

Aaranyak has placed its observations and humble submission on the Draft Environment Impact Assessment 2020 Notification and sent it to MoEFCC. Following are the areas of concern:

A. Definition of the “Accredited Environment Impact Assessment Consultant Organization (ACO)””: Clause 3(1)

The Draft EIA defines ACO as an organization that is accredited with the National Accreditation Board for Education and Training (NABET) of Quality Council of India (QCI) or any other agency, as may be notified by the Ministry from time to time. The said definition arbitrarily restricts the role of individuals/service providers like lawyers, chartered accountants, etc. who are registered with the NABET or QCI. The said definition takes away the discretion upon the Project Proponent to approach and seek the services of individual services providers.

Aaranyak’s Suggestion: A balance of equitable opportunities and an inclusive approach may be adopted. The discretion should vest with the project promoter to either approach the individuals or organizations.

B. Definition of ‘border area’ -100 kilometres aerial distance from Line of Actual Control: Clause 3(6)

The Draft EIA defines the term ‘border area’ as “area falling within 100 kilometres aerial distance from the Line of Actual Control (LAC) with bordering countries of India.” The said Draft EIA also proposes to exempt linear projects such as projects pertaining to roads and pipelines being carried out in ‘border areas’ from the purview of public consultation.

The said proposed amendment would have unprecedented environmental impact and more specifically on the North-Eastern part of India, which is the repository of the country’s richest biodiversity which can act as natural security for India from future pandemics to check spread of any zoonotic disease. The North-East India shares its borders with Myanmar, Bhutan, China and Bangladesh. The North-Eastern part of India which accounts for more than 60% of India’s forest cover is also a global biodiversity hotspot. The NE India is made up of diverse forest types of the Brahmaputra river valley, the forests at the foothills and the high altitude sub-alpine coniferous vegetation and the dense bamboo and pine forests. This vast ecosystem is a premier habitat for over 950 species of birds, 200 species of mammals and many other species of flora and fauna. A major portion of this rich and fragile ecosystems are located within the term ‘border area’ as defined under the Draft EIA. The said areas being very sparsely populated have remained undisturbed for several decades post independence and as such have been a biodiversity hotspot. However, with the proposed Draft EIA these areas likely to become susceptible.

Aaranyak’s Suggestion: The so-called border area having natural forest cover should be used as an advantage for the country’s defence and security. Keeping the forest cover intact would also provide a natural blockade against satellite surveillance by other countries. The said natural obstruction will aid in keeping India’s preparation in border areas covert and in turn shall also help protect India’s sovereignty and the security of people including the defence forces.



C. Definition of Eco-Sensitive Areas/Zones: Clause 3(21) and 3(22)

The definition assigned to the terms Eco-sensitive areas and eco-sensitive zones is are the areas as notified under sub-section (2) of section 3 of the Environment (Protection) Act, 1986 and subsequent amendments, from time to time. The said definitions fail to take into account various other ecologically sensitive areas/zones such as reserved forests, wetlands, etc. which are governed by certain specific laws/rules like the Wetland Rules for instance. The said contracted and limited scope as provided under the definitions completely rules out the possibility of such areas/zones being brought within the ambit of Clause 3(21) and 3(22).

A prime example of an ecologically vital area is the Maguri Motapung Beel (wetland) which has been adversely impacted by the Baghjan Oil leak. It is imperative to mention that nearly 300 bird species as well as the Gangetic River Dolphin which is listed as 'Endangered' under the IUCN Red List call the Maguri Motapung Beel their home. The said Beel however, which is a 'wetland' under Section 2(1)(g) of the Wetlands (Conservation and Management) Rules, 2016, has not been declared as a 'wetland' by the State Wetlands Authority of Assam. The non-classification of the Maguri Motapung Beel as a 'wetland' by the concerned Authority in no manner whatsoever dilutes the vital ecological role the said wetland plays.

Aaranyak's Suggestion: Environmental safeguard should be the foremost priority to secure the life and assets of the people of the country. It is therefore recommended that aforesaid provision should be amended so as to include eco-sensitive sites and areas based on ecological contiguity and irrespective of whether they have been officially recognised by the MoEFCC or any competent authority.

D. General Conditions: Clause 3(30)

The said definition provides for exempting category B2 projects from the applicability of General Conditions. It is imperative to mention that any industrial or developmental activity in areas mentioned under (a) and (b) of the said definition, would inevitably lead to interruption to the ecosystems, landscapes, wildlife corridors, etc. The said activities also would lead to the increase in human-wildlife conflict or natural disasters. In the said circumstances, exempting B-2 projects from the applicability of the General Conditions merits being reconsidered.

Aaranyak's Suggestion: To ensure that the increasing incidences of human-wildlife conflict in various parts of the country, and North East India in specific, are kept to the minimum, we feel that this clause may kindly be omitted from the draft EIA 2020 notifications. Further, taking into consideration the probable environmental impacts of projects or activities listed under Category B2, the same merit being brought under the purview of General Conditions.



E. Requirement of Prior Environment Clearance or Prior Environment Permission: Clause 4

Under Clause 4 of the proposed Draft Notification, it is provided that ‘construction work’ shall not include securing the land by fencing or compound wall; temporary shed for security guard(s); levelling of the land without any tree felling; geo-technical investigations if any required for the project. The same implies that a project promoter can begin construction of a wall and also undertake levelling of the land where tree felling is not required without obtaining prior EC. It is pertinent to mention that activities like construction of walls and levelling of land may irreversibly alter the land cover of a landscape. The carrying out of the said activities prior to the grant of EC in ecologically sensitive areas/zones such as reserved forests, grasslands, wetlands, animal corridors, etc. may result in irreversible damage and degradation of the environment and the eco-system.

Aaranyak’s Suggestion: The North East India is located in fragile ecosystems of the eastern Himalaya where the soil formation is new and as such, the entire North East India needs to be excluded from the proposed changes in Clause-4. Further, Aaranyak urges the MoEFCC that the standard of the 2006 EIA Notification not watered down and further, the securing of the land by fencing or by constructing a compound wall and also the levelling of the land should not be sanctioned without prior EC.

F. Reduction of Public Response Time and Public Hearing

Under the EIA Notification 2006, it was mandatory to carry out a public consultation and hearing of the objections, if any, of the project-affected people. Under the new Draft EIA, the time period for receiving public response has been sought to be reduced from 30 days to 20 days, which would result in the lack of meaningful and effective participation of the affected people.

The said reduction when viewed from the perspective of how it would impact the indigenous communities in the North-Eastern region presents an extremely disconcerting picture. For instance, a fishing community is likely to be effected by a proposed project to be carried out in the vicinity of a river or a water body on which the livelihood of the said community depends; in such circumstances, it would be impossible for the said community to firstly understand the EIA which may not even be published in their local language/dialect, secondly recapitulate the main aspects of the EIA and thirdly, submit their written objections, within a matter of 20 days.

Aaranyak’s Suggestion: India being a democratic country, people’s participation needs to be encouraged and sustained. North East India has a diverse administrative set up under various schedules of the Constitution of India where customary laws and regulations in North Eastern States have been playing a pivotal role in engaging people in key decision-making processes since time immemorial. As such decision-making power should lie with these existing traditional institutions which are being recognised by the people of North East India for decades. It is important that for a meaningful and effective participation of the affected people, ample time and opportunity is provided to the affected people so as to enable them to communicate and provide a detailed response. Aaranyak would request the MoEFCC to at least



provide a period of 60 days to the people to give their responses.

G. Exemption from Public Consultation for projects national defence & security or involving strategic considerations as determined by the Central Government: Clause 14(2)(e)

The draft states that there will be no public consultations on projects that are deemed to be strategic to the defence and security of the nation. The removal of public consultation/participation from the process of granting environmental clearances violates the tenets of participatory democracy. The stakeholders would not only have a say with regard to any project deemed strategic or exempted from public consultation. The bypassing of the EIA process by terming a project as strategic and shunning public consultations on it and blocking information to the public are clearly a violation of the precautionary principle and the doctrine of public trust.

Aaranyak's Suggestion: We feel that people's voice need to be taken into account in a democratic country like India and with the people's support, the country's defence and the overall security mechanism could be potentially made even stronger. By leaving the local people from such key decision-making process, there is a distinct possibility of increasing the feeling of alienation, especially in the North East India, which is culturally diverse and is comprised of many ethnic tribal groups, languages and dialects. An inclusive approach of seeking people's opinions and support shall act as a long-term security for our country where defence officials and local people can further strengthen the bond as concerned citizens of the country.

H. Projects exempted from requirement of EC: Clause 26

Clause 26 of the Draft Notification, 2020 proposes to exempt 40 odd project activities such as Solar & Thermal Power Plants, etc. from the requirement of prior EC/EP. The classification of the said project activities is clearly arbitrary and without any basis and requires reconsideration.

Aaranyak's Suggestion: We feel that this provision may kindly be dropped from the Draft EIA 2020 Notification. It is submitted that the said projects need to be included in the EIA Notification under category A and/or B1.

I. Exemption given to certain Projects (B2) from Public Consultation: Clause 14(2)

The Draft EIA has categorised a vast number of projects under Category B2, exempting them from Scoping, EIA study, public consultation and expert appraisal. The said B2 category includes projects pertaining to manual mining, dredging and de-silting, solar power thermal plants, offshore and onshore oil, gas and shale exploration, Solar Parks, industrial housing, minor irrigation projects, thermal power plants, etc. The illogical exemption of a large range of activities from the EIA process is *ultra vires* to the parent Act, and also against the concept of precautionary principle, as well as contradictory to various important judgments of the Supreme Court and National Green Tribunal and also against the fundamental right to life guaranteed under Article 21 of the Constitution.



Aaranyak's Suggestion: We feel that this provision may kindly be dropped from the Draft EIA 2020 Notification. It is submitted that the said projects should come within the purview of public consultation.

J. Violation of the provisions contained in the he Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA is a law enacted by the Government of India for ensuring self governance through traditional Gram Sabhas for people living in the Scheduled Areas of India. Similarly, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or FRA, enables the tribal communities of India and the North-Eastern Region in particular, to assert their rights over the forestland over which they were traditionally dependent. The Draft EIA would result in the reversal of the powers of the Gram Sabhas guaranteed under the PESA and the FRA to grant approval or consent before any project/activity can start in tribal/forest areas. It is pertinent to mention that the Supreme Court in its judgement in the case of Orissa Mining Corporation Versus Ministry of Environment & Forest & Others categorically observed that it is mandatory to obtain consent of the Gram Sabhas prior to the start of any project/activity in tribal/forest areas.

Aaranyak's Suggestion: The decentralised approach to governance which has stood the test of time and the various legislations which have given power to the locals to be part of the administrative as well as the decision-making process, need not be impeded by carving out a centralised approach towards key decision making.

K. Grant of Ex-Post-Facto Environmental Clearance: Clause 3(60) and Clause 22

A conjoint reading of Clause 3(60) which defines the term 'violation' and Clause 22 which deals with the 'cases of violations' reveals that the Draft Notification proposes to regularize industries which have commenced operations without obtaining prior Environmental Clearance and are guilty of committing 'violations' under the Draft EIA. The same is in contravention of the Precautionary Principle and the intent of the EIA regulations. The grant of post-facto clearance would result in industries infringing otherwise mandatory procedures, considering the same as a mere formality.

The Supreme Court of India in the following cases has held that the concept of post-facto EC is completely illegal:

a. Alembic Pharmaceuticals v. Rohit Prajapati & Ors. – Civil Appeal No. 1526 of 2016 (decided on 01.04.2020)

In the said judgment, the Supreme Court has held that an executive notification allowing post-facto clearance goes against the parent legislation, the Environment (Protection) Act, 1986, and is therefore illegal: “Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purpose of protecting and improving the quality of the environment.”



b. Common Cause v Union of India: (2017) 9 SCC 499

In the said case, the Apex Court has held that “the concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including the EIA 1994 and EIA 2006”.

c. Association for Environmental Protection v State of Kerala: (2013) 7 SCC 226

In the said case the Supreme Court has held that the commencement of projects without obtaining prior EC is a violation of the fundamental right to life guaranteed to the people of the area under Article 21 of the Constitution.

Aaranyak's Suggestion: To retain citizen's faith in our administrative and legal system, we feel that no post facto clearance be ever considered. The dilution of the principle of a 'prior EC' would render the provisions of the Environment (Protection) Act, 1986 otiose.

L. Monitoring of Projects Post EC: Clause 20(4)

The Draft EIA notification provides for a once a year Self-Compliance Report to be submitted by the Industry as opposed to the EIA 2006 which mandated that a industry would submit the said Reports twice a year. The change in the provision would result in the industries adopting a casual approach which may be to the detriment of the environment.

Aaranyak's Suggestion: The earlier bi-annual reporting practice needs to be continued with so that industries take environmental issues seriously and contribute towards a green and clean environment.

Submitted for Aaranyak:

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