



To

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

Sir,

Sub: Comments and observations on draft EIA Notification 2020 inviting
comments from the public

Ref: Draft EIA Notification No. S.O. 1199 (E) issued by MoEF & CC on 23.03.2020.

The Kerala Sasthra Sahithya Parishad (KSSP), a mass science movement in Kerala, hereby submits our comments and observations on the draft EIA Notification No. S.O. 1199(E) issued on 23rd March 2020 by MoEF & CC. Our observations and recommendations have emerged from broad consultations with environmental scientists, environmental practitioners, experts and a broad spectrum of people.

The Environmental Protection Act (1986) and the EIA Notification 1994 & 2006 provided for legal checks and balances so that adverse impacts are minimum when projects are implemented or modernised. In the last 14 years, MoEF issued about 300 Office Memorandums (OM) and about 50 Notifications to effect amendments in EIA Notification of 2006, most of which were of diluting nature. The present draft notification inviting comments from the public is again a large scale dilution of the earlier notifications. The considered opinion of the KSSP is that any modification to the existing EIA notification should be to strengthen the ongoing initiatives to protect the environment, especially in the wake of climate change and associated disasters and threats to environment and biodiversity. Considering that the overall state of environment in the country is far from satisfactory, the KSSP strongly expresses its objection to the draft EIA notification 2020 and plead to withdraw the same before proceeding further.

Our observations, comments, objections and suggestions/recommendations on the draft EIA notification are detailed below for your consideration and favourable action.

As discussed the draft EIA notification 2020 does not have any concrete proposal on improving the critical elements of EIA. India is facing multiple environmental crises and an important legislation like the EIA notification should have adopted a proactive approach learning from the wealth of experience gained during the last few decades. As such what has been proposed need to be totally rewritten not just to address the present day (and yesterday's) problems, but also the emerging ones.

Yours sincerely,

A.P. Muraleedharan
State President

K Radhan
General Secretary



COMMENTS ON THE ENVIRONMENTAL IMPACT ASSESSMENT NOTIFICATION 2020

Right to a clean environment is a fundamental right

1. The EIA notification is one of the most important legal/ institutional frameworks to operationalize the Environment Protection Act 1986. Obviously, any revision of EIA notification should take note of the vast experience of implementing the 2006 notification (as also the 1994 EIA notification) and ensure that the proposed revision is an improvement of the existing EIA process addressing its deficiencies. Various judgements by the Supreme Court have underscored the inseparability of right to life with right to a clean environment. It is in this context that one should consider the effectiveness of the current and proposed EIA process to ensure that the fundamental right of every citizen to a clean environment is safeguarded.

Worsening state of environment demonstrates ineffectiveness of existing EIA process

Though some progress has been made in protecting the environment, it has to be acknowledged that the overall state of environment in the country is far from satisfactory. Indian cities are ranked very high as regards the level of air pollution and often life comes to a stand still in cities like Delhi on account of extremely high air pollution. The level of pollution in our water bodies is also very high. Faulty environmental clearance processes have led to multitude of environmental conflicts imposing high economic and social costs. Notwithstanding the various provisions in the EPA and the EIA notification, environmental assessments are not carried out systematically. In most cases government departments dealing with development projects have become the major violators of environmental laws and the EIA process is often manipulated to fulfill narrow short-term objectives imposing heavy externalities on present and future generations.

Urgency to deal with critical environmental challenges, especially climate change and biodiversity loss:

3. The last couple of decades have witnessed major changes in our understanding of environmental issues. Climate change stemming from increased green-house gas emissions has become the most defining environmental issue facing humanity, unleashing multitude of natural disasters – including cyclonic storms, floods, droughts, landslides, etc. – whose frequency and intensity are on the rise. All the indications are that sea level rise will result in millions of environmental refugees. Other critical human driven environmental issues include loss of biodiversity, land degradation and changes in hydrology, all of which are causing significant loss to society directly and indirectly. To ensure that human interventions are not resulting in net welfare loss, the EIA process has to be very robust

Draft notification ignores key requirements of an effective EIA process

4. It is in this context that we should consider the proposed 2020 EIA notification specifically looking into whether it will significantly improve the objectives of the Environment Protection Act 1986 and take note of current and emerging issues including whether developmental activities are reducing the ecological foot-print. The proposed 2020 notification gives inadequate attention to key requirements and much of the emphasis is to cut short the time and to liberalise the clearance process. In other words, it is largely a “pro-industry” process neglecting the critical environmental issues.

5. Any credible EIA process should fulfill the following conditions:

- A. It should be totally evidence-based drawing upon the best available science and the vast experience of implementing projects within and outside the country.
- B. The process of EIA should be highly transparent so that people have trust and faith in the process and the institutions involved, thus avoiding costly conflicts at a later stage.
- C. Participation of important stakeholders is another key requirement of an effective EIA process and any dilution of this will have significant negative impacts on project implementation and operation.
- D. Accountability and due diligence on the part of those involved in the EIA process including those preparing the EIA report.

6. In the context of increasing environmental conflicts EIA should ensure that projects are scrutinized thoroughly, and decisions are science based. While there is a strong justification for revising the Environment Protection Rules giving due consideration to the major changes that have taken place within and outside the country, the proposed notification is at best undertaking incremental tweaking of the 2006 notification largely focusing on speeding up the environmental clearance process. It fails to chalk out a very effective and robust path for environmental assessments taking into account the larger changes that have taken place in the recent years and the long term issues like climate change, loss of biodiversity, failure to reverse air and water pollution, land degradation and the increasing severity and frequency of natural disasters.

Grouping of projects

7. Clause 5 provides the categorization of projects and activities. This grouping – A, B1 and B2 – is quite arbitrary and many projects that are likely to have significant environmental impacts – including cumulative impacts – have been shifted to category B2, helping to circumvent a proper assessment of their environmental impacts. All projects need to be subjected to environmental appraisal, but the nature of appraisal could be decided at the initial screening level.

8. Instead projects may be grouped on the basis of the area of their on-site and off-site environmental impacts as indicated below:

- 1. Group A: Projects whose on-site and off-site impacts during construction and operation transcends more than one state. In this case the competent authority to give necessary approval is the Regulatory Authority at the central level. The Regulatory Authority at the central level will also be responsible for any projects to be implemented in the territorial waters of the country.

2. Group B: Projects whose on-site and off-site impacts during construction and operation transcend more than one district, but within a given state. In this case the competent authority to give necessary clearance will be the State Regulatory Authority.

3. Group C: Projects whose on-site and off-site impacts during construction and operation are limited to one district. In this case EI clearance to be provided by the District Regulatory Authority.

9. An exception can be made as regards the grouping suggested above in the case of strategically important projects. Thus, a project whose on-site and off-site impacts are confined to a district if considered strategically important could be taken up for environmental clearance at a higher level (State or Central regulatory authority). Similarly, a project whose impacts are limited to one state and normally assessed by the State Environmental Committee may be taken up at the central level if it is considered as strategically important. Strategic importance should also include consideration of critical environmental issues like green-house gas emission, loss of biodiversity, protection of vital ecosystems like wetlands, rainforests, montane forests and mangroves.

10. Such a grouping simplifies the entire process. The project proponent will submit the proposal to the state government, who based on a preliminary screening decides (a) whether a detailed EIA is required or not and then (b) forwards the proposal to the District/ Central Authority. At the initial screening stage, a decision may also be taken at which level the environmental clearance will be given based on the geographical impact as also strategic considerations.

Public consultation:

11. Clause 14 outlines the steps/ process to be pursued as regards public consultation. Interestingly all projects categorized as B2 are exempted from public consultation and so are some of the projects under category A and B1. Several of the projects listed under B2 including small irrigation and power projects, small and medium cement plants, water aerodromes for commercial use, etc. do result in significant externalities and experience hitherto indicates that faulty clearance process – especially absence of a consultative process – could lead to innumerable problems at a later stage. A transparent process of stakeholder consultation is key to people's commitment to the project and to avoid conflicts that could prove to be very costly in the long run. Hence it is recommended that the exemption clauses are removed, and all projects are brought under the purview of public consultation.

Compliance to the provisions in PESA 1996

12. The EIA process should fully comply with the provisions in the Panchayats (Extension to Scheduled Areas) Act 1996 ensuring prior informed consent of the Gram Sabha in taking up any project in the scheduled areas.

Modernization and production capacity enhancement needs to be appraised

13. Prior clearance for modernization: Clause 16 outlines the requirements for prior environmental clearance for modernization. This is almost entirely aimed at the modernization and production capacity enhancement of mining leases. There is a need to clearly define modernization as otherwise some of the modernization efforts could

increase the energy needs and carbon footprint. All production capacity expansion needs to be appraised properly inclusive of due consultation process.

Integration of all environment related clearances

14. Currently a multitude of departments/ organizations are involved in providing clearances for different environmental components adopting a silo approach. It is time that all these are integrated into one comprehensive process. Thus, we should integrate clearances under the Forest Conservation Act, Wildlife Protection Act, CRZ, etc. into one integrated clearance process. This will considerably help to speed up the process and avoid unnecessary duplication of efforts.

15. In essence this will be in line with the landscape approach to environmental management, resulting in a holistic assessment ensuring that all aspects related to management of land, water and air are considered together.

16. Eventually environmental clearances should be fully integrated with the general clearance process which takes into account all dimensions of a project – economic, social, environmental and cultural dimensions. In essence a more effective “single-window” system should be put in place to ensure that all aspects of a project are assessed adopting an objective, transparent, participatory, accountable and science-based approach.

Development of a database on environmental impact assessments

17. A wealth of information on environmental issues have been generated from the large number of projects that have been implemented during the last few years. Almost every kind of project have been implemented with each impacting the environment in various ways be they at the local, district, state or national levels. A systematic effort needs to be made to build up a database on past and ongoing projects. Actual environmental impacts of these projects could provide a solid foundation for undertaking environmental impact assessment of new projects. And this could considerably reduce the time required to appraise new projects and to issue environmental clearance.

Tapping into past EIAs and use of modern technologies like GIS, Blockchain Technology and Artificial Intelligence

18. EIA and the appraisal process should draw upon the vast wealth of information generated from environmental impact assessment as also monitoring of environmental impacts during the last few decades. The projects that have been implemented so far have generated considerable information and this should be included in a national/ state level environmental assessment data base. Taking advantage of developments in GIS, blockchain technology and big data analysis, it should be possible to speed up the whole process of environmental impact assessment as also to make it more transparent and science based.

Collection of data for EIA

19. The stipulation about the data collection period – one season other than the monsoon season for all projects other than river valley projects and monsoon season also for river valley projects – is unscientific. A significant number of environmental impacts manifests over a long period and the EIA should try to collect and analyze long term trends including through analysis of projects implemented in the past. The nature of

data and its duration will entirely depend on the type of impact and it is inappropriate to make arbitrary time stipulations.

Accountability of accredited consultant organizations

20. Accredited Consultant Organizations play a very critical role in undertaking EIA. There are however umpteen cases where ACOs have failed to undertake objective EIAs and often there is a tendency to undertake EIAs overlooking critical environmental problems and the behest of the project proponent. There are umpteen instances of ACOs undertaking “cut and paste” assessments deliberately overlooking critical issues. This tendency needs to be curbed through penal provisions which should include (a) blacklisting the organization, (b) criminal action against the CEO as also those who have actually prepared the EIA report. Deterrent penal provisions including fine and imprisonment need to be provided to ensure that consultant organizations exercise due diligence while undertaking environmental impact assessment.

Due diligence by those involved in the environmental clearance process

21. Environmental clearance process is highly susceptible to malpractices and it is important that all those responsible in scrutinizing and appraising projects exercise due diligence in the discharge of their responsibilities. This needs to be explicitly stated indicating that any failure in this regard will lead to individual and collective criminal liability. This will ensure that the regulatory authorities, appraisal committees and technical advisory committees adopt an evidence-based approach in reviewing project proposals.

Delink Corporate Environment Responsibility from Environment Management Plan

22. Corporate Environment Responsibility (CER) should not be linked to the Environmental Management Plan. EMP should be the direct responsibility of the project proponent and while CER is the larger responsibility of any investor/ company outside their normal activities. EMP should not thus become a means for avoiding Corporate Environment Responsibility.

Avoid ambiguity between Environmental Clearance and Environmental Permission

23. The difference between Environmental Clearance and Environmental Permission is rather tenuous. It is better to use the term Environmental Clearance uniformly to avoid potential confusion. As such the only difference is as regards the category of projects (A and B1 for EC and B2 for EP) and whether it has been scrutinized by the Appraisal Committee or not.

Exception of projects:

24. Para 26 provides a long list of projects that are exempted from the purview of prior environmental clearance/ permission. The intention is primarily to exclude small scale activities carried out by farmers/ households and traditional artisans. However, several industrial activities that are not environmentally benign and generating externalities have been included in the list. These need to be reviewed and excluded. For example, extraction and sourcing of ordinary earth for linear projects like roads have often led to major changes in topography with severe adverse impacts on hydrology.

Levelling of land should not be excluded

25. Clause 4 (3). Exclude “levelling of land without any tree felling” from the purview of activities that requires no prior permission. Levelling of land with or without tree felling is an irreversible intervention and could have very significant on-site and off-site impacts especially on hydrology.

Dealing with violation cases

26. Clause 22 – para 1 to 15 – addresses various issues relating to violation of the rules, especially project implementation without any prior environmental clearance. Providing an opportunity to regularize and condone violations could encourage continued violations. If the violation has the potential to result in long term environmental damage the project should be closed forthwith, and criminal proceedings initiated to recover the loss caused by the project. Including a provision for post-facto regularization goes against the stand adopted hitherto (which in the context of the CRZ violations led to the demolition of apartments in Kerala). However, if this is included it should be a one-time opportunity based on a cut-off- date enabling regularization / denial of permission to operate/ closure of the project.

Summary

27. The proposed EIA notification seems to be largely focused on speeding up the clearance process and there is no concrete proposal on improving other critical elements of EIA, namely (a) bringing more science into the process, (b) enhancing transparency, (c) broadening participation of stakeholders, especially those who are likely to be affected in particular tribal communities, and (d) ensuring accountability and due diligence by those involved in appraising the projects and those preparing environmental impact assessments. India is facing multiple environmental crises and an important legislation like the EIA notification should be adopting a proactive and not the “business as usual” approach learning from the wealth of experience gained during the last few decades. As such what has been proposed need to be totally rewritten not just to address the present day (and yesterday’s) problems, but also the emerging ones.