

August 11, 2020
Shri Prakash Javadekar,
Minister for Environment, Forests & Climate Change (MoEFCC),
Paryavaran Bhavan,
New Delhi.

Subject: Withdraw the draft Environment Impact Assessment notification 2020

Dear Shri Javadekar,

The MoEFCC has put out a draft EIA notification 2020 for public comments.

It is a matter of grave concern to see the timing of this move, considering the whole country is in the throes of a pandemic and any meaningful public participation at this point of time is impossible.

This is especially relevant since the environmental impact assessment of projects and activities, which the EIA notification seeks to govern, has grave implications for the ecological security of the country, including the livelihood security of millions of people dependent on diverse ecosystems – their natural infrastructure for survival.

A large part of the population has had very little opportunity to examine the changes proposed, as the draft EIA notification 2020 has not even been made available in regional languages in different parts of the country until now. This is despite orders of various high courts. A matter of serious concern is the stand taken by the MoEFCC in its challenge to the Delhi High Court order in the Supreme Court of India. The Delhi High Court in its order dated June 30, 2020 in Vikrant Tongad Vs Union of India had directed the notification to be made available in various languages, at the very least those mentioned in the Eight Schedule in the constitution. The MoEFCC in its challenge has taken a hyper-technical stand that it is not obligated to make public such notifications in languages other than English and Hindi as per law. The Government of India expressing concern that this will lead to a precedence and people will demand such documents in their vernacular languages in the future, indicates a worrying mindset in a multi-lingual democracy where effective public participation is a necessary constitutional obligation.

Despite the lack of ability of millions to participate until now due to the pandemic and unavailability of the notification in regional languages, many have tried their level best to participate despite the difficult circumstances. This includes the youth of the country who will face the brunt of decisions taken today which will impact the environment in the future. But there has also been an attempt to thwart their effort to participate through untenable police complaints and actions, leading to their online platforms for expression being pulled down. While the move was reversed after a public hue and cry, that this action was taken in the first place again shows a rather cynical attitude to participation of youth in the future of the country.

A reading of the draft notification shows that it is in continuation of ongoing efforts to undermine environmental laws and existing safeguards for those affected by exploitation of natural resources – all in the name of ease of doing business. The ongoing pandemic should have been enough of a wake-up call to remind us that undermining safeguards for the environment only increases risk of disease and not what we mistake in the short-term to be ‘ease of doing business’.

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As various commentators have observed citing relevant court judgements, any changes in environmental law will need to pass the test of the principle of non-regression, which means environmental law should not be modified to the detriment of the environment. Therefore, exclusion of any sectors/categories/projects from requirement of environmental clearance/environment impact assessment/public consultation or weakening of the scrutiny currently existing in law is a violation of the principle of non-regression. Further, the powers of the Central Government under the Environment (Protection) Act, 1986 are only to take measures as are required for the purpose of protection and improvement of the environment, not to undermine it.

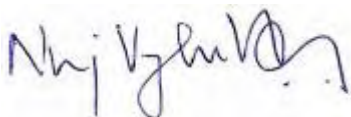
A few examples from the draft EIA 2020 which are regressive are: legalising of ex post facto environmental clearances which violates the precautionary principle and which the Supreme Court of India has in April 2020 held to be in “derogation of the fundamental principles of environmental jurisprudence”; a provision whereby the Central Government can determine any project as involving ‘strategic considerations’ wherein no information related to such projects will be placed in the public domain (which would include information about their environmental and social impacts); reduction of notice period for public hearings from 30 days to 20 days when in fact the existing thirty days itself has been extremely inadequate for local communities to familiarise themselves with the information related to the impacts of a project and furnish their responses effectively.

Substantive changes are planned to the current system. We re-iterate that any meaningful participation is impossible in the existing pandemic situation on these major changes being sought to be made to a vital environmental legislation. The EIA notification 2006 is already in operation and as such there is no legal vacuum which requires the government to push through a cosmetic public consultation process during a pandemic for the draft EIA 2020.

In light of this we urge you to withdraw the draft EIA 2020 notification in the current circumstances.

The EIA 2006 is obviously not faultless and has been further undermined through many amendments even before the draft EIA 2020 was brought in earlier this year. But a strengthening of the larger environmental governance framework, which is desirable, should be discussed through widespread public participation after the pandemic is over. But the current attempt to use the pandemic to weaken our environmental governance framework is clearly undesirable. In light of this we make a sincere plea: **please withdraw the draft EIA 2020 notification immediately.**

Thanking you,
Sincerely,



Neeraj Vagholikar