

## **FAQs – Clearance Processes in India**

### **Environmental Impact Assessment**

#### **1. Question: What is an EIA?**

Ans: The Environmental Impact Assessment (EIA) was notified in 1994 (amended in 2006) in order to regulate the impact of development activities on the natural environment of the country. UNEP defines Environmental Impact Assessment (EIA) as a 'tool used to identify the environmental, social and economic impacts of a project prior to decision-making. It aims to predict environmental impacts at an early stage in project planning and design, find ways and means to reduce adverse impacts, shape projects to suit the local environment and present the predictions and options to decision-makers.

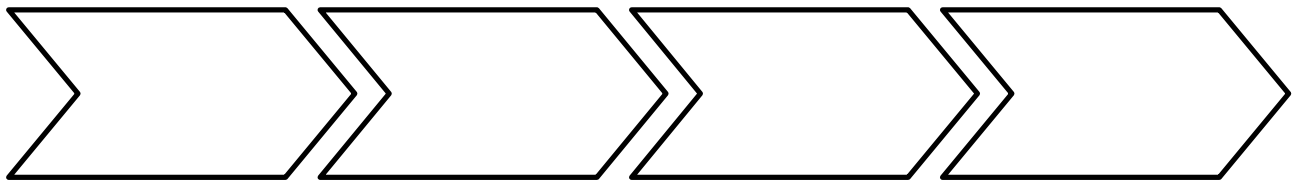
#### **2. What projects need an EIA?**

Ans: According to the EIA notification of 2006, the construction or expansion of any projects which includes but not limited to, thermal, hydro and nuclear power, mining, oil and gas, infrastructure and construction projects- can only be undertaken after a prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government. These projects are divided into Category A and B, 'based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.' Category A projects require prior environmental clearance from the Central government, on the recommendation of Environmental Appraisal Committee (EAC). For eg., Nuclear Power and related projects such as Heavy Water Plants, nuclear fuel complex, Rare Earths will need a Clearance from the Central government. Category B projects on the other hand, will require an EC, except the ones with specific conditions fulfilled, from State/Union territory Environment Impact Assessment Authority (SEIAA), on the recommendation of the State or Union territory level Expert Appraisal Committee (SEAC). However, there are some Category B projects, which come under specific conditions, which will require an Environmental Impact Assessment report and, shall be termed Category 'B1', and remaining projects shall be termed Category 'B2'. For example, if an area comes under a 10 kms radius of a National Park or Sanctuary, it will be treated as a Category B1 project

and will need an EC. In the case of V Srinivasan Vs Union of India, the National Green Tribunal passed an order setting aside an EC granted by the Tamil Nadu SEIAA, given to a municipal solid waste processing plant because it was found to be located within 10 kms of the Guindy National Park.

### 3. Question: What is the process of an EIA?

Ans: An application in Form I with Form IA is made, after identification of prospective site. While there are diverse procedures for different kinds of projects, a general process followed in most cases is provided below:



**Screening:** The process determines whether a project will be classified as Category A or B. In case of Category ‘B’ projects or activities, certain projects will need further environmental assessment by the SEIAA and therefore will be termed as Category B1 and the rest will be Category B2 and will not require an Environment Impact Assessment report.

**Scoping:** This refers to the process by which the EAC in the case of Category ‘A’ projects or activities, and SEAC in the case of Category ‘B1’ projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms of Reference (ToR), addressing all relevant environmental concerns for the preparation of an EIA Report in respect of the project or activity for which prior environmental clearance is sought.<sup>1</sup> The ToRs are based on the information provided by the applicant in Form 1 and 1A, site inspections by the appraisal committees and any other information provided to them. Considering there are so many applications submitted for appraisal, there are draft ToRs on the MoEF website that can be referred to by the project proponent and the authorities. The EAC or SEAC can reject a proposal at this stage and has to give its decision within 60 days of the submission of Form 1.

---

<sup>1</sup> Scoping as defined in the EIA Notification, 2006

**Public Consultation:** The process by which “the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate” is the third stage of the Clearance process. All category A and B1 projects have to undergo a public consultation, except for certain projects specified in the notification. The public consultation shall be conducted in two ways, a public hearing and written statements by anyone who has a plausible stake in the project. It will be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC). Once the consultation is done, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. “The final EIA report will be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.”<sup>2</sup>

### **Public Hearing**

One of the most important features of the EIA notification 2006, the public consultation process is considered as important as the right to vote in a democracy.

### **Relevant Cases**

The Supreme Court in **People's Union for Civil Liberties v. Union of India**<sup>3</sup> comparing the two, declared that the right to vote is part of the fundamental right of expression of the voter under Article 19 (1) (a) of the Constitution of India, and held that "a well informed voter is the foundation of democratic structure. The court referred to the opinion of M.B.Shah., J.,

*"(the) right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information, all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce."*

---

<sup>2</sup> EIA Notification 2006

<sup>3</sup> People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399

In **Adivasi Majdoor kisan Ekta Sangathan and Anr Vs MoEF**<sup>4</sup>, the NGT criticised the process of public hearing conducted and observed,

*“In the case on hand, after viewing the CD of the public hearing conducted on 5.1.2008, we are surprised to note to our dismay that the same was a “farce”. It was a mockery of the public hearing and the procedure required to be followed thereof. All the norms required in conducting a smooth and fair procedure was given a go by.*

*Even before the public hearing could start, the affected people raised slogans to stop the public hearing. However, on the intervention of the Additional District Magistrate a few persons came forward and gave their statements saying that no Gram Sabha was conducted and the Gram Panchayats have issued “No Objection Certificates” and such certificates are invalid and cannot be relied upon to say that the people in the village have no objection for acquiring their lands for establishing the project ... In the meanwhile, it appears the persons raising slogans against each other also pelted stones and that created some commotion which resulted in the intervention of the police and use of force. The participants however, broke all the plastic chairs and left the place. The officers were all sitting quietly even after the people left the place after the police used force. Some media persons and the local people objected for continuing the proceedings after the people left the place. In fact, there was no announcement that the proceedings would be resumed after some time. However, the Additional District Magistrate resumed and continued the proceedings in the presence of few persons.*

*This time only the supporters of the project were paraded one after the other only to say one word “**I Support**”. The persons who supported the project all appeared to have been brought and prompted by the proponent. It was a mockery of the entire process of public hearing.”*

**Appraisal:** The final stage of the Clearance process is Appraisal. It is a detailed scrutiny of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings by the EAC or

---

<sup>4</sup> Adivasi Majdoor kisan Ekta Sangathan and Anr Vs MoEF; M.A. NO. 36 OF 2011 (ARISING OUT OF APPEAL NO. 3 OF 2011)

SEIAA. For Category B2 projects, the project is appraised on the basis of Form 1 and 1A.

### **Relevant Cases**

Appraisal is the last and final stage of the EC mechanism. In **Gau Raxa Hitraxak Manch and Gauchar Vs Union of India**,<sup>5</sup> the NGT has observed that, *“appraisal is not a mere formality and it requires detailed scrutiny by EAC and SEAC of the application as well as the documents filed, the final decision for either rejecting or granting an EC vests with the Regulatory Authority concerned viz., SEIAA or MOEF, but the task of appraisal is vested with EAC/SEAC and not with the regulatory authority.”* In the same case, the tribunal also observed that,

*“The EAC or SEAC concerned has to 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 EC, together with reasons for the same. The use of “coma” at the end of first part of the sentence, prefixing the words “terms and conditions” and also suffixing the words “together with reasons for the same” will have to be read in conjunction.”*

In one of the few cases where the court has quashed the EC completely, the NGT in **Jeet Singh Kanwar Vs Ministry of Environment and Forests**<sup>6</sup> observed,

*“It appears that the EAC did not conduct “detailed scrutiny” nor gave adequate reasons as to how the objections raised by the members of public were addressed by the Project Proponent and that the stand of the Project Proponent was found acceptable. On this ground also, we are inclined to hold that the impugned order of EC is arbitrarily issued and therefore it is unsustainable.”*

*...”it was necessary for the EAC /MoEF to verify the R&R Plan, action plan for CSR activities, the responses of the Project Proponent to the issues raised in the public hearing and to examine the relevant materials before granting the EC. We find that such exercise is skirted by the MoEF.”*

---

5 Gau Raxa Hitraxak Manch and Gauchar Vs Union of India, available at: [http://awsassets.wwfindia.org/downloads/gau\\_raxa\\_hitraxak\\_manch\\_and\\_ors\\_vs\\_uoi\\_and\\_ors.pdf](http://awsassets.wwfindia.org/downloads/gau_raxa_hitraxak_manch_and_ors_vs_uoi_and_ors.pdf)

6 Jeet Singh Kanwar Vs Ministry of Environment and Forests; APPEAL NO. 10/2011

The Supreme Court in the **Lafarge Case**, pointed the various problems with the EIA process in India. Suggesting the appointment of a National Regulator, the Supreme Court said, “*the present mechanism under the EIA Notification dated 14.09.2006, issued by the Government with regard to processing, appraisals and approval of the projects for environmental clearance is deficient in many respects*”. It is possibly time to reinvent and rethink the EIA mechanism in India and restructure the entire process to make it more effective.

**Grant or Rejection of Prior Environmental Clearance:** The concerned regulatory authority shall consider the recommendations of the EAC or the SEAC within 45 days. In case the regulatory authority disagrees with the recommendations, it will request reconsideration of the application by the EAC or SEAC within 45 days of receipt of the recommendations from EAC or SEAC. According to the Notification of 2006, “Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.” For eg., for projects located within forested area, the project proponent will have to submit an application seeking prior approval under the Forest (Conservation) Act, 1980 for diversion of forest land before submitting the application for grant of ToRs. The clearance for these projects will only be given after the stage I clearance has been given under the Forest (Conservation) Act, 1980.<sup>7</sup>

---

<sup>7</sup> There have been amendments to this rule for linear projects. See, <http://pib.nic.in/newsite/erelease.aspx?relid=93973>