rarely been a prominent attribute. In fact, commenting on this criteria (in the existing Notification), the National Green Tribunal, in its Order of 17 July 2014 (Kalpavriksh Ors vs Union Of India Ors Application 116 (THC) of 2013), unequivocally stated that “we are of the considered view that it will neither be permissible nor in the interest of the environment, or any of the stakeholders, to appoint persons from only administrative or management field, without having specific experience in the field of environment.” Yet, this criterion has been retained, and environmental expertise and knowledge is not required for being a Chair of the EAC.

This needs to be changed in the Draft 2020 to ensure that the Chairs of all EACs be outstanding environmentalists or ecologists, or eminent environmental policy experts who have a demonstrated contribution to environmental conservation and sustainable development. (Wording derived from that used in the 1992 draft of the EIA Notification). This should be the primary, necessary and mandatory eligibility criteria. All other eligibility criteria can be additional to this, not as a substitute to this.

Further, the Chair and at least 50% of the members, including some of the independent (non-official) members, should be full-time members. The EAC should include social scientists and community representatives to bring in these perspectives, which are missing. A proper secretariat with qualified researchers and analysts should be provided to the EAC to support it and help with background analysis and preparations. These are some of the key measures needed to make the EAC effective.

The same suggestions will also apply for the state, UT and District level EACs i.e. for the composition and structure of the SEAC/UTEAC/DEAC, and the eligibility criteria suggestions as above shall also apply for the Chair of the SEIAA /UTEIAA.

Ensuring Credibility of EIAs

The quality of many EIAs has been quite bad. This has ranged from plagiarism to omissions and commissions, but the most striking fact has been that majority of the EIAs have been prepared from the point of view of securing an EC, rather than for any rigorous assessment of the environment

impacts. A major reason for this is that the consultant who prepares the EIA is selected, hired and paid for by the project proponent. Further, the EIAs don't receive due scrutiny partly because the EAC is so overloaded. Importantly, most EIAs are done without any involvement of the local and affected communities. All these result in EIAs of questionable quality and credibility.

To make the EIAs more credible a number of measures are needed. One, the project promoter should be distanced and disconnected from the entire process of appointment of the consultant. The MoEFCC should maintain a roster of EIA consultants from which it will appoint a consultant to do the EIA for individual projects, and the project proponent can pay the MoEFCC.

In this matter, we would strongly recommend that the procedure laid down in the Rules for conducting the Social Impact Assessment (SIA) under the Land Acquisition Act 2013 (formally, the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*) offer a very useful framework for carrying out impact assessments, and the MoEFCC should adopt it in full as a framework for the EIA. These *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014* are available on the website of the Rural Development Ministry at https://dolr.gov.in/sites/default/files/RFCTLARR%20%28SIA%20and%20Consent%29%20Rules%202014_1.pdf

First and foremost, the Rules require that the SIA be carried out in consultation with the local self-government institutions in the affected area. The Draft 2020 must incorporate this provision, and also provide for proper involvement of local communities in preparation of the EIA, as local communities have immense knowledge of local environment. Today, the only say local communities have is at the so called public consultation, which is carried out at the fag end of the impact assessment process, when the EIA is ready. The public hearing procedure and actual experiences are riddled with problems, which have been extensively documented with by others. The point we want to bring in here is that the public involvement must come much earlier in the project appraisal cycle.

Apart from the roster of impact assessment consultants mentioned about, the SIA Rules also provide for the setting up of a Social Impact Assessment Unit, which, among other things is tasked with building and “continuously expand a Database of Qualified Social Impact Assessment Resource Partners and Practitioners”, “conduct training and capacity building programmes for the Social Impact Assessment team and community surveyors”, and “continuously review, evaluate and strengthen the quality of Social Impact Assessments and the capacities available to conduct them”. The Draft 2020 must provide for an equivalent Environment Impact Assessment Unit with similar functions.

Last but not the least, there must be a sound process of a preliminary scrutiny of the EIA before it goes to the EAC. This may be done by the EIA Unit as suggested above, or could be done by a select panel of peer reviewers. The least that should be done is that every EIA submitted by a project proponent must be subjected to a plagiarism check which a common practise in academia.

Summary of Our Suggestions

1. Introduce a structure and process for carrying out higher level impact assessments including strategic impact assessments, sectoral impact assessments or regional impact assessments.

2. Locate individual project specific EIAs and EC process within these higher level impact assessments.
3. The eligibility criteria for the Chair of the EAC should be primarily, necessarily and mandatorily environmental knowledge and capacity, that he or she be “an outstanding environmentalist or ecologist, or an eminent environmental policy expert who has a demonstrated contribution to environmental conservation and sustainable development.” All other criteria can be additional to this, not as a substitute for this.
4. The Chair of EAC and at least 50% of the members should be full time.
5. EAC should have social scientists and community representatives.
6. A proper secretariat should be provided to the EAC with qualified researchers and analysts to support it and help with background analysis and preparations.
7. All these suggestions for EAC should also be considered as suggestions for the SEAC/UTEAC and SEIAA/UTIEAA.
8. Project Promoter should be distanced and disconnected from the appointment of EIA consultant.
9. MoEFCC should maintain a roster and select EIA consultants from this for specific projects, and project promoter will pay MoEFCC.
10. In this regards, *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014* provide an excellent model for the entire EIA procedure and should be adopted by MoEFCC also. In particular:
 - a. EIAs should be conducted with involvement of local self-government institutions, and local communities.
 - b. An EIA Unit should be set up to carry out various functions similar to those outlined the SIA Rules, including training of EIA consultants and surveyors, and to review, evaluate and strengthen the quality of EIAs.
11. EIAs must be subjected to proper review before going to EAC, including plagiarism check.

Comments by

Manthan Adhyayan Kendra, Pune
(Part 2 of 3)

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