9 November 2018

Shri C.K. Mishra  
Secretary,  
Ministry of Environment, Forest and Climate Change,  
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Subject: Comments to the draft Amendment (S.O. 4721 (E)) to Environment Impact Assessment Notification, 2006, issued on September 10, 2018

Dear Sir,

We write with regard to the draft amendment issued by the Ministry of Environment Forests and Climate Change (MoEFCC) on September 10, 2018. We appreciate the steps taken by the MoEFCC to seek comments on the draft notification. We are associated with the Centre for Policy Research (CPR)-Namati Environmental Justice Program. Along with our engagement with national level discourse (Annexure 1) on compliance and monitoring we have also been working on an action-based research project with communities affected by non-compliance of environmental safeguards in four states-Gujarat, Karnataka, Chhattisgarh and Odisha.

While we appreciate that Ministry has initiated the process of amending Section 10 of the Environmental Impact Assessment (EIA) Notification, 2006. Through this effort “to improve the compliance status of the implementation of the environmental clearance conditions”, we are happy to note that the Ministry has acknowledged the long standing problem of the huge compliance gap, which has been highlighted by affected people, civil society organisations, courts and the Comptroller Auditor General (CAG) of India. However, we are concerned that this process is still limited to government agencies and project developers. This has been a lacunae of the compliance and monitoring protocol from the time it was first included in the EIA Notification, and will continue to be so, if not addressed with this unique opportunity.

We would like to emphasise based on empirical research carried out in the last five years as part of the CPR-Namati Environmental Justice Program, we have demonstrated and documented 235 instances where the partnership of affected community members and regulators has demonstrated that it can go a long way in addressing non-compliance and strengthening monitoring. Annexure 2 and 3 are study highlighting some case studies related to this process.
Based on our on ground research and experience we would like to raise the following concerns regarding the current amendment.

- **Details related to “institutions of national repute” require disclosure to address challenges of conflict of interest and quality of assessments**

The draft notification mentions “government institutions of national repute” would conduct third party monitoring. It does not give details on who these institutions are going to be, how these institutions will be chosen, and in what all instances these institutions would be working. Their current involvement in the preparation of EIA reports and environment management plans should also be revealed. If these are going to be the same institutions of national repute which are part of the EIA process before an Environment Clearance is granted, it amounts to clear conflict of interest.

This is also particularly important because credibility of these institutions has also come to be questioned in several instances. In Annexure 4, we have attached a brief note highlighting a few instances where the credibility of these institutes have been questioned on serious grounds by fellow scientists, social movements and affected people. A reading of the annexure will reveal that the institutions of national repute have not been able to uphold basic requirements to carry out the studies, mapping exercises ensuring participatory decision-making as mandated by law. Only through the proactive and timely input from affected community members, citizens and civil society organisations the institutions of national repute have been pushed to make revisions and correct inaccuracies.

In addition, the CAG of India report in 2016 had also revealed that there were, “inadequacies in monitoring by third party/agencies in 201 projects”. All these observations put in question the credibility of these institutions to be able to independently carry out the required tasks. Specific sections of this report are attached as Annexure 5.

- **Need to disclose funding details for proposed monitoring protocol prior to accepting the amendment**

In 2013 the Ministry had asked the Central Pollution Control Board to conduct third party monitoring in Critically Polluted Areas. The CAG audit report in 2016 had found out that only five out of the 15 states undertook this. As per the CAG report, the Ministry in October 2016 had responded to the CAG stating: “due to paucity of funds and other administrative difficulties, the third party monitoring could not be performed by CPCB in 2015.”

Thus how the funds would be arranged to pay to these auditors becomes a critical question to be disclosed and widespread feedback to be sought on, prior to accepting any arrangement. The Gujarat Pollution Control Board has third party audit system under which the auditors were hired and paid by the firms directly\(^1\). We are deeply concerned about such arrangements where those whose compliance is to be audited are holding direct control over the payments for audits or monitoring to be done. Such a practice only encourages a deep nexus between project authorities and monitoring agencies leading to serious questions on the credibility, independence and outcomes of these audits. Such a situation also makes the compliance protocol vulnerable to the serious concerns similar to the EIA process where the project

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authorities funds EIA consultants to carry out impact assessments, leading to biased, inadequate and misleading assessment targeted at securing approvals only.

It is therefore imperative that the issue of funding and financing of these audits is disclosed and seriously debated upon prior to such an amendment is carried forward.

- **Need for a monitoring framework based on addressing impacts**

In our study which has been included as **Annexure 3**, we had highlighted that the monitoring protocols face three clear challenges. First they are mostly practiced as one-off inspections rather than ongoing efforts by the regulators for collaborative monitoring along with the affected parties. Second, they don’t act as deterrents against non-compliance. Checking the boxes after site inspections and giving warnings through notices, as components of these protocols have not been able to instill a commitment to comply amongst project developers. Third is the current focus on standards rather than effects of pollution. This is particularly visible in the practice of Pollution Control Boards (PCBs) whose site inspection visits are followed up by long-term scientific assessments of air and water quality, rather than taking immediate measures to address the impacts arising out of pollution.

The monitoring protocol followed by the ministry so far has relied heavily on the disclosure by project authorities and random monitoring carried out by the regional offices of the MoEFCC and the State Environment Impact Assessment Authorities. In some states like Gujarat, incident-oriented or complaint-specific monitoring is also carried out through vigilance committees in instances of emergency situations and accidents. But one crucial aspect that gets missed in the current enforcement regime of the government is regular and ongoing monitoring of non-compliance to prevent impacts or to take immediate remedial action on the observed impacts.

Below are mentioned two examples representing how ongoing monitoring can help address at least two routine problems related to monitoring and compliance of environmental safeguards:

- **Recurrent non compliance**: In Salhi and adjoining villages of the Sarguja district in Chhattisgarh, we have documented illegal discharge of mine wastewater since November 2014. At each instance the community members have reached out to the Regional Office of the Pollution Control Board through phone calls, letters or visits. Despite the problem being solved in 2014, it re-occurred four times after that. The latest recurrence was in July 2018, which was after an expansion was granted to the project in April 2018. In another instance, in Bhilalkhand village in Uttara Kannada, Karnataka, a landfill site was functioning in violation of the Municipal Solid Waste Rules. There was leachate coming from the landfill site and contaminating the agricultural lands and wells in the village. Since 2015, the community there has been seeking remedy from the local municipality. Action was taken by the Municipality in 2016 to resolve the issue by constructing a leachate pond and a covered structure for waste. However both in 2017 and 2018 there was recurrence of this problem during the monsoon season, and local communities had to repeatedly follow this through with the Municipality and regulatory authorities to ensure that the basic safeguards are followed.

- **Delay in securing evidence of non-compliance**: Environmental non-compliances can also lead to emergency situations where immediate action is needed. For example, there have been several instances in Vapi, Gujarat where industrial effluents have been discharged into the Kolak river. Communities that
have complained on these occasions have said that on an average in the cases where the vigilance squad has been called, it has taken it 12-14 hours to send someone to site. Between January and March 2016, communities complained of effluent discharge into the water four times. Their experience tells that by the time the Vigilance Squad reaches the points of discharge in the subsequent morning the tide from the sea comes in to the estuary at least twice, washing away the effluent discharge, making it impossible to collect evidence of the violation.

In both these instances, people living around industrial, infrastructure or extractive facilities continue to face impacts on their lives, livelihoods and health while non-compliance is recurrent and carried out with impunity. Therefore the current regulatory framework needs to go from randomised and adhoc monitoring to a protocol which proactively addresses the recurring impacts arising out of non-compliance. The present amendment unfortunately does not do this at all.

- **Missing public participation in the proposed “third party” monitoring**

Our experience of handling cases of environmental violations shows that 235 cases of environmental non-compliance has affected close to 3 lakh people. This implies that over 1000 people could face problems from a single case of environmental non-compliance. However, as discussed earlier, the current amendment relies on the same two actors i.e. the government and project authorities to be the two parties to steer the monitoring and compliance protocol. This system has so far not been able to address the problem of non-compliance. The “third party” proposed as part of the present amendment is not independent of the government at all.

Our evidence indicates that one of the best ways to address this issue is to develop a protocol that is geared to address the problems and impacts faced by the communities and citizens. In our 235 cases of environmental non-compliance observed by the local communities in the states of Gujarat, Karnataka, Chhattisgarh and Odisha, the communities’ efforts at close monitoring, collection of evidence and reporting of violations to environmental institutions has led to compliance in 115 cases. The rate of compliance comes out to be above 50%.

For eg. Affected communities from Bolani village complained to the Odisha PCB on how the effluent water from SAIL’s Bolani Iron mine in Keonjhar was impacting their agricultural fields. In their complaint they linked it to Special conditions 7,8,10 and 13 of the consent to operate issued by the PCB. According to the conditions, there should not not be any discharge without ensuring that the standards are met, mitigative measures are taken to prevent pollution of nearby water bodies and measures should be taken for run-off management. In the first site visit report the occurrence of the impact and non-compliance was denied but it was clearly recorded in the second. There was a marked difference in the first and second site inspection reports of the PCB, especially due to the presence of affected people during the second site inspection. It is based on this that the directions were issued and problem was partially rectified. The two reports are attached with this submission as [Annexure 6](#).

The role of public participation in addressing environmental issues is something that has also been reiterated in international treaties and national level planning documents. For instance:

- In 1992, at the Rio Summit, Principle 10 was adopted which said that, “*Environmental issues are best handled with participation of all concerned citizens, at the relevant level.*”
• The Planning Commission of India in 2000, suggested that pollution control could be better administered and monitored “if local community action groups are created/sensitised to take up vigilant community action against pollution. The Commission had suggested that this could be in such a way that the group monitors periodically the samples generated by the polluting industries and gets it tested in private labs. The Commission further stated that,”This would effectively prevent polluters-authorities nexus.”

• Article 51A(g) of the Constitution emphasizes on the role of citizens for protection and improvement of the natural environment, “It will be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”

The proposed amendment, thus, could be the much-awaited opportunity to create a space for public to highlight the social impacts of environmental violations and participate in environmental regulation. Unfortunately, it slips back into keeping the process limited to two parties without plugging a crucial gap in the compliance and monitoring framework that could go a long way in addressing the non-compliance problem as well as upholding the international standards of participatory environment governance.

• Existing statutory spaces for third party monitoring involving affected communities:

We would like to bring to the ministry’s attention that there are several existing provisions in the environmental and social justice legislations where public can be/is made a part of the monitoring system. For example:

- Under Section 24 of the Air (Prevention and Control of Pollution) Act 1981 and Section 23 of the Water (Prevention and Control of Pollution) Act 1974, any person can be empowered to conduct inspection or for any other functions that the Pollution Control Board entrusts the person with.
- There was a practice of provision for forming committees involving local community members for monitoring of hydro power plant projects on conditions mentioned in the environmental clearance letters issued to them. A letter of the Teesta III HEP in Sikkim is included as Annexure 6 as an illustration of the same.
- The Ministry of Rural Development, released a ‘Livelihoods Manual’. In this it was suggested that under the Mahatma Gandhi National Rural Employment Guarantee Act, communities can be involved at the habitation level through the formation of Habitation Level MNREGA Management Committees which can plan, execute and monitor all MNREGA works.
- As per Section 21 of the Right of Children to Free and Compulsory Education Act 2009, School Management Committees are formed at each school which consist of elected representatives of the local authority, parents or guardians, and they monitor the working of the school.

Keeping in mind the above-mentioned concerns, we suggest that the present draft amendment be revised with the following additions and clarifications and re-issued for public comments:

1. A mechanism that includes affected people as third party monitors to work in collaboration with regulators towards improving quality of monitoring and ensuring compliance with environmental safeguards should be presented. Participation of affected communities and constitutionally
recognised institutions at the village level such as Gram Sabha in monitoring could be one way to do that.

2. If this mechanism is to also include partnerships with ”government institution of national repute”, then clear disclosure of past record, conflict of interest and funding mechanism should be developed through public inputs before finalising this notification.

3. Clear guidelines and protocols should be developed for third party monitoring. These could cover details such as duration of response to complaints, protocol for site inspections which includes informing and involving affected communities, recording of violations and the record to be disclosed publicly within a short period of inspections, minimum standards of site inspection reports etc.

We would appreciate it if the ministry gives the above issues serious consideration and not proceed with the proposed amendment in the present form without the necessary clarification and discussions required. We would be willing to discuss all the above points and share our work on this issue in greater detail with the ministry.

Sincerely

Kanchi Kohli
Manju Menon
Meenakshi Kapoor
Krithika Dinesh

Bharat Patel
Mahabaleshwar Hegde
Santosh Dora

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List of Annexures:

Annexure 1: 2009 study on EC monitoring protocol titled Calling the Bluff: Revealing the state of Monitoring and Compliance of. Environmental Clearance Conditions
Annexure 2: Making the Law Count
Annexure 3: How Effective are Environmental Regulations to address impacts of industrial and infrastructure projects
Annexure 4: Note on quality of work carried out by government institutions of national repute
Annexure 6: Copies of Site inspection reports of Odisha PCB (as discussed in the letter)
Annexure 7: Environment Clearance Letter of Teesta III in 2006