

*A quarterly update of news, developments, views and comments on India's Environment  
Impact Assessment process*



## ISSUE THEME

ROLE OF EXPERT APPRAISAL COMMITTEE

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### Editorial

The 20<sup>th</sup> century was notable on many counts. On one hand it was marked by rapid industrialization while on the other the emergence of an environmental consciousness around the world was unmistakable.

By 1950s the knowledgeable had come to realise that the natural world as had existed till then for millennia was in for major and irreversible changes if 'deleterious' human activities in form of indiscriminate industrialization and resultant pollution of the natural environment was not reined in.

No longer could clean air and water be taken for granted. Environmental pollution as a growing threat entered the human consciousness slowly but steadily. By the time Rachel Carson's *'Silent Spring'* was published in the early sixties, the signs of irreversible changes in the natural world were already evident.

One outcome of this consciousness was the emergence of a regulatory regime which could ensure that pollution of air, water and lands was checked and reduced if not entirely eliminated. Legislative actions led the way and environment protection agencies in different countries of the world started to come into being by the seventies.

In India, immediately after the Stockholm Conference (1972), a National Committee for Environmental Protection and Coordination (NCEPC) was established and environmental protection actions were initiated during the 1970s and 1980s when the Air and Water Acts were promulgated by the Central Government. The Ministry of Environment and Forest (MoEF) at the Government of India level was established in 1984. The Environment (Protection) Act, EPA was promulgated in 1986.

It was only in 1994 that Environment Impact Assessment (EIA) Notification issued under the Environment (Protection) Rules, 1986 established a procedural mechanism for seeking prior

Environmental Clearance (EC) from the MoEF by the proponent of a new project listed in the schedule of the notification. The said notification has since been revised in 2006.

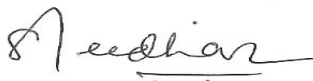
The purpose of this E- Journal is to inform, enlighten and to provide a platform for various concerned citizens to raise and debate issues relating to different aspects of environmental governance in the country with the central objective of strengthening the Environmental Clearance and Forest Clearance mechanisms. Such a strengthening of the said mechanism and bringing in the much-flaunted element of public participation to the fore will go a long way in safeguarding the natural environment in the country.

We begin in all humility and without any biases but will not hesitate when needed to call a spade a spade!

Editors



Manoj Misra



R Sreedhar



Ritwick Dutta

*We look forward to your comments, suggestions and criticisms. So that together we could make the ERC Journal, increasingly meaningful and effective.*

A brief one-liner under different sections provides the purpose of each section.

## **EIA News Exclusives**

*(Here we shall carry news of relevant happenings from within and outside the country-Editor)*

### **EXPANSION OF MONNET ISPAT CHALLENGED BEFORE NEAA**

The National Environment Appellate Authority (NEAA) admitted for hearing on merits in May 2008 an appeal filed by Ramesh Aggarwal of Jan Chetna Kendra, Raigarh against the expansion plans by the Monnet Ispat Ltd located at Raigarh, Chhattisgarh. Earlier, the Public Hearing on the project had been 'postponed' in view of the faulty EIA report and the project proponent being unable to answer the queries raised by the public.

The matter was heard by the NEAA at length over two hearings when the issue of condonation of delay in filing of the appeal was taken up. The delay on the part of the proponent company to publish the information within the stipulated 7 days from the grant of clearance and to instead publish it 43 days after the clearance was granted by the MOEF convinced the NEAA to decide in favour of admitting the Petition.

The main issue before the NEAA is the validity of the decision of the District Collector to postpone the Public Hearing and the nature of the public consultation process under the EIA

Notification, 2006. The District Collector as head of the Public Hearing panel had ordered for postponement of the hearing on the ground that the project proponent could not satisfactorily answer all the questions posed by the general public. The Pollution Control Board and the Expert Appraisal Committee (EAC) however took the view that the Collector has no power to postpone the Public Hearing and could only conduct the same. According to them the power to postpone the same lay with the Pollution Control Board.

NOTE

*The proceedings and the outcome of the hearings at NEAA is crucial and is likely to clarify the provision of the EIA Notification, 2006 with respect to the role of the Collector in the Public Hearing process. The people attending the Public hearing were pleased with the Collector's decision to postpone the Public Hearing. As noted in the Minutes of the Public Hearing, the people stated "we honour the decision of the Chair to postpone the Public Hearing". Hence it later came as a rude shock to them when it was learnt that the Collector's decision had been overruled and an environmental clearance (EC) for the expansion project had been granted to the proponent by the MOEF. Accordingly the said appeal against the order of the MOEF has been preferred before the NEAA.*

**PROPOSED DAMS OVER GANGA RIVER CHALLENGED**

Environmental Clearances granted by the MOEF to a series of 'run of the river' dams in Uttarakhand which includes the Kotlibhel stage II, I A and I B has been challenged before the National Environment Appellate Authority (NEAA). The projects have been challenged by noted Vimal Bhai of Matu People's organization and noted economists Dr Bharat Jhunjhunwala along with various Panchayats of the area. The Appellants have raised the following issues in the Appeal:

- No cumulative impact assessment for the series of dams coming up on the Bhagarathi river has been done;
- The cultural and religious significance of the river and and impact if any on them due to the dams has not been carried out in the Impact Assessment studies.
- The impact from landslides due to dams has not been assessed.
- The project will lead to the submergence of the holy confluence of the River Alaknanda and Bhagirathi.
- The Impact of the increase in sedimentation and stoppage of flow due to dams on the Mahasheer and the Otter population in the river has not yet been done.

**NOTE:**

*Of late the issue relating to the dams in the Himalayas has received national and international attention with the fast unto death led by Prof G. D Aggarwal opposing the series of dams proposed / underway on river Bhagirathi. This has led to the temporary stoppage of work on the Pala Maneri and Bhairon Ghati project. It may be pointed out that the projects on the Bhagirathi River had been challenged before the NEAA as well as at the High Court of Delhi. The NEAA refused to quash the clearance given by the*

*MOEF to the project but allowed it to continue with certain additional safeguards.*

*The Himalayan River system is seeing a rush of new projects. It is essential that opposition and involvement of those concerned about the ecological and social impact, if any, of these projects should start rather early at the project planning stage and in advance of the Public Hearing stage so that the project proponents are not able to present a fait accompli situation to all concerned. The respective Pollution Control Boards, the Expert Appraisal Committees and the Forest Advisory committees need to be informed of the harmful consequences if any of the projects in a timely manner so that the decision making at the MOEF is in a much more informed manner than it seems is happening at present. It is important to ensure that the necessity to appeal before the NEAA or any other judicial/administrative forum by the affected people becomes an exception rather a norm as is at present.*

### **HIGH COURT DECISION ON YAMUNA RIVER BED AWAITED**

It has been over six months since the Delhi High Court after hearing the PIL filed challenging the Environmental Clearance granted by the MOEF for the construction of Commonwealth Games Village in the river bed of river Yamuna to the DDA and the impugned structures under construction by the Delhi Metro (DMRC) on the Yamuna river bed was reserved. As concerned citizens await the verdict, construction activities continue at both the sites.

The Petition filed by Rajendra Singh, INTACH, Manoj Misra and Sanjay Kaul raised certain pertinent issues relating to the protection of flood plains as well as the arbitrary manner in which the Games Village project was granted approval by the Ministry of Environment and Forests. The main issues raised were:

- The Expert Appraisal Committee (EAC) had recommended first for the change of the site and later for raising only temporary 'dismantable' structures and that the construction should be based on the assumption that the area be restored to the river, after the games were over in 2010.
- No alternative site was examined for the Games village in the city by the DDA.
- There was a deliberate concealment from MOEF by the DDA of the NEERI report, 2005 which clearly recommended against raising of any permanent structure of residential or commercial nature on the River bed.
- The allotment of land in the river bed by the DDA to DMRC to build a polluting depot, stations, residential quarters and a mall cum station was arbitrary and without any consideration for the manner in which it would impact the river
- All expert studies in the past had advised against any such construction in the river bed.

#### **NOTE:**

*It is notable that while the High Court of Delhi heard the matter with great interest and patience over 5 months including a site visit made by the members on the bench, it is a matter of great concern to the*

*petitioners and all others as to why the judgment remains reserved for so long, while the construction at the site both by the DDA and DMRC continues. The petitioners at the start of the hearing by the Court had brought to the attention of the Court, the fact that construction had begun at the site in question, to which the court had remarked 'let them build at their own risk'. Accordingly the petitioners had not insisted on any grant of stay by the court on construction at the site by the concerned agencies in the hope that the court's decision would take care of the matter. Now this delay in the matter may soon make the impugned constructions a fait accompli and thus raises a wider question of time frame if any that the Courts are bound either by rules or tradition to pronounce their judgment at least in matters in which time is of essence.*

### **DIBANG DAM FACES STIFF OPPOSITION: GOVERNMENT RELENTS**

The Government on 13-08-08 has cancelled the proposed Public Hearing for the proposed 3000 MW Hydel Power Dam to be located in Dibang District of Arunachal Pradesh. For more than a year, local tribal communities have been protesting against the dam - touted to be amongst the highest in the country - on the grounds that it would devastate the fragile ecology and destroy the culture and sources of livelihood of the Idu Mishmi Community.

The Dibang Dam is a classic instance of a struggle of a local community for access to information and participation in the decision making process that has resulted in a partial victory for the community. When the first Public Hearing was announced, local tribal community sent a legal notice through Legal Initiative for Forest and Environment (LIFE) requesting for postponement of the hearing in view of the fact that the Environment Impact Assessment report was not readily available and that too only an electronic version was made available. The Government relented and directed that no Public Hearing be conducted till the EIA reports are made available at the designated places for easy access to the community members.

As the 1<sup>st</sup> Stage of the Public Hearing process was underway, in a shocking development aimed clearly at undermining the public consultation process, the Prime Minister of India, Dr Manmohan Singh was persuaded to lay the foundation stone for the project at Itanagar, the State Capital located more than 500 Km from the project site ! This development was met with stiff criticism and opposition both locally and nationally.

Finally, the date for the second Public Hearing was fixed on 20-8-2008. However, the community was shocked to learn that the place for conducting the Public Hearing was more than 100 Km away from the affected villages. The Environment Impact Assessment Notification, 2006 provides for conducting of the Public Hearing in or in proximity to the project



site. In the North Eastern Part of the country characterized by undulating terrain and heavy rainfall covering 100 Km could very well take even up to a day's journey.

On 13<sup>th</sup> August, the community members were pleasantly surprised to know that the proposed Public Hearing had been cancelled. Even more important was the fact that the Chief Minister of the State has called for a meeting with all the concerned organizations who have been raising the issue with respect to the Dam on 20-8-2008.

*Note: The Dibang Dam in Arunachal Pradesh if approved will be amongst the most destructive dams and will wipe out some of the last wildlife refuge in North East harboring highly endangered species like the Mishmi Takin and the Hoolock gibbon among others. Already a critique of the EIA has revealed glaring omissions and reflects the casual nature in which the EIA report has been prepared.*



## **HUMAN DAM STOPPED 'FOR THE TIME BEING'**

In a significant development, the Supreme Court in May refused to approve the diversion of forest lands for the Human Irrigation Project proposed to be located in Chandrapur Forest Division in Maharashtra. The project proposed by Vidharba Irrigation Development Corporation (VIDC) was contested before the CEC (Central Empowered Committee) by the Bombay Natural History Society (BNHS) on the grounds that it will destroy the narrow corridor linking the Tadoba Andheri Tiger Reserve with the Brahmapuri Forest Division and to other protected areas.

### **EIA Report of the Issue**

*(Here we plan to carry a brief critique from experts of a EIA report as available in the public domain – Editor)*

#### **Thermal Power Plant of JSW Energy Ltd (JSW) at Ratnagiri (Maharashtra)**

The Environmental Impact Assessment (EIA) Report for the proposed 1200 MW thermal power plant to be set up by JSW in District Ratnagiri, Maharashtra, which has been prepared by EQMS Pvt Ltd, has failed to provide a detailed and correct assessment of the impacts that the thermal power plant could have on the environment. It contains inadequate and false information aimed at misleading the Expert Appraisal Committee(EAC) and in facilitating the Environmental Clearance from the MOEF.

Apart from the above, the proponents have not followed the due process of environmental clearance itself. To begin with there were two versions of the EIA reports. The proponents of the project allegedly changed the EIA report 'selectively' without informing either the Public or the Expert Appraisal Committee. The deliberation of the EAC does not reveal the fact that any suggestion came from the EAC to change the EIA Report. In fact, EIA Notification, 1994 does not provide for any modification/ alteration of an EIA report after the Public Hearing and hence the action of the proponents is clearly illegal and contrary to law.

The proponents violated the mandatory procedure as stipulated in EIA notification of 1994 as amended in 2002 by failing to make available the complete Environment Impact Assessment report before the public hearing.

The EIA report does not talk about any alternate locations. As per the EIA Notification 2006 it is mandatory for the project proponent to compare various alternatives and to identify the one that represents the best combination of economic and environmental costs and benefits. There is no mention of the alternative site in the EIA report. Also in the application form submitted by the proponents before the EAC there is no mention of any alternate site. It simply states that MoU has been signed between JSW energy limited and the government of Maharashtra for the development of the land. This shows that the only reason given for selecting the site was the existence of a MoU and solely on this ground no alternative sites were considered.



No information has been provided on the existence of mangroves within the vicinity of the proposed thermal power plant. Neither the EIA report nor the questionnaire provides any detail on the existence of mangroves. However, as per ground survey conducted by Dr P.R. Arun, several mangrove areas are present in the Jaigad creek in close proximity i.e. all within 10 km radius of the project and some within 4.5 km from the proposed thermal power plant. Hence the area is ecologically sensitive and of high conservation value. This aspect has been totally neglected in the EIA report. In fact there is no mention of the existence of mangroves in the entire EIA report.

There is no mention of the Ratnagiri – Sindhudurg resource region regional plan 1981-2001, the draft of which was approved in 2001 and continues to operate till date. In chapter 10 the regional plan, the list of industries, which can be set up, is clearly mentioned. Thermal power plants have not been included in the said list. The EIA report makes no mention of the fact that there is a regional plan in place, which does not allow for thermal power plants in the Ratnagiri-Sindhudurg region.

Studies of well-respected Indian scientists have clearly shown that cultivation of the fruit of the tree *Mangifera indica* (mango) is extremely vulnerable to pollution from coal-fired thermal power plants. There is huge difference in SO<sub>2</sub> emission as stated in the application form and that which is mentioned in the EIA report, which is a deliberate concealment of the factual data. The deleterious impact of pollutant emissions on mangoes and other agricultural activity has not been assessed in this case. The failure of the EIA report to provide an assessment of how emissions of sulfur dioxide might impact the cultivation of mango in the vicinity of the proposed location of the power plant deprives everyone of essential information to decide whether the proposed location of the power plant is sound or not.

Also the impact of radiation due to thermal power plant has not been studied by the EIA conducting agency. Neither the EIA report nor the Expert Appraisal Committee of the Ministry of Environment and Forests considered the aspect of radiation threats due to thermal power plants.

The objective of EIA is to foresee and address potential environmental problems/concerns at an early stage of project planning and design. Unfortunately, the EIA report in this case, lacks the correct assessment of the identified impacts and it has also failed to take into consideration many important issues like radiation hazards, effect on mangoes, mangroves etc. The study has been done just for name sake and the proponents and EIA conducting agencies have forgotten its true objective, that is, of identifying the key impacts/issues and formulating mitigation measures so as to assist planners and government authorities in the decision making process.

*[Based on the critique done by Dr. P.R. Arun and submission made before the NEAA]*

*(Dr P. R Arun has been associated with the EIA wing of SACON for about five years. He has authored around 40 scientific publications including 17 EIA Study reports on various developmental projects across India. He has also served as an invited member in the CPCB panel and currently working as freelance consultant working on different environmental issues.)*

## Topic of the issue

(Here we propose to discuss and highlight a term relevant to the EIA governance in the country – Editor)

### Expert Appraisal Committee (EAC) – Role and Effectiveness

*The EAC are supposed to comprise of environmental experts who would evaluate projects in terms of their potential to cause environmental harm. Unfortunately, the minutes of the EAC meetings generally reveals no such concern. Over a series of articles **Ritwick Dutta**, Co convenor **ERC**, will highlight the manner in which decision making by the EAC takes places*

The new EIA regime in the country was introduced in September, 2006 .It is now almost two years and hence the time has come to critically look at the functioning of the Ministry of Environment and Forests so far as grant of Environmental Clearance is concerned.

The new EIA notification is much more detailed and incorporates globally accepted EIA terms such as “screening’ ‘scoping’ ‘appraisal’, ‘public consultation’ etc. One of the most crucial role therein is performed by the Expert Appraisal Committee (EAC). The EAC carries out the Appraisal of a project. ‘Appraisal’ has been defined to mean:

*“the **detailed** scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a **transparent manner** in a proceeding to which **the applicant** shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same”*

Few questions arise?

- Does the EAC conduct ‘detailed Appraisal’?
- Is EAC really a body of Experts?
- Can the decision making be regarded as ‘transparent’ when only the applicant (the project Proponent) is allowed to participate in a EAC meeting?

The minutes of the several EAC meetings reveals that the EAC meetings held within the closed doors of Ministry of Environment and Forests are often oblivious of the ground realities. The EAC relies on the Project proponent for information. Routine clarification is sought and little effort is made to ascertain as to whether the clarifications have been provided or not. After two to three meetings, the EAC generally recommends for approval. Approval is the norm and rarely is a project rejected.

An interesting case emerges from a reading of the minutes of the EAC for the Sarvona Mines of M/S Zantye. The EAC meeting was held on 16-17 of March, 2007 in which additional Terms of Reference (TOR) were framed by the EAC and a condition was imposed that the EIA should be prepared in terms of the new TOR and a public hearing be conducted after the revised EIA report has been prepared. Surprisingly and 'perhaps' unknown to the EAC, the Public Hearing was already announced for the project more than a month back and the Public Hearing took place on the 24<sup>th</sup> of March, 2007 i.e. within a week of the EAC meeting. Could the new EIA as per the fresh TOR be prepared within few days and circulated for the mandatory one month period when the Public Hearing itself was held within a week of the EAC meeting? As per records no fresh EIA was conducted and no second Public Hearing was held but still the EAC headed by a former Additional Secretary of the Ministry of Mines cleared the project in the next EAC meeting held in 18-20<sup>th</sup> July 2007. The minutes of the meeting reveal that no questions were asked as to whether a new EIA report had been prepared or a Public hearing based on that EIA was held.

In case of another mining proposal from Goa in Rivona (Borga Mines of Pandurang Timblo Industries), it is found that during the Public Hearing held for the project, every single person present had opposed the project. The minutes of the Meeting signed by the Additional Collector noted that every single person and every representation received had opposed the project in view of its social and ecological impact. Strangely, the EAC while recommending approval to the project did not deliberate at all nor give any reason for overruling the viewpoint of people present at the Public Hearing. The EAC minutes merely state "Public Hearing was held on 31-1-2007." No discussion, no reason for not considering the minutes of the Public hearing is provided in the Minutes of the meeting. There is no evidence on record that the EAC carried out any detailed scrutiny of the Public Hearing proceeding as is mandated in the EIA Notification.

All these examples leave one wondering if we really have any 'experts' sitting in the EAC and whether they carry out any 'transparent' (when only the MOEF officials and the project proponent sit in these meetings) 'appraisals' as mandated or is it just a façade being played on the nation and its natural environment?



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## Mindless Mining in Goa: Role of EAC

*The fate of Goa is now in the hands of the Additional Expert Appraisal Committee on mining which approves mining projects in the State with remarkable speed. **Claude Alvares** of **Goa Foundation** provides an insight into the functioning of the EAC. These are excerpts of a note submitted before the National Environmental Appellate Authority*

1. The Expert Appraisal Committee (EAC) set up by the Ministry of Environment & Forests under the provisions of the EIA Notification of September 2006 makes recommendations relating to the environmental impacts of development activities and also whether the project may be granted environment clearance. There are several EACs. Of the many, two have been specifically set up to recommend (or reject) environment clearance for mining leases. There are two EAC's for mining. The additional Expert Committee (headed by M.L Majumdar) is responsible for appraising mining projects located in Goa.
2. This note is in respect of the technical deficiencies noticed in the working of both EACs. These deficiencies are so glaring that the very competence and expertise of the experts on these EACs are now seriously doubted. In fact, many of the environment clearances issued are being challenged on grounds of incompetence and that they are wholly inadequate to deal with the environmental issues raised in the public hearings and/or the problems created by individual mines.

3. The more important and critical aspect of the EAC's work in respect of mines in Goa is that each mine has been discussed in isolation from other mines approved – often in the same area or village. Almost a classic example of this scenario is provided by Colomba village in south Goa where 23 mining leases exist. If all these leases are cleared to operate, the entire village – including settlement, agriculture, schools, tanks, etc – would be physically extinguished. Several mining leases from this village have been taken up by the EAC in isolation from the others either already approved or which may be approved in future. In fact, neither the minutes of the EAC nor the EC orders record an awareness or recognition that these mines are adjacent to mines in the same village or that other leases from the same village have been granted ECs. Neither the minutes of the EAC meetings nor the ECs themselves record any discussion or knowledge of the displacement of life and livelihood by the operations of these mines, seen either singly or collectively.
4. If there is no consciousness of this aspect in the EAC's functioning, then the very real problem of the cumulative impact of these mines on the environment and ecology of the village would clearly not have been considered. In actual fact, it has not been considered as is clear from the minutes of the EAC and the EC orders.
5. **The procedure at the moment is that any person or company would directly approach the ministry for EC which is granted independent from all other clearances.** Thus, the environment clearance does not deal with impact on forest. That is left to the forest advisory committee. What sort of environment clearance is this which excludes consideration of the impact of mining on forests? Shouldn't the forest clearance be prior to the environment clearance? If the environment clearance is granted prior to the project, will forest clearance be denied, since it is also issued by another wing of the Ministry of Environment and Forests? In many cases, the main issue is the location or operation of the lease in a forest area, so what sense if an environment clearance is granted prior to the clearance under the FCA, 1980?
6. **The Forest Department of Goa has publicly conceded that there is no more land available in the State of Goa for compensatory afforestation. In such a situation, how can forest clearance be granted? If forest clearance cannot be granted, how could environment clearance be granted?** If an environment clearance is granted without a forest clearance, would such a clearance not be technically and scientifically deficient?
7. To return to the environment clearance process: after the project proponent or mine owner has applied for an EC, the EAC (post-September 2006) draws up terms of reference (TORs). These are of a general nature and do not deal with the specific mine in question or its impacts. Thereafter the EIA and EMP must be prepared in terms of the TORs framed by the EAC. These documents are then put up for public hearing. The report of the public hearing is then transmitted by the Pollution Control Board to the Ministry of Environment. Thereafter the EAC must once again ensure that the task has been properly completed and that the submissions made at the time of hearing are incorporated in the final EIA report. After this is completed, the EAC recommends or rejects grant of environment clearance. Thereafter the EC order is issued by the MoEF.
8. **It needs to be mentioned here that not a single case of iron/manganese ore mines in the State of Goa was rejected by the EAC. It is an admitted fact that mining has caused enormous damage to the delicate environment and ecology of Goa. However, all existing mines**



**operating, despite the problems they were causing, were regularized, thus effectively reducing the environment clearance procedure to a complete farce.** The only difference the EACs made was to enable the mine owners to now flaunt an official piece of paper which gave them all the legitimacy they required. Not one of these ECs either dealt with the environmental problems caused by the individual mine or proposed measures for coping with such problems in future.

9. **From the minutes of both the EACs, it is quite apparent that very little actual consideration was given to the results of the public hearing process.** For example, in the State of Goa several public hearings have unanimously demanded rejection of EC for a specific mining lease due to indiscriminate damage to the environment or village livelihood. However, all these proceedings have been spurned by the EAC and the MoEF. It is doubted that a committee that often deals with more than 20-40 leases at each meeting would have the time to peruse records of public hearings and video recordings (that sometimes go on for several hours). **If the videos of the public hearings are not seen by the EAC, why are they being taken?**
10. **Thus the entire process of the public hearing has been turned into a mockery and the public are fooled into thinking that they have a say when actually their views are not even read or considered. In fact, none of the EC orders or EAC minutes records that the proceedings of any public hearing were examined and considered by the EAC and the MoEF. Not a single issue raised in any public hearing has been noted in any of the minutes.** The minutes of the meetings of the first EAC, in fact, which approved most of the destructive mines (including three mines in wildlife sanctuaries) do not even mention public hearings!
11. **An equally critical aspect of the functioning of the EAC is that it rarely made site visits to understand any of the issues.** The EAC is quite aware that mining has caused enormous turbulence in the State of Goa since it is devastating huge forest areas and has disrupted the lives and livelihood of long established village communities, particularly their agriculture and water supplies.
12. **The Additional Expert Committee (headed by M.L Majumdar) EAC set up in September 2006 did not visit any of the mines till environmentalists made an issue of this. So a visit was finally made on August 4, 2007, after all the major problem mines had already been granted environment clearance. This visit comprised only two members and the single-day visit was to a couple of mines.**
13. The Ministry of Environment and Forests, however, appears to be been given a direction not to obstruct any mining activity in the State of Goa. Its actions showed it to be extremely dedicated to keep the mines of Goa running by hook or by crook. Certainly, the speed with which environment clearances were granted was quite stunning. In order to maintain this speed, all important issues had to be summarily dealt with. It is a shame that the EAC went along with this plan of action.
14. Another interesting issue at the EAC is that it accepts at face value information provided by the applicant for the EC. Thus, all project proponents provide incorrect data in respect of the distance of the mining lease from notified forest, sanctuaries, national parks, river beds, settlements, agricultural fields, etc. The information is not verified by any local government official and is taken as true by the EAC and the MoEF. Thus, in one case, the river is shown at a distance of 2 kms from the mining lease when the lease is actually on the river bank.

15. Similarly with forests: one EC granted states “there is no forest on the lease”. However, it later transpires there is forest on the lease, that too, identified by an Expert Committee set up under the Godavarman order of the Supreme Court. The EC is not revoked even after a complaint is filed with the MoEF. The false data are routinely accepted by the EAC and the Environment Ministry.
16. **The state of Goa does not comprise more than 1% of the total land mass of India. However, it exports more than 50% of the ore that leaves Indian shores.** At last count, the total iron/manganese ore exported was in the region of 30 million tonnes. If we consider that for every tonne of ore removed, four tonnes of overburden, top soil and reject material is generated, this means that 120 million tonnes of Goa’s earth are being shifted or excavated and extracted every year in the interests of the Chinese economy. Would the beautiful state of Goa outlast this temporary, non-renewable extraction at this rate?
17. **It is important to note that while mining occupies over 8% of Goa’s land area, contribution of mining constitutes only 4.2 % of the State GDP. The Centre for Science and Environment’s *State of India’s Environment Report*, (2008) warns that if all the applications for leases under various stages of processing are cleared, as much as one-fourth of Goa will be under mining.**
18. Likewise, if the other cumulative effects were put together for economic valuation, the mining industry would be hard put to pay up. Just a few examples will suffice: the National Institute for Oceanography has studied the impact of the huge volumes of mining sediment that have now gathered within the two major estuaries of Goa – Mandovi and Zuari. It has calculated huge losses in terms of the fauna of these estuaries. The IIT, Mumbai, has carried out studies of water losses due to pumping from mines. Mayem Lake, a major tourist resort, is in danger of dying, due to sedimentation. A huge number of paddy fields have silted up: a renewable resource killed by a non-renewable industry.
19. **The social impact of mining activities, particularly the impact of mining activities on the health of people in the mining areas, has never been considered by the EAC.** Data is available, including a recent report from The Energy and Research Institute (TERI). In fact, the Ministry of Environment and Forest has not even placed before the EACs the reports it has itself sponsored over the last decade on the impacts of mining on the different ecosystems of Goa.

## **EAC AND THE COMMONWEALTH GAMES VILLAGE**

*As the Olympic games 2008 closed, closer home in the capital city of Delhi, a Citizens initiative to fight to save the river Yamuna and its river bed from the planned destruction and privatisation of the river bed under the cover of Commonwealth Games village is currently underway. The genesis of the citizens movement lay in the blatant and arbitrary manner in which the Ministry of Environment and Forests overlooked the recommendations of the EAC for construction of only temporary dismantable structures (so that the river bed could be restored to the river) and approved construction of permanent structures in the river bed. Sadly, the EAC remained a mute spectator to this vandalism of the river. **Manoj Misra**, Co –Convenor of ERC writes:*

Delhi Development Authority (DDA) is currently building a residential complex in the “name” of Commonwealth Games Village over 59 ha in the river bed of river Yamuna in East Delhi. This construction is being carried out by EMAAR MGF, a real estate consortium led by the EMAAR group of Dubai, on behalf of DDA under the PPP (Public Private Partnership) mode of working.

The Environmental Clearance issued by Ministry of Environment and Forests (MoEF) to DDA for the said construction has seen widespread criticism and highlights the cavalier fashion in which the MoEF has been dealing with such matters in utter disregard of public trust imposed on the MoEF vis a vis safe guarding the natural environment of the country.

The facts of the matter came to light when file noting of the relevant file were accessed under the provisions of the Right to Information (RTI) Act.

A perusal of the file noting from 1 November 2006 to 23 April 2007 in File No. 21-475/2006-IA-III of the Ministry of Environment and Forests, MoEF points to the fact that the Expert Appraisal Committee (EAC) dealing with ‘New Construction Projects and New Industrial Estates’ had taken enough pains and applied themselves to the task at hand but its appraisal and recommendations had been ignored and over ridden by the MoEF officials in an illegal manner and under pressure from the proponent namely the DDA (Delhi Development Authority).

14.10.06; 03.11.06 and 1.12.06 – The proposal of Environmental Clearance for construction of Commonwealth Games Village in the river bed of river Yamuna over 59.28 ha land was appraised by the EAC at its 29<sup>th</sup>, 30<sup>th</sup> and 32<sup>nd</sup> meeting respectively. The EAC also made a site visit on 2<sup>nd</sup> November 2006.

*In the former meeting, the Committee had made a number of observations on the environmental concerns about the location of the project in the river flood plain; creation of efflux in the river during high floods; interference with recharge of ground water; adverse effect of filling fly ash over the project site; high level of noise from the railways and national highway and high traffic density induced by the project and bottlenecks that would be created on east-west link etc. The committee also suggested to DDA to find an alternate site not involving such environmental issues....*

Further it is found from the file noting that:

*While the Committee does not doubt that time has already become a constraint, the Committee is not convinced that environmental impacts and their mitigation have been studied to a satisfactory level. Under the circumstances, the Committee will go by the ‘Precautionary Principle’ and emphasise the point that, as far as possible, the proposed works should not be of a permanent nature. Since the design of the structures is still to be made, it should be possible to take this point into consideration and adopt*

*dismantable structures. Unless detailed studies lead to the conclusion that the proposed structures can be left behind permanently, the proposal should proceed with the assumption that the river bed may have to be restored to the river.*

The manner in which the officials at MOEF and DDA colluded to over ride the recommendations of the EAC as above in an illegal manner and in complete violation of Para 8 (ii) and (vi) of the EIA Notification dated 14<sup>th</sup> September 2006 which invalidates the EC (Environmental Clearance) granted to DDA by the MOEF on 2<sup>nd</sup> April 2007 is another story (presently the matter is *sub judice* at the High Court of Delhi) which shall be covered in due course in these columns.

#### ISSUES THAT MERIT CONSIDERATION

a) What happens after the EAC has given a particular recommendation on a proposal?

*According to Para 8 (ii) of the EIA Notification of 2006 'the regulatory authority (ie the MOEF) shall normally accept the recommendations of the Expert Appraisal Committee. In cases where it disagrees with the recommendations of the EAC, the regulatory authority shall request reconsideration by the EAC within 45 days of the receipt of the recommendations while stating the reasons for the disagreement. The EAC shall in turn consider the observations of the regulatory authority and furnish its views on the same within a further period of 60 days. The decision of the regulatory authority after considering the views of the EAC shall be final'.*

It is notable that this process was ignored in its entirety by the MOEF in the instant case of the construction of permanent buildings in the name of Commonwealth Games Village in the river bed before EC was granted by MOEF to DDA for starting of the construction work on 2 April 2007.

b) What is EAC's role and powers if any, if it's recommendations are amended or upturned without following the provisions of Para 8 (ii)

The Notification is silent on this matter.

c) How does EAC ensure that its expert recommendation is not taken lightly by either the MOEF or the project proponent?

The EAC which is presumed to be an expert body of eminent people who give their time for a cause has no mechanism or authority to ensure that its recommendations are not taken lightly.

The EAC has under the current EIA Notification of 2006 no suo moto authority to insist on its recommendations being followed if the due process under Para 8 (ii) of the EIA Notification of 2006 has not been followed. At the most the members can express their displeasure or if the

issue was critical enough as it was in the instant case (where the future of the river was involved) then they could resign which would create a public pressure on the authorities concerned. But there is nothing in the public domain to suggest that anything of this kind happened in the instant case.

## Campaign



## Condemn and Reject the Indian Mining Policy

*(The Ministry of Environment and Forest is known for granting speedy approval for mining projects. The states like Goa and Orissa are already bearing the brunt of such hasty approvals, the new Mining Policy will only make things worse for the ecology and escalate conflicts. **R. Sreedhar**, Co Convenor ERC and Managing Trustee Envirionics Trust comments)*



**The New Mining Policy, 2008 is for the appropriation of water, land and natural resources for private profits.**

The National Mining Policy 2008, which has come after a lot of criticism of the existing mining conditions in the country as well as complaints by the States of the paltry sum that mining provides to the states, is a regressive policy to say the least. The new policy there is nothing at all for both communities and the respective state governments, it is clearly for private profits and centralisation. It therefore is diametrically opposed to basic preamble of the constitution – of being social and a republic!

Mining is undoubtedly the sector that causes maximum environmental and livelihood damages for the communities. The entire policy has devoted just couple of paragraphs and takes a convenient shelter in the name of high sounding words such as 'sustainable development', 'international best practices' without any mechanism to ensure how this could happen. The policy does not even contain the words women and children who are the worst sufferers.

Even in its overall strategy, it jargonises more than what it would deliver for example - "However, a disaggregated approach in respect of each mineral will be adopted and a mineral specific strategy will be developed. To maximise gains from the comparative advantage which the country enjoys intra se mineral development will be prioritised in terms of import substitution, value addition and export, in that order." Let us for example take the case of Bauxite – ore for Aluminium. The value-add is significant if we were to use for strategic purposes such as aircraft and spacecraft building and not in merely exporting raw ore or the metal itself. Yet the rapidity with which the leases are being granted, most bauxite will be exhausted even before we make the first indigenous aircraft. Does this jargon mean that the Government will discourage bauxite mining?

It hides behind the National Rehabilitation Policy without recognising that the policy has clearly stated that various sectors can do more than what is indicated minimally in this policy. It has very little to talk about benefit and stake-sharing which is becoming an international norm.

The policy has very little to say about safety in mining activities. While the DGMS concedes that it is desperately short of staff and has very little oversight over informal mines, the policy lacks clarity about what needs to be done. In fact, the government even does not have statistics or has been perpetually denying existence of killer diseases like silicosis, radiation impacts etc in the context of mining and the policy has no clues about these critical issues.

The policy clearly undermines the role of state governments and has very little for them in terms of enabling their capacities for utilising the resources and regulating the mining activities. Its focus seems only on how to make it easier for private mining interests. The policy propounds a skewed philosophy of mineral conservation without evaluating the technological status of the country, better-use opportunities and the need to conserve certain strategic minerals over time.

State governments and the communities should come forward to comprehensively condemn and reject this mining policy which has been promulgated without any process of consultation or taking into issues that are critical to the management of our mineral resources.

Let us remind the government “It is the question of the lives of millions of people, ordinary people, tribals and poor people. We have failed to guarantee their safeguard as far as their health and environment are concerned and at the same time we are taking away their land in the name of mining or in the name of processing under the guise of development”.

In his Republic Day speech of 2001, the then President K.R.Narayayan said ‘Let it not be said by future generations that the Indian Republic has been built on the destruction of the green earth and the innocent tribals who have been living there for centuries. A great Socialist leader has once said that a great man in a hurry to change the world who knocks down a child commits a crime. Let it not be said of India that this great Republic in a hurry to develop itself is devastating the green mother earth and uprooting our tribal populations. We can show the world that there is room for everybody to live in this country of tolerance and compassion.’

It is time that the policy planners and the political parties take India’s mineral resources seriously and be not led by corporates making this country look similar to some ‘banana republic’.

#### ***LAST WORD....***

The EIA regime introduced in 1994 and “reformed” in 2006 was originally intended to ensure protection of environment. For today’s decision makers in the executive, legislature and judiciary it is intended to achieve ‘Sustainable Development’, defines not as development that meets the needs of the present without compromising the ability of the future, but modified to mean “sustained development” at the cost of the environment, the people and countless species of flora and fauna.

Today, the sad reality is that the environment is least protected when it is most in need of it. The regulatory regime is being done away with amazing speed. At a time when series of roads are coming up the Government in its own wisdom thought it best to exclude most roads from the purview of EIA. To ensure that we are not behind China in destroying the ecology, the state has thought it fit to allow a rail connection from Himachal Pradesh to Leh through the Rohtang Pass. Some of our last remaining mountains will be ripped apart. The sad fact is that since

'Railways' are not included in the EIA Notification, no environmental assessment or prior consultation with the affected community will be necessary.

India's EIA governance has unfortunately become a paper tiger. The Expert Appraisal Committee comprising largely of people representing Industry, Government run Scientific Institutions and retired bureaucrats grant approval. Approvals to most projects are given in such a reckless speed that would shame a drunkard pressing the pedal. There is little to show on record that a serious application of mind had been made before clearing projects. Standard TOR's are prescribed, standard "Cut and Paste" EIA reports get prepared, often by fly-by-night EIA consultants and standard clearance letters are issued by the Ministry officials. No effective compliance mechanism exists. The only action seems to be standard letters written by middle and lower level officials to project proponents on compliance matters which are either not answered or plainly denied. There is no effective mechanism to ensure enforcement or compliance. The Courts in various decisions unfortunately tends to take the stand that 'if decision are taken by experts, the Courts will not sit as appellate authority'. Unfortunately, this approach seems to prevail not only in the Judiciary but also in quasi judicial bodies such as the National Environmental Appellate Authority (NEAA). Should environmental decisions not be questioned merely because it is taken by experts and high ranking officers and politician. In *Delhi Transport Corporation Vs DTC Mazdoor Congress [1991 Supp (1) SCC 600]*, the Supreme Court emphasized "individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection, do not go with these posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it". The EAC today represents such complacent presumption and unless the decisions are questioned, the country's environment is at serious risk.

The EIA Resource and Response Centre (ERC) has thus been set up at a time when the EIA governance is at present virtually non existent in terms of its real purpose and objective. This Journal is aimed at keeping a track of the developments in the field of EIA in a systematic manner and to provide a forum for sharing of ideas and experiences not only from India but also from the rest of the world.

We must all strive to bring about a transparent, honest, accountable EIA process into operation. Every passing day, the last remaining natural areas in India are being sacrificed by a handful of people comprising the various "Expert Committees" of the Ministry of the Environment and Forests.

The journal is being brought out just days after the Supreme Court cleared the mining proposal of Vedanta and Posco to mine forest areas in Orissa and NMDC to mine the Panna Tiger reserve

of Madhya Pradesh. The cries and the protests seems to have gone unheeded. There must be collective struggle and joining of movements to stop the State assisted and Corporate led plunder of natural India and one way among many others is surely through a real reform of the EIA process dictated not through multilateral funding agencies and industry associations but by the real need to protect the environment and the common people of the country.

*Ritwick Dutta*

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