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**A quarterly update on News, Views, Comments and Developments on
India's Environment Impact Assessment (EIA) Process**

EDITORIAL

Accountability in EIA and in the environmental clearance (EC) processes in the country is in dire need of shoring up in a manner that serves to protect rather than compromise further the security of the natural environment in the country.

Records testify that almost all projects, irrespective of their potential environmental and social impacts stand to
(See article "Why is

be cleared ultimately
Govindrajan happy?").

The recent decision of in respect of the clearance (EC) granted Delhi Development raising of permanent Commonwealth Games by the MOEF amply which the rot has and the grant of Clearance (EC) process Court despite not expert advice, the on the flood plain was functioning of all the

"As would be borne out neither NEERI nor Ministry of Environment and Forest nor DDA can be said to have acted fairly and objectively. Their hands appear to be tainted".

the Delhi High Court environmental by the MoEF to the Authority (DDA) for constructions like the village in the river bed highlight the extent to firmly set in the EIA Environmental in the country. The halting, without an ongoing constructions overtly critical of the government agencies

DELHI HIGH COURT JUDGEMENT

concerned, namely the Ministry of Environment and Forests, MOEF; the National Environmental Engineering Research Institute, NEERI which is a government expert body and the DDA. With respect to a 'revised' report filed by the NEERI and the approval granted by the MoEF to the DDA, the Court was constrained to observe:

- *"From an institution of this repute, it was not expected that report of this kind would be submitted"*
- *"The Reports of the NEERI do not paint this body in bright colours. Rather, they show how it has changed colours and has not bothered to contradict itself".*
- *"As would be borne out from the above neither NEERI nor Ministry of Environment and Forest nor DDA can be said to have acted fairly and objectively. **Their hands appear to be tainted**".*
- *"The issues involved are of great significance and importance and they require dispassionate, honest and thorough examination by experts of eminence and impeccable integrity".*
- *It is a sad story of men in haste fiddling with major issues and resultantly playing havoc.*

The observations as above made by the Delhi High Court (for details refer to the article " An update on Yamuna Case in High Court of Delhi") may well be true for a range of other projects cleared across the country where expediency rather than the social and environmental safeguards have characterized the environmental decision making at the key decision making levels in the land.

The last month has seen the Country shocked at the 'Satyam' Scam. Fake accounts and audit reports enabled the company to embezzle millions and fool the nation. Unfortunately, such misrepresentation has become the norm for most corporate houses so far as environmental compliances are concerned. Sadly they are often justified or cleared in the name of either 'development' or on the basis of large amount of expenditure already incurred.

Ritwick Dutta

R. Sreedhar

Manoj Misra

NEWS

NATIONAL ENVIRONMENT APPELLATE AUTHORITY DIRECTS MOEF AND EXPERT APPRAISAL COMMITTEE (EAC) TO RECORD REASONS FOR OVERRULING PUBLIC OPPOSITION TO PROJECTS

In a recent decision dated October 24, 2008, concerning mining in Goa filed by local group Uttakarsh Mandal (*Uttakarsh Mandal Vs Union of India and ors, Appeal No 12 of 2007*) the NEAA has observed that 'in view of the increasing environmental awareness of the public neither Ministry of Environment and Forests nor any of its instruments like the EAC's

can brush aside the public opposition to the various developmental/ infrastructural projects and schemes. Further having enlarged the scope of public hearing into public consultation in their revised EIA Notification dated 14.9.2009, MoEF would do well to advise its various committees to record the reason for their recommendations in an appropriate manner, especially in respect to public opposition to project". The NEAA gave a specific direction that "the MoEF and its various Advisory Committees should indicate in their minutes/proceedings/ orders the link between the issues raised and the decisions thereon, **and whenever the public objections are involved, they should clearly indicate such public concerns have been addressed while arriving at final recommendation/decision."**

TIPAIMUKH MULTIPURPOSE PROJECT GRANTED ENVIRONMENT CLEARANCE

Despite large scale protest and opposition, the Tipaimukh Multipurpose project in the north eastern state of Manipur has been granted environmental clearance (EC) by the MoEF on 24.10. 2008. This project aims to generate 1500 MW Hydropower but would entail loss of 31,950 hectare of land out of which 27,471 hectare (270 sq km.) is forestland. As per reliable estimates a total of 84 lakh (8.4 million) trees are proposed to be cut for the construction of the project.

The public hearing for the project was held twice as per provisions of EIA Notification 1994 and 2006. As per the minutes of the EAC, the first public hearing was held at the office of the district magistrate (DM) at Churachandpur and Tamenglong (Manipur), which are about 200 km & 300 km respectively. The 2nd public hearing was held at Kaimal on 26th March and on 31st March 2008 at Tipaimukh. A public hearing was also held on 06.07.2004 in Mizoram.

The project proponent is the North Eastern Electric Power Corporation Limited and the EIA report for the project has been prepared by the Agriculture Finance Corporation (AFC) Ltd. The project envisages the construction of a 162.8 m high rock-fill dam at about 500 meters downstream of the confluence of river Barak with Tuivai, near village Tipaimukh with a dam toe powerhouse, which will generate 13.611 Mm³muck.

Particular	Area (in Ha.)
Total forest land required for the project	26,237
Total submergence of forest area	23,441.64
Total submergence of forest area in Manipur	21,952.64
Total land required for compensatory afforestation in Manipur	51,644.28
Total land required for compensatory afforestation in Mizoram.	3298.2

As per the official file notings of the MOEF obtained by the ERC, using the Right to Information Act, 2005, both the Chief Minister, Manipur and the Union Minister for Heavy Industries wrote letters (indicating high level of interest in the project) recently to the Minister of State for Environment and Forests for the grant of the environmental clearance (EC) to Tipaimukh Hydroelectric project in Manipur. The project has now been placed before the Forest Advisory Committee (FAC) for the issuance of forest clearance required under the Forest Conservation Act, 1980.

HUMAN DAM CLEARED BY SUPREME COURT

Just months after it refused to approve the Human Dam located in Chandrapur District of Maharashtra, adjoining the Tadoba Andhari Tiger Reserve, the Supreme Court on 21 November 2008 approved the project based on the Recommendation of the Forest Advisory Committee (FAC). The Supreme Court had earlier in the year refused to approve the project in view of the large scale felling of tree. Although the project had received the Environment and Forest Clearance in 2004 itself, the work could not start due to an application filed before the Central Empowered Committee of the Supreme Court which had raised strong objections in view of it being located on a critical wildlife corridor that serves to link the wildlife of Tadoba Andheri with the neighbouring areas of Brahmapuri Forest division among others.

TOPIC OF THE ISSUE

Why Govindrajan is Happy?

The collapse of Environmental Governance in India

Ritwick Dutta

India's Environment Impact Assessment Process was 'reformed' in 2006, this was done despite a great deal of opposition from various groups representing environmental and social concerns. The fear of the groups was that the 'reform' process would actually be a cover for dismantling the limited protection that natural India gets through its regulatory framework. At the heart of the 'reform' process was the recommendation of the "Govindrajan Committee" on Investment reform. Govindrajan: the Secretary in the Department of Industrial Policy and Promotion (and currently Member Secretary of the National Manufacturing Competitiveness Council) headed the "Committee of Investment Approvals and Implementation Procedure" in 2002. The

Govindrajan Committee had identified the ‘cumbersome procedure’ in Environmental and Forest Clearance as the single major cause of delay in investment. In particular, he put the blame on details to be submitted in the application form, Public hearing and site visit as causes of delay and favored “self regulation”. His recommendation was incorporated in the new Environmental Policy of 2006. Pressure from the Industry Associations and even from the highest political offices ensured that the existing and much diluted EIA Notification of 1994 was replaced with the much weaker and permissive EIA Notification of 2006 based on the recommendation of the Govindrajan Committee. It provides for a much complicated system of categorization of developmental activities with power to approve projects being shared with the State and the Central Government. Of serious concern was the absence / deletion of various categories of activities from the EIA process: the major one being railways and tourism projects and various road projects on the one hand to doing away with requirement for public consultation on the other. Govindrajan may be a faceless bureaucrat, but his report has threatened India’s natural environment and the communities who are dependent on it like never before. The recommendations of the government committees are generally known to gather dust. This report and its recommendations ‘unfortunately’ has not met the same fate with dangerous implications for natural India.

We at the EIA Resource and Response Centre (ERC) investigated whether there exists a regulatory system in place in the Country and whether the Ministry of Environment and Forests plays a watchdog function in ensuring that there is a balancing of environment and developmental concerns.

We took September 14, 2006 (the day the new EIA Notification came into force) as our starting point and filed Right to Information application with the MOEF asking as to the number of projects related to the various sectors *viz.* Industry, Construction, Mining, Thermal Power Projects, River Valley and Irrigation, Nuclear Power which had been approved and the number of projects which had been rejected by the MoEF till September 2008. We felt that the two years data would give us a fair idea of how the ‘reforms’ were actually working.

The Govindrajan Committee had identified the ‘cumbersome procedure’ in Environmental and Forest Clearance as the single major cause of delay in investment. In particular, it put the blame on details to be submitted in the application form, Public hearing and site visit as causes of delay and favored “self regulation”

The results of our application were truly illuminating to say the least:

- Construction Sector:** The first response received was for the Construction Sector. As per the law any construction of any project above 20,000 Sq mts requires approval from the MoEF. An Expert Appraisal Committee (EAC) for construction project recommends for approval or rejection. In the last two years 1073 projects were approved by the Ministry and a total of 4 projects were rejected. **Thus the ratio of approval to rejection comes to 268:1.** The perusal of the rejection letters reveal that in two cases it was only a conditional rejection in view of the fact that the project proponents had not provided the full information and one can easily assume that if the information is provided the project would ultimately be approved.
- Industrial Projects:** The tireless efforts and interest of the Industry Association is visible in the Expert Appraisal Committee for Industrial Projects: *In two years it has approved every single project for which approval was sought and not a single one rejected ! Thus a total of 952 Industries were approved and none rejected.*
- Thermal Power Plants:** The same is with respect to Thermal Power Plants. At a time when there is unanimity of the adverse role of thermal power plant to global warming, *a total of 952 Thermal power plants have been approved and none rejected.*
- Mining:** In respect of mining 587 mining (non Coal mining permissions) projects were granted approval and a total of 10 rejected. Of the ten rejected, two were in view of Supreme Court prohibition. **The ratio of approved versus rejected projects works out to be 59:1.**

The writing is on the wall: if you want to set up a mega Industry or do mining, or set up a mega Shopping mall, India is a paradise. The last thing you should worry about getting environmental clearance. The MoEF and the Expert Appraisal Committee will ensure that you will have all necessary clearances

Sector	Number of projects Approved (2006-2008)	Number of projects Rejected (2006-2008)
Construction	1073	4
Industry	952	Nil
Thermal Power	134	Nil
Nuclear	1	Nil
Mining (Non Coal)	587	10

Source: RTI response from MOEF obtained by ERC in 2008

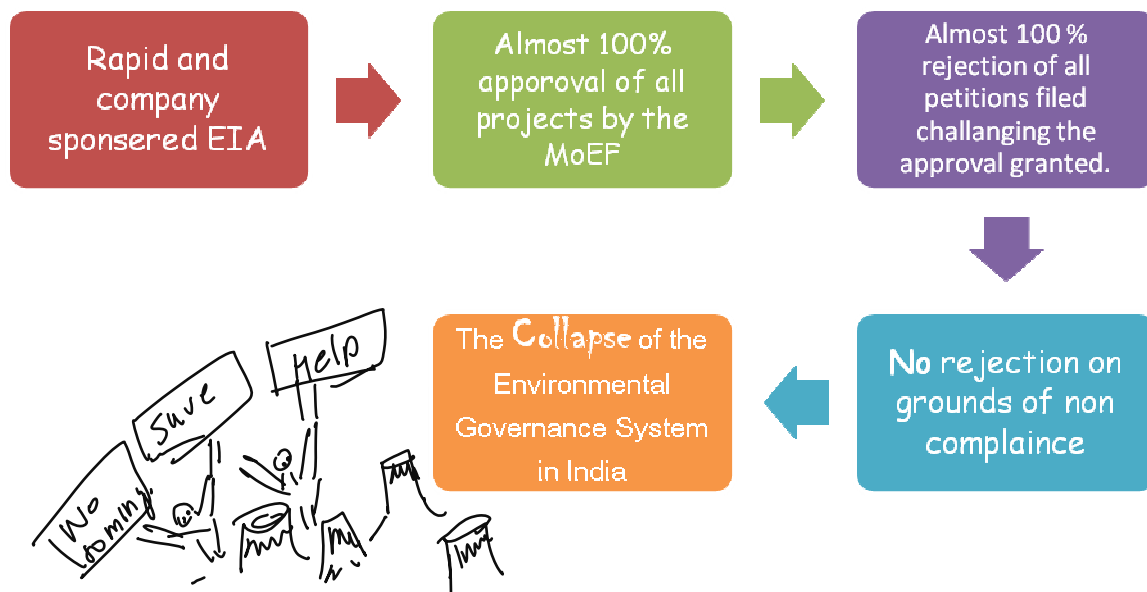
The writing is 'loud and clear' on the wall: if you want to set up a mega Industry or do mining, or set up a mega Shopping mall, India is a place to be in. The last thing you should worry about is getting the environmental clearance. The MoEF and the Expert Appraisal Committee will ensure that you will have all necessary clearances. If at all in rare occasion the EAC recommends for rejection, the MoEF will 'request' the EAC to reconsider its decision. The end result is always approval.

There is little to commend the appellate mechanism in the matter. The Authority created by the Parliament is the National Environment Appellate Authority (NEAA) based in a cramped office next to the Wildlife Crime Control Bureau at the Bhikaji Cama Place, New Delhi. That Appeals are filed before the Authority is a pure miracle: the NEAA has no internet access, no website, no chairperson for the last eight years, no vice chairperson for over the last 3 years and serves with three retired bureaucrats serving a 'technical members'. The results are obvious: it has dismissed every single Appeal filed before it in the last 11 years except one. Information obtained under the RTI as part of the *The Access Initiative Assessment* (TAI) (www.theaccessinitative.org) revealed that none of the members possessed any qualification on the EIA Process, rarely ever conducts site visits (conducted one site visit in three years), have never consulted any scientific experts and institutions with respect to any issue brought before it and subscribes to no law or scientific journal (In fact the response we got to the query was that the NEAA incurs a total expenditure of Rs 720 per year on magazine and periodicals which includes only one magazine: 'Down to Earth!'). The Comptroller General of India has also repeatedly made scathing criticism on the manner of its functioning. It has little financial accountability, has never disposed off appeals on time, and most of its posts are vacant. Yet the Government of the day is happy. It unlike the other Committees set up by the Supreme Court does not act as a stumbling block in the urgent "reform" process.

Thus while the EAC and MoEF clears every single proposal to set up a project in the Country irrespective of the environmental concerns, the NEAA ensures that every single challenge by affected people by way of Appeal is dismissed.

The quality of EIA's have been much spoken about and yet things continue to remain unchanged if not exactly worsened. It is now known to all that unlike situations in many countries, in India it is the Project proponent who engage the consultant/s to conduct the

Environment Impact Assessment (EIA) studies. However, what is most distressing is that there exists no norm as to the minimal standards and the requirements for such a consultant. Again, responses obtained through the Right to Information Act, revealed that the Ministry's EIA manual stipulates that a comprehensive EIA should be the norm. Thus not only is the MoEF approving all projects, it is being approved based on grossly inadequate studies. Last year, scientists at the Environmental Law Alliance Worldwide exposed as to how, a bauxite mine in Ratnagiri was approved on the basis of a plagiarized EIA report which had been copied from a EIA done for a Russian bauxite mine. Yet, no lessons have been learnt and the system continues to operate with remarkable speed in approving projects.



What does all this reveal? India has absolutely no regulatory mechanism in place. The presence of Environmental laws is a plain hogwash: an impression given to the world at large and to the common folks that environmental concerns will be taken care of and that the people's voice will be heard and taken into account during the decision making process. Given the present nature of implementation, both in letter and spirit, is it not now time to dismantle and abolish all the environmental laws which we have whether it be the EIA Notification or the Forest (Conservation) Act, 1980 and all other legislation together with the so called Expert Committees whether it is the EAC or the Forest Advisory Committee. Let the state make a declaration that India in its great hurry to be declared a 'developed nation' and to invite foreign investment can no longer afford restrictive and prohibitory conservation and environment protection laws. At least, then none of the poor folks across India, will miss a days earning to participate in 'bogus'

Public Hearings in the hope that their concerns will be addressed. No longer will poor villagers and the civil society groups mobilize resources to file Public Interest Litigation (PIL) in the hope that their lands, forests and rivers will be protected under the Public Trust doctrine only to be finally told by the Courts that they (the Courts) cannot interfere because these are policy decision and courts will not sit as appellate authority over decisions of experts (howsoever illegal or malafide the decision or decision making process might have been).

As one observer (Sirkin, 2008) states that from Globalisation we are today in the world of Globality: A world of not just competition but hyper competition. And in the world of globality you can't wait for someone else to set the rules.

One is not presuming (howsoever much one may like it to happen) that the MoEF should act like an activist. However at the barest minimum it should ensure that the ecologically destructive projects and such project proponents who have dismal compliance records are not be cleared / encouraged. The MoEF should have the power as well as the intention to say "No". Should it not say 'no' when it is aware that over 84 lakhs trees are to be cut for the Tipaimukh Dam in Manipur? Can it not say 'no' when Diamond mining takes place in a Tiger reserve; Oil Exploration in Desert National Park; a Dam across a vital Tiger corridor (Human Dam in Chandrapur, Maharashtra)? It's a sad come down for a Ministry which was created to safeguard country's natural heritage and became a full fledged union Ministry from originally a Department in the Ministry of Agriculture. If every project is to be approved and it has neither the interest nor inclination to say 'no' ever, the time perhaps has come that it may again be reverted to a Departmental status, with a minor change. Let it become a department this time under the Ministry of Industry, fitting best a role it has presently mastered in, with no apparent conflict of interest or any pangs of conscience to reckon with. Needless to say, that it will make Govindrajan enormously happy!

"in the world of 'globality',
the new rule is that there are
no rules. The road going
forward in like an eight lane
highway with no access and
egress signs, no directions, no
lane markings, no speed
limits, no police and no one
knowing if they should drive
on the left side or the right
side of the road. You make
your own rules and do your
best to get to your
destination"

Missing Link

Environmental Audit Reports could provide the road map for Governance Reform

Himanshu Upadhaya

Accountant Generals of states met in capital from October 14th to 16th 2008 for their 24th Biennial Conference. Amongst issues of relevance for Indian Accounts and Audit Department [IAAD] that they discussed and debated was the one of extending CAG's oversight to Greenfield areas [i.e. emerging areas of audit, where IAAD is still in the learning process) such as Public Private Partnership projects, Regulatory bodies, E-Governance, Social Audit, Environment and Climate Change etc. They also discussed the provisions of CAG (Duties, power and Conditions of services) Act, 1971 and the need to bring in a few amendments to effectively carry out a constitution mandate as Supreme Audit Institution.

While its mandate over regulatory bodies, public private partnership and E-Governance as well as its engagement with the concept of social audit have indeed been matter of discussions, it's a little disheartening that fifteen years after International Organization of Supreme Audit Institutions' (INTOSAI) Working Group on Environment Audit carried out first survey on environment audit, IAAD fraternity would still flaunt this as a Greenfield area and speak about it in future tense. Since 1993, INTOSAI has carried out five surveys and when one examines the results, one finds that India had not responded to first three surveys. It did respond to the fourth survey in 2003 and fifth survey in 2006, and had sent in the much-delayed response to the questionnaire of the first survey while responding to the fourth survey.

The term environmental auditing, when used in context of independent external audit by constitutionally established Supreme Audit Institution, connotes evaluating whether government's financial statements reflect its environmental costs and liabilities, corroborating compliance with domestic and international norms, laws, treaties and policies.

Today, INTOSAI Working Group on Environmental Audit web site lists 18 audit references as "environmental audits" carried out by CAG of India till 2006

What makes it a bit hard in these days, when Economic and Political Weekly has started to explore putting its back issues from 1966 onwards online, is that online access to CAG audit report is limited to union reports for about a decade, and state reports for about last four years.

(<http://www.environmental-auditing.org/intosai/wgea.nsf/viewAuditsCountry3!OpenView&count=300&restricttocategory=India>).

Coincidentally on this list one finds environment audit reports from 1993 onwards, the year when INTOSAI working group launched its first survey of environment audits worldwide. So did CAG audit reports cover environmental matters, or scientific bodies and research institutes under MoEF before 1993, is a question that's worth archival research. In 1995, a CAG audit reported performance reviews of scientific bodies and it had covered Ganga Action Plan as well as Forest Survey of India. The audit findings on FSI stated, "the objective of creation of the National Basic Forest Inventory System was not achieved".

In 1996, CAG carried out performance audit of schemes for preservation of wildlife in Meghalaya. In the same year its audit report on Haryana had covered Afforestation of Waste Land and Agro Forestry.

In 1999, a CAG audit report looked critically at the Botanical Survey of India and indicted it for having failed to preserve 1990 species out of 2000 species of flowering plants, which are likely to become rare, threatened or extinct by the year 2000. It also reported that a research project for selecting, conserving, multiplying and distributing these species was sanctioned in March 1994, but the same had not been initiated as of June 1998. In June 1998, even as audit pointed out that the entire fund sanctioned [Rs 17.81 lakhs] had remained idle, BSI sought to reply that "the work was being carried out by traditional methods" and added that "many species of our country would be saved by different institutes of our country engaged in such projects." And what was the reaction by MoEF to such CAG audit findings on BSI? "The matter was referred to the Ministry in October 1998; their reply was awaited as of December 1998."

In 2002, CAG carried out performance audit of scientific bodies and Zoological Survey of India under MoEF was also one of those covered. The audit findings revealed "The primary objectives of survey and exploration work of 'faunal' resources in the selected

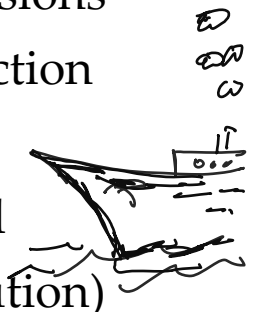
areas was behind schedule for periods ranging from five to 13 years. There was slow progress in conducting status survey of endangered species. Research results were not published expeditiously resulting in their non-dissemination. Non-commissioning of Marine Aquarium Research Centre at Digha for about a decade adversely affected marine research and equipment worth Rs 49.25 lakh remained idle. Ineffective monitoring and evaluation resulted in delay in achievement of targets fixed by Ministry of Environment and Forests in 1987."

There have been a few more insightful environment audits from recent times not listed on that website, but are available in public domain. However, one often finds that Ministry of Environment and Forests fails to strengthen environmental governance learning lessons from audit findings. Many a times, the ministry didn't even bother to reply to audit findings.

Last year, we witnessed lot of media coverage on the issue of dwindling tiger count in national parks and sanctuaries, but stories based on CAG's performance audit of MoEF's flagship programme were very few and far between.

Last year, CAG audit also reported on the environment management of Mumbai Port Trust. Audit findings were shocking reminder to the tale of violation of environmental laws with impunity and the utter failure of Pollution Control Board and MoEF ensuring compliance. and Section 21 of Air (Prevention and Control of Pollution) Act, 1981 and Rule 5 of Hazardous Waste (Management and Handling) Rules, 2000. The scrutiny of records and communications showed that Maharashtra Pollution Control Board (MPCB) had asked – in January 2001 and August 2001 – the port to obtain 'consent to operate' as required by law, and MoEF had opined – in February 2001 – that MPCB

Shockingly, the audit findings revealed that the Mumbai Port Trust had not obtained a valid "consent to operate" as of May 2006, which is mandatory as per the provisions contained in Section 26 of Water (Prevention and Control of Pollution) Act 1974



should initiate appropriate action under Section 33 (A). However, no such actions were initiated against the port trust.

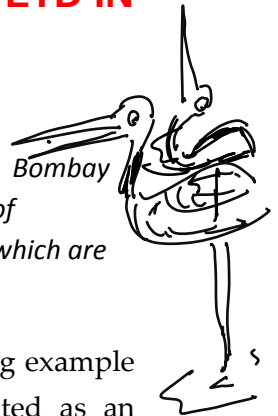
The report had also shown in details how there was a need to strengthen the environmental clearance process emanating from EIA notification 1994. On the contrary, MoEF went ahead with its moves to amend the EIA Notification, which has further weakened the environmental clearance process.

Author works with Environics Trust, New Delhi

EIA REPORT OF THE ISSUE

THERMAL POWER PLANT OF EAST COAST ENERGY PVT LTD IN SRIKAKULAM, ANDHRA PRADESH

Nowpada swamps known for its visiting pelican and storks are under grave threat due to the establishment of Bhavnapadu Thermal Power Project promoted by East Coast Energy Pvt. Ltd. Bombay Natural History Society (BNHS) has carried out a detailed assessment and has urged Ministry of Environment and Forests to stop all ongoing work and shift the project to the alternative site which are relatively less sensitive.



The Telineelapuram pelicanery in Srikakulam district of Andhra Pradesh, is a shining example to the world on community conservation initiatives. The site has been designated as an Important Bird Area (IBA) by BirdLife International, through the Bombay Natural History Society (BNHS) in recognition of its global importance for avifauna. Approximately 5 Km from Telineelapuram, lies the Nowpada swamps, covering an area of 15-20 Sq. Km. These brackish swamps are rich in fish, crustaceans and other nutrients that are essential for the breeding and survival of the visiting pelicans and storks.

- A 2640 MW Bhavnapadu Thermal Power Project promoted by East Coast Energy Private Ltd., is coming up on the Nowpada swamps. The project proponent has applied for the mandatory environment clearance from the MoEF under the Environment Protection Act [TOR No.J- 13012/102/2007-IA.II (T)]. The clearance has not yet been granted. Despite this, earth moving and excavation work has already commenced on the actual swamp, destroying the fragile ecology of East India's only coastal swamp. The Final EIA report contains high degree of inaccuracies and omissions.

- Construction of thermal power plant and filling up of Nowpada swamps has been started prior to environment clearance from MoEF. An access road has been built for passage of heavy trucks carrying construction material. The construction activity is also disturbing and denying access to migratory birds to the swamp for foraging.
- Diversion of fresh water away from Nowpada swamps. The project proponent is also guilty of diverting flowing fresh water from surrounding areas away from the swamp to facilitate drainage of construction site. In order to achieve this, they have constructed a canal to ensure that fresh water bypasses the swamp and directly enters the creek. The ecology of the swamp depends on a steady supply of fresh water from surrounding areas that help maintain its brackish nature. The survival of fish and invertebrates on which the migratory birds feed, hinges on maintenance of a brackish ecosystem. Reduced flow of fresh water interferes with the hydrological regime and increases salinity. Therefore, the canal is a major threat to the very ecological integrity of the swamp and its associated biodiversity. It is also a violation of the environment clearance process.

RECOMMENDATIONS

- a) All construction, excavation, filling and transport connected with the thermal power project must be ceased with immediate effect.
- b) The mouth of the canal constructed to divert water from the swamp must be closed.
- c) The access road to the construction site must be blocked by creating a trench barrier for vehicles.
- d) Chapter 8 of the Final EIA report lists alternative sites for the thermal power project. However, very little information was provided in the report to assess how diligently these alternatives were explored and seriously considered. Alternative Site No.1 (Near Vizag) seems a better location for the project. The site has already been demarcated as an industrial area by APIIC. The NTPC Simhadri Power Station is in the vicinity, suggesting availability of all resources needed for establishing and running a thermal power project already exists there. The higher cost of land at Site No.1 would be offset by access to pre-existing infrastructure, power evacuation facilities and absence of drainage problems.

Complete report is available on <http://www.ercindia.org/node/194> ,For more details you can write to Anand Shekhar, Advocacy Officer, BNHS: advocacy.officer_iba@yahoo.co.in

An Update on Yamuna Case in the Courts of Delhi

The matter concerning the construction on the Yamuna River Bed which includes among others, the Commonwealth Games village, the polluting Metro Depot and a Mall have led to critical questions being raised before the Courts as well as in media: where does public interest lie ? Is destroying forever a vital water recharge area for a few days event a good enough justification? Should projects proposed to be located on riverbed / flood plain not be subject to the strictest possible scrutiny?

Just last week, the Central Empowered Committee in its characteristic no hold barred report severely castigated the DDA for cutting over 800 trees in Siri Fort Complex stating that such areas should not have been chosen on the first count given its ecological importance and almost a deemed forest status.

*The issue of construction on the river bed is now before the Supreme Court, in view of an Appeal filed by the DDA. While those concerned with the protection of the river bed were not particularly happy with the Hon'ble High Court's judgement of setting up an expert committee after a delay of almost 8 months, it came as a surprise that rather than the aggrieved citizens filing an Appeal against the High Court judgement, the project proponent i.e the DDA filed an Appeal and as much admitted its ill intent and wrong acts against the river in the process. Various questions have been raised as to the why has the DDA moved the Supreme Court? **Manoj Kumar Misra**, convener, Yamuna Jiye Abhiyan and co-convener ERC provides an FAQ.*

Although the FAQ relates to the Yamuna, the issues involved is symptomatic of the large scale assault on river bed, flood plains, wetlands and the lakes. Citizens' however continue to struggle against heavy odds whether it is in the form of a PIL in Bangalore to save lakes from privatization, or groups opposing seismic survey for oil exploration in the Brahmaputra...

FAQ

1. What is DDA afraid of that it has approached the Hon'ble Supreme Court against the judgement of Hon'ble High Court of Delhi in the Yamuna Case ?

It is indeed surprising that the DDA has preferred to appeal against the judgement of Hon'ble High Court in the Supreme Court, despite the High Court of Delhi not giving any relief to the petitioners in form of stay on ongoing constructions in the river bed.

It is also surprising that the DDA now do not desire the constitution of a high level Expert Committee headed by Dr. R.K. Pachauri directed by Delhi High Court whereas during the hearing of the case in the High Court, it was DDA which itself had suggested the name of Dr. Pachauri.

Clearly DDA is apprehensive that the said Committee might lay bare its sinister designs on the river bed and recommend against any construction in the river bed to safeguard the future of the life-line river of the city.

2. What is it that the DDA is trying to hide in the garb of seeking stay on the judgement of Delhi High Court at the Supreme Court?

DDA is well aware that the construction of high rise, high end real estate in the name of Games Village in the river bed is not only illegal but also against the doctrine of public trust. DDA is also well aware that the land that it has sold to DMRC in the river bed for the construction of polluting Metro depot (Yamuna Metro Depot) is against the existing orders of the High Court of Delhi and in violation of the doctrine of public trust.

Clearly, DDA is afraid of getting fully exposed from the recommendation of the Expert Committee that it has acted with a wrong intent and against the public interest by treating the remaining flood plain and river bed in the city as a real estate 'waiting to happen'.

3. Is it correct for the DDA to now take the excuse of heavy investment already made to justify the ongoing construction?

It may be recalled that in the month of October 2007, when the case was first filed at the High Court of Delhi, there was nothing on the ground in nature of construction at the impugned site in the river bed. The entire construction has come up only during the pendency of the case at the High Court of Delhi. It may also be recalled that the Division Judge Bench of the High Court of Delhi had clearly stated at the beginning of the case that any ongoing construction is at the risk and consequence of the agency responsible. The following excerpt from the judgement of the Delhi High Court also reiterates the same:

*"All third party interests created or proposed to be created on the land in dispute or in the constructions made or proposed to be made shall be subject to the directions as may be made by the court on the submission of reports of the Committee of Experts. It may be noticed here that we were told during the hearing that construction at a massive scale was being carried out. **We had made it amply clear that if despite the pendency of the writ-petitions the respondents or any other person were raising constructions or were creating third party interests they were doing so at their own peril. I reiterate that.**"*

4. What is it that DDA is trying to achieve through constructing in the river bed?

It is clear that the DDA is only trying to exploit and encash the river bed of the life line river of the city through giving away part of the river bed which is a critical natural resources to a private builder and which will compromise the ability of the river to recharge ground water, as a precursor to more of such constructions. It's a shameless attempt to begin the process of concretization of the river bed in the city misusing the name of the Common Wealth Games 2010.

It is this very ill intent and wrong action on the part of the parties concerned that Justice Rekha Sharma has so eloquently highlighted in her judgement of 3 November 2008 as under:

"This judgement relates to a river which once flowed majestically but is now gasping for breath. If this continues, time is not far off when this gift of Gods, will die an unnatural death getting buried beneath

“It is not only NEERI, it is the Ministry of Environment and Forest also which is equally guilty of changing its position”.

“It is a sad story of men in haste fiddling with major issues and resultantly playing havoc”.

*Delhi High Court Judgement in
W.P 7506 of 2007*

the layers of silt. If no urgent remedial measures are taken Yamuna may exist only in books. It is this fear an anxiety that has made me pen these lines”.

.....

*“Of course, my learned brother has also noticed the subsequent report of the NEERI and its affidavit dated January 29, 2008 and, with respect, I join him when he says “we are constrained to observe that his affidavit is the result of some of the loopholes in its earlier reports which were picked up by the petitioners and pointed out to the court. **From an institution of this repute, it was not expected that report of this kind would be submitted”.***

.....

*“As would be borne out from the above neither NEERI nor Ministry of Environment and Forest nor DDA can be said to have acted fairly and objectively. **Their hands appear to be tainted”.** (Emphasis provided by the author).*

It may be noted that it was only when the vigorous outreach campaign by Yamuna Jiye Abhiyaan bolstered by the Yamuna Satyagrah was seen to bear little fruits, that the petitioners were compelled to approach the High Court of Delhi with a Public Interest Litigation (PIL) with a hope that if not the Executive, then at least the Judiciary would help the river survive!

QUATERLY E JOURNAL

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