

Forum for Policy Dialogue on Water Conflicts in India

SOPPECOM, 16, Kale Park, Someshwarwadi Road, Pashan, Pune 411 008, Maharashtra, India

Tel: +91-84119 94051/ 2588 6542 Fax: +91-020-2588 6542

Email: waterconflictforum@gmail.com;

URL: <http://waterconflictforum.org>; <http://conflicts.indiawaterportal.org>



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Draft EIA 2020 Notification

STATEMENT by the Forum for Policy Dialogue on Water Conflicts in India

The Steering Committee (SC) of the Forum for Policy Dialogues on Water Conflicts in India (Water Conflict Forum in short) has carried out a detailed and critical review of the extant Environmental Impact Assessment (EIA) governance system since 1994 in the country, with specific reference to the draft EIA 2020 notification which is up for public comments.

Consequently, the Water Conflict Forum finds that:

- a) There have been systemic and institutional shortcomings in the EIA governance in the country dating to 1994 and which have continued since then.
- b) All the subsequent amendments (first in 2006 and now proposed in 2020) to the EIA notification have not been based on any publicly available credible data or rigorous analysis of the pluses and minuses of the extant EIA notification and hence have carried forward the existing infirmities within the system.
- c) The Constitution places a specific duty (Art 48A) on the State that “*The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country*”. The Supreme Court has also held that a right to healthy environment is an integral part of Article 21 (Fundamental Right to Life) of the Constitution. The draft EIA 2020 notification by its attempt to dilute even the existing provisions of EIA 2006 notification fails to uphold either the State’s constitutional duty or citizen’s fundamental right to healthy environment.
- d) EIA Notification, being a subordinate legislation under the Environment (Protection) Act 1986 (EPA 1986), cannot promote any activity which is not **specifically** to protect and improve the natural environment as has been mandated by the EPA 1986.
- e) Anything proposed in the manner of delegation, rationalization or standardization of process/s or inclusion / deletion / upgrading / downgrading of any entry in the Schedule (list of projects/activities) must be **specifically** proved to be for the protection and improvement of environment and nothing else whatsoever.
- f) The EIA notification must be based on and uphold the demands of good science, specifically ecological science and no other consideration, whatsoever, can be given ascendancy over it.
- g) EIA notification must also organically build in Social Impact Assessment (SIA) into it to uphold citizen’s fundamental rights guaranteed under the Constitution.
- h) The EIA notification must uphold the well established principles of environmental jurisprudence including Doctrine of Non Regression; Polluter Pays Principle; Principle of

Inter-generational Equity, etc. Here the judgment dated 8th Dec 2017 of the principal bench of the Hon'ble NGT in OA No 677 of 2016 is relevant which has held that:
“Under the International law, the doctrine of Non-regression is an accepted norm. It is founded on the idea that environmental law should not be modified to the detriment of environmental protection. This principle needs to be brought into play because today environmental law is facing a number of threats such as deregulation, a movement to simplify and at the same time diminish, environmental legislation perceived as too complex and an economic climate which favours development at the expense of protection of environment”.

- i) The EIA notification cannot include in it any provision (like the para 22 in the draft EIA 2020 notification) that has already been struck down as being unconstitutional by the Supreme Court of India. The para 22 in the draft EIA 2020 notification deals with provisions to enable a *post facto* Environmental Clearance (EC) to projects that have been carried out by the project proponent without acquiring prior EC as provided by the provisions of the EIA Notification. A recent judgment dated April 1, 2020 delivered at the Supreme Court by Hon'ble J Chandrachud in Alembic Pharmaceutical Ltd has held that:

*“The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the **judgment in Common Cause** holds, detrimental to the environment and could lead to irreparable degradation. The reason why a **retrospective EC or an ex post facto clearance is alien to environmental jurisprudence** is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed.”*

- j) The EIA notification must provide for not only cumulative environmental impacts of similar projects in an area or rivers and streams but also assess the environmental impacts of entire sectors or even inter-sectors. Few examples of these sectors include energy, transportation, construction, mining, food production, recreation, pharmaceuticals, packaging etc. There is also a case for conducting strategic and regional EIAs to offset likely adverse impacts under the Precautionary Principle.
- k) There is a strong case for a full fledged legislation to be passed by the Parliament establishing EIA governance in the country on a firm and sustained footing and which does not remain subject to frequent amendments sometimes based even on extraneous considerations like the promotion of ease of doing business, etc.

Accordingly, the Water Conflict Forum calls for a total recall of the draft EIA 2020 notification and suggests that:

1. The central government constitute an expert committee headed preferably by a former judge of the Supreme Court with an eminent Environmentalist as a Co-Chair and having representatives in it from various relevant sectors (including civil society) to deliberate in a scientific, transparent, participatory and time bound manner on “*what should be an*

appropriate (that also fulfils India's international commitments made at Rio Earth Summit, 1992 etc) EIA governance legislation and institutional structure in the country to replace the existing one"?

The observations as made by the Water Conflict Forum in this statement (a - k) may be considered for inclusion in the terms of reference (TOR) of the said expert committee.

2. Pending the results of the deliberations of the said expert committee, let the central government remove immediately through executive action the following infirmities which are present in the EIA 2006 notification:
 - a) EIA reports on proposed projects not to be commissioned by the project proponent (PP) but by the central government itself through a transparent process utilizing the money deposited by the PP into a central kitty held by the central government. This shall take away the inherent conflict of interest (master-servant relationship between the PP and the EIA consultant) existing in the current process.
 - b) Do away with the practice of entertaining any 'rapid' EIA of projects.
 - c) Resolve the question of non inclusion of specific projects/activities like inland waterways transportation (IWT) projects; raising of embankments along rivers and streams and raising of large sized bridges / elevated roads across rivers and streams etc within the Schedule.

Steering Committee – Forum for Policy Dialogue on Water Conflicts in India

(Abraham Samuel, Chicu Lokgariwar, Eklavya Prasad, Gorky Chakraborty, S. Janakarajan, Himanshu Kulkarni, K. J. Joy, Manoj Mishra, Nafisa Barot, Neha Bhadbhade, Partha J. Das, R. Murali, S. P. Ravi, Sarita Bhagat, Shripad Dharmadhikary, K. P. Soma, Veena Srinivasan)

Contact person: K. J. Joy; Email: waterconflictforum@gmail.com; joykjoy2@gmail.com; Phone: 9766247320, 9422505473