সবুজ মঞ্চ
sabuj mancha

To

The Secretary,

Ministry for Environment, Forests & Climate Change

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Sub: Draft Environment Impact Assessment Notification (EIA), 2020

Dear Madam/Sir,

The aforementioned draft notification was published in March 2020 and the public were requested to send in their comments. Our observations are mentioned below for your consideration.

1. Putting up an online bilingual version of the notification is certainly not the best way of getting the notification across to various sections of our country's citizens. Versions in all the major languages of the country are not merely desirable but necessary.

2. A more active mode of engaging the citizens would have seemed pertinent. The country-wide national consultations undertaken by the ministry with regard to GM seeds and a new coastal regulation zone notification in 2010 and 2011 respectively provides an indication of a more active mode of learning the views and opinions of the public.

3. Clause 22. Dealing of Violation cases: The draft EIA 2020 departs from established Environmental Jurisprudence of "Precautionary Principle" principle by allowing for post facto obtaining of EC for all categories of projects, in lieu of fine.

   The rationale of having prior EC with mandatory procedure for public consultation prior to granting Clearance and prior to construction/installation or commencement of any project is rendered null and void by the introduction of this clause, thereby defeating the very purpose of enacting a legislation for regulating industrial pollution. The said clause is *ultra vires* the parent act, The Environment Protection Act, 1986. Allowing industries or processes to obtain EC, after violation has been reported by the project proponent or by government agencies in lieu of fine and taking remedial measures is beyond the scope of rule making power of Central Government.

4. Clause 23. Dealing of Non-Compliances: In Contrast and contrary to the parent act, the Draft Notification completely falls short of actually imposing any penalty upon the project proponent. The draft clause 23 provides for holding the bank guarantee, which as per sub-clause (10) of clause 22 is equivalent amount of remediation plan and Natural and Community Augmentation Plan. However, the Environment Protection Act, 1986, by way of Section 15 and 16 provides for a liability and penal structure. It goes without saying that in creating a legal instrument under the parent act, the penal provisions indicated in the latter cannot be contradicted. Therefore Clause 23 is *ultra vires* sections 15 and 16 of the Environment Protection Act, 1986.

5. The Draft Notification 14(1), 2 indicates that 'All Category 'A' and Category 'B1" projects of new and expansion proposal or modernization with capacity increase more than 50% shall undertake public consultation'. This clause will have serious consequences as project proponent will prefer expansion of the project of less than 50% and avoid public consultation/hearing. The public who may be the sufferer due to adverse impact of the expansion of the project will not get any opportunity for public consultation through public hearing. Even there may be adverse impact to the environment due to the expansion but since the expansion may be of less than 50%, therefore the people of the concerned region as well as environmentalists will not get any opportunity for public consultation / hearing. Hence this relaxation given in the modification (Draft EIA 2020) is in contradiction to the objective of National Environmental Policy.

6. Both Clauses 22 and 23 do not provide for local affected person or others who have a plausible stake in the environmental impact of the project, to make any complaint or to have any right of audience before any procedure dealing with violations and/or non-compliance of prior-EC and/or prior-EP. This omission of giving the right of audience is a violation of Article 21 of the Constitution.

7. While the violators get the opportunity of having their violations regularized and their non-compliances scrutinized and corrected, the draft notification does not grant the citizens any voice or audience in the entire process of detection of violation, investigation of violation and drawing up of remediation plans.

8. Clause 10: In sharp contrast to the EIA Notification 2006, the present Draft Notification, does away with the Screening process altogether. Thus, it remains for the project proponents to decide whether their project is to be classified under Category B1 or B2 and do the necessary. This deliberate loss of an opportunity of detecting possible error at the beginning and preventing consequent damage seems positively harmful, at the very least.

9. Almost as a logical corollary to the doing away of Screening in clause 10, in clause 26, some 40 categories of activity have been exempted from even the most preliminary form of scrutiny. These can be undertaken without seeking any kind of environment clearance or permission. While the list contains some apparently innocuous or at least largely innocuous categories, there are some categories that are suspect and even clearly hazardous.

10. As per Draft EIA Notification 2020, new projects or activities including expansion or modernization of project or activities listed in the schedule under Category 'B2' will not required to be placed before Appraisal Committee as special case in the schedule but shall require Prior Environmental Permission from concerned Regulatory Authority. It indicates that State Environment Appraisal Committee (SEAC) will not scrutinize, assess and appraise the proposal. It will be not appropriate to by-pass the SEAC for specified 'B2' category of project and directly place before State EIA Authority.

    AS per Draft EIA 2020, projects under Category 'B2" in Item 42 (Projects under (i) & (ii) of Column (5) shall not be referred to Appraisal Committee. This modification is strongly objected since these category of projects in details need to be appraised considering its impact on environment and neighborhood. Moreover such projects (Housing / real estate) are very common in cities and towns as well as in peri-urban areas. Since SEAC comprised of experts from all relevant fields of environment, so it will be justified to use the expertise of SEAC to appraise the projects before being placed before concerned SEIAA / Regulatory Authority for prior environment permission.

11. The process of appraisal of project proposal is clearly biased in favour of the proponent and the thrust is on speedily issuing clearance and without any hassle if the norms have been followed on paper. This becomes startlingly evident in Clause 15, where the appraisal process is spelt out in some detail. A revealing portion of the clause reads as follows:

No fresh studies *shall be sought by the Appraisal Committee at the time of appraisal, unless new facts come to the notice of the Appraisal Committee and it becomes inevitable to seek additional studies from the project proponent and same shall be clearly reflected in the minutes of the meeting.*

12. The draft notification Exempts Potentially Damaging Activities from Requirement of Prior Environment Clearance or Prior Environment Permission. Clause 4 paragraph 3 of the draft notification reads:

    It is, however, clarified that 'construction work' for the purpose of this notification shall not include securing the land by fencing or compound wall; temporary shed for security guard(s); leveling of the land without any tree felling; geo-technical investigations if any required for the project.

    At one stroke, actions like erection of compound walls and levelling of land are exempted from prior scrutiny or permission. Unfortunately, such activity can cause serious damage to the environment, depending on where they are undertaken. These activities can harm mangroves or the flow of water. Such context-free exemption of activity indicates lack of sensitivity to the basic needs of environmental governance. Furthermore, such exemptions grant the project a *Fait Accompli* status, which prejudices any independent, fair assessment of the project.

13. In EIA Notification 2006, there was no reference of Accredited Environmental Impact Assessment Consultant Organization (ACO). Subsequently MOEF notified that EIA needs to be done by ACO that is accredited with NABET of QCI. As project proponent engages ACO for preparation of EIA so there may be chances to suppress negative impact in the EIA report. Only an independent expert body engaged by CPCB / SPCBs should be given the charge for preparation of EIA report whereas the cost of assessment must be borne by the project proponent.

14. The Instant Draft "EIA Notification 2020" down rates Public Consultation: The Definition of Public Consultation under clause 3, sub-clause 46 underplays the purpose of public consultations or hearings. While the submissions made in the public consultations have been deemed to be sufficient for the rejection of applications by the Supreme Court of India, clause 3 sub-clause 46 holds public consultations as only a "process by which the concerns of local affected persons and others, who have plausible stake in the environmental impact of the project, are ascertained with a view to appropriately take into account all such material concerns while designing the project".

15. Public hearing is of much importance as it ensures widest possible public participation for discussion on very many issues of the proposed projects / activities including specific queries, objections, and likely impact on livelihood, public health, nature and environment. As per EIA Notification 2006, the minimum notice period for 30 days is to be provided to the public for furnishing their responses. Before public hearing EIA report must be available to public and accordingly guidelines were given in the notification. But in Draft EIA 2020, a minimum notice period of 20 (twenty) days has been proposed to the public for furnishing their responses. This reduction of 10 days will cause immense difficult situation for the public to read, understand the project and prepare to attend in public hearing. Therefore it will be appropriate to keep minimum notice period as 30 (thirty) days for the interest of public hearing/ consultation.

16. The proceedings of public hearing shall be displaced conspicuously at the office of the Panchayat within whose jurisdiction the Project is located and other places as specified in Appendix-1, 6.6. The time frame for displaying the proceedings has not been mentioned. It is suggested that the proceedings must be displayed within 5(five) days and accordingly this must be included in Appendix-1, 6.6. Further, comments if any, on the proceedings should be sent directly to the concerned Regulatory Authority and the Project Proponent concerned as per Appendix-1, 6.6. But no time frame has been mentioned. It is suggested to include the time frame as 'within 15 days from the date of display of proceedings' in Appendix-1, 6.6

17. In Draft EIA Notification 2020, the public hearing / consultation has not been given due importance. Here Appraisal Committee has been given with discretionary power to recommend 'any other appropriate mode' for public consultation (Refer 14 (1) C). As this 'any other appropriate mode' has not been defined in the notification it is apprehended that poor villagers, adivasis, tribal population etc may be deprived of to place their concern, likely adverse impact (if any) of the project / activities on their life and livelihood as well as any change of virgin character of the area due to the installation of the project.
18. The Draft EIA promotes land grab backhandedly by allowing projects to 'secure' land for long period even when they are not being constructed.

Recommendations:

Assess not only the activity but the context. The emphasis should be not only the nature of activity but the context. In this case, the context must be understood at multiple levels—planetary or global, national, regional, and local. For example, whenever considering any activity, one must place it in the context of climate change and consider its immediate and long term climate adverse effects. Similarly, attention must be given to the state of environment of the region and locality and consider not only how much damage the activity will do as a standalone activity, but how much more damage it might be causing on an already stressed environment. This is the importance of such efforts as strategic environmental assessment, regional EIA, sectoral EIA and project level EIA, which should be included in any meaningful EIA exercise.

1. Ensure citizen's access to compliance reports. The periodic compliance reports must be public documents and must be available online and otherwise accessible to members of the public.

2. Ensure maximum period of validity of prior environment clearance of mining projects should be maximum 30 years and not 50 years.

3. Dealing with Violation of EIA process and/or Non-Compliance of prior-EC/prior-EP

   a. The Environment Protection Act, 1986 explicitly envisions criminal liability for violation of environment norms, laws, regulations, etc. This originates from "Polluter Pays" as well as "Strict Liability" principles and doctrines of Environmental Jurisprudence. By way of rule making power, the criminal liability as envisioned in sections 15 and 16 of the parent Act cannot be abrogated and/or diluted or subverted.

   b. It is recommended that in empowering an authority with powers to investigate violations of EIA and/or non-compliance of prior-EC/prior-EP, the principle of 'SEPARATION OF POWERS' must be adhered to. An authority who is issuing Environmental Clearances/Permission shall not also adjudicate violators/non-compliers. The executive authority must be separate from the adjudicative authority. Therefore, to enforce EIA regulations as well as EC terms and conditions, the adjudicating authority must be independent, fair and impartial.

c. It is recommended that in ensuring transparency, merely publishing online communications between adjudicating authority and alleged violators/non-compliers is neither transparent nor fair. The independent adjudicative authority must have specified powers to call for evidence and summon witnesses and follow principles of natural justice in adjudicating cases of violation and/or non-compliance. The adjudication process must not happen in closed chambers and in bureaucratic format, rather in public office with full access to public to participate and witness.

d. It is recommended that affected or aggrieved persons, local affected persons and others, who have plausible stake in the environmental impact of a project, must and should have a Right of Audience and Locus Standi to make and lodge complaints, rights to participate in the proceedings against alleged violators/non compliers, and be accorded with the same rights that of the alleged violators/non-compliers.

5. Ensure a serious, dedicated, qualified and credible EAC

a. The chairperson of the EAC should be an environmentalist of repute and be a fulltime member.

b. Not less than half the other members must be fulltime members.

c. At least half the members should have Post Graduate degrees in environment or related scientific fields and a sizeable section of members must have similar qualification in the fields of social science.

d. The EAC must be provided with a dedicated office space.

e. The EAC must be provided with a secretariat staff including a sufficient number of qualified researchers and analysts and they must be selected to their posts with the consent of the EAC.

f. The EAC must be expected to make at least occasional site visits or send out representatives to site inspections.

Yours faithfully,

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