From Impact Assessment to Clearance Manufacture

MANJU MENON, KANCHI KOHLI

The newly appointed environment minister, Jairam Ramesh’s statement supporting industry demands to speed up environmental clearance for development projects is unfortunate as it will weaken the already inadequate procedures for environmental impact assessment. Not only will this be calamitous for nature and the communities living at the project sites, it will also lead to delays as the affected people challenge such clearances in courts of law. The better course would be to strengthen the environmental clearance process and make it transparent.

Within a day of taking charge, the new environment minister, Jairam Ramesh, focused his attention on a notification under the Environment Protection Act, 1986. This is the Environmental Impact Assessment (EIA) notification 2006, which has the status of a lead actor among the plethora of environment norms within the ambit of the Ministry of Environment and Forests (MoEF). This notification lays down the procedures for the grant of environmental clearance to infrastructure projects in the country. It was crafted by the joint efforts of several committees in the ministries of environment and finance, the Planning Commission, national and international consultancy groups, academic institutions and expert agencies, and even the World Bank and has been amended 15 times since it was promulgated in 1994.

Jairam Ramesh’s initial statement was a discomforting echo of the persistent demands made by industry associations like the Confederation of Indian Industry (CII), Associated Chambers of Commerce and Industry of India (ASSOCHAM) and the Federation of Indian Chambers of Commerce and Industry (FICCI) of turning the qualitative process for environmental impact assessment into a quantitative one in which both the time for clearance and the rate of rejection are minimised. A November 2008 confidential report of an expert committee under the Ministry of Finance and a January 2009 draft notification by the MoEF to amend the EIA notification illustrate the perception of the EIA process as an inventory of items/documents submitted for the receipt of a licence rather than a detailed assessment and appraisal to arrive at decisions least harmful to people and the environment.

The EIA regime is a critical regulation through which a large set of development and industrial projects are assessed for their environmental impacts. The purpose of this exercise has been to differentiate between projects that have varied impacts, so that the ones with relatively less severe or fewer impacts are granted clearance. From 1986 to 2006 the MoEF cleared 4,016 projects. However, between September 2006 and August 2008, the MoEF granted clearance to 2,019 projects. For the period between January 2008 and February 2009, the number of clearances was the highest at 2,586. Such manifold increases can be traced to the “re-engineering” done to the EIA notification of 1994. Several far-reaching changes were made to the notification, to reduce the time spent on grant of clearances. It also divided the list of projects and activities identified as polluting/environmentally damaging into Categories A and B, while allowing for projects under the latter category to be cleared by committees set up at the state level (Menon and Kohli 2007). This “streamlining”, as the MoEF calls it, of the environmental clearance process was undertaken in response to the recommendations of the November 2002 report of the Govindarajan Committee on investment reforms set up by the Cabinet Secretariat and the World Bank funded Environment Management Capacity Building project from 1998 to 2004 (Menon and Kohli 2008).

The impact of this streamlining and speeding up of a qualitative decision-making process such as the EIA has been debilitating on two grounds. First is the shockingly low rejection rate under this “streamlined” process. For the period from September 2006 to August 2008, the rate of rejection was an appalling 1.2%! This includes projects that were sent back for review/reconsideration. For the period between January 2008 and February 2009, the rejection rate was minuscule at 0.8%. Such low rates of rejection should lead to a questioning of whether this process allows any possibility of discerning the varied impacts of the proposed projects. The second is the time spent on each project by the expert appraisal committees (sector specific committees that advise the MoEF on clearance of projects), which is as low as 12 minutes per project, according to recent meeting proceedings posted on the MoEF web site.

It is in this context that one should read the purpose and content of the November
2008 report of the Ministry of Finance and the MOEF’s proposal for amendments to the EIA notification. The key recommendations are for exclusions from the EIA process, standardisation of the terms of reference for the preparation of EIA reports, regulating the public hearing process by introducing a questionnaire and eliminating open discussion and debate, and introducing “deemed” clearance for projects that cross the predetermined timelines of decision-making.

Eliminating Procedural ‘Hurdles’

The policy discussions on environment in formal bureaucratic spaces are now filled with platitudes on economic growth. In this rhetoric, precautionary clauses are called “hurdles” and impacts on the poor and the environment are referred to as “collateral casualties”. Consequently, a staggering number of activities or categories of projects, seen as supporting an economy on the fast track, have been excluded from the whole, or parts, of the EIA process since 2000. Of these the most significant have been the massive exemptions made for the urban construction sector. The latest draft notification requires only projects larger than 50,000 square metres and smaller than 1.5 lakh square metres of built-up area, and townships covering an area of more than 100 hectares and/or with a built-up area of 1.5 lakh square metres or more, to be assessed under the EIA process. If this change comes through, most shopping malls and real estate projects will find themselves outside the purview of the EIA notification.

Another blanket exemption proposed is for all modernisation and expansion of projects. Clearances will be granted to these based on a self-certification by project authorities that there will be no increase in pollution load. Will such a commitment by the project developer also reveal the status of compliance of existing conditions of clearance? Or whether the impacted area can bear even the existing pollution loads any longer? There are several examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion, which includes adding new components to the existing industrial operations, etc. Legal sanction has been awarded to several projects to continue their activities and expand despite blatant non-compliance (Agrawal 2008).

Allowing self-certification by a project authority who is interested in seeking environment clearances will create a conflict of interest. It is widely acknowledged that in the present system, the cause of biased and inadequate EIA reports is that the consultants hired to prepare them are funded by the project proponent. Several civil society groups, scientists, researchers and media persons have brought these facts to the notice of the MOEF at various points of time. Clearances based on self-certification will be a step worse than developer funded EIA reports. It presupposes that a project proponent will be honest and objective in not certifying if their expansion or modernisation plans will lead to an increase in pollution load.

It has been over two years since the EIA notification delegated powers to states to grant clearances to projects falling under Category B. However, State Environmental Impacts Assessment Authorities (SEIAAs) are yet to be established in all states. As per the notification cases from states without SEIAAs are to be appraised by the MOEF. In the two years of implementation, this has meant an increased workload for the MOEF. With no other means to manage the workload, it now proposes to do away with the scoping phase for a projects for three years. The requirement of scoping and preparation of a TOR was brought into the 2006 EIA notification to help the MOEF and SEIAAs ensure a minimum standard and quality in the preparation of site-specific EIA reports. The delay in the setting up of SEIAAs is now being used by the MOEF to dispense with the requirement of a TOR and scoping which was acknowledged to be a positive element of the 2006 EIA notification.

Exemptions have also been proposed to certain activities from the public hearing process. For example, dredging and dumping of material within port limits have been exempted even though these are activities with high marine and coastal impacts, and consequences for coastal and marine livelihoods such as fishing and clam collection. Exemptions have also been proposed for areas which result in land-use change if they do not contain projects under Category A or B. Industrial areas under 500 ha or where the building stipulation is less than 50,000 square metres and/or development area more than 100 ha will not need to go through an EIA process. Such exemptions are not supported by any evidence of these activities being environmentally benign. On the contrary, change in land-use is known to adversely impact groundwater and soil fertility in adjoining

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areas lead to species and habitat destruction/fragmentation and the loss of grazing lands, agricultural lands, wetlands or grasslands which are communally used.

Standardising ‘Data’
The greatest challenge faced by clearance givers and seekers has been posed by the vast amount of information on diverse environmental and social parameters required by an ideal EIA process. Immense time and application of judgment is needed to collect and analyse several hundred aspects about the environment and people and their interactions over time. In order to speed up the clearance process, the experts in the Finance Ministry’s committee have recommended the standardisation of the ToR for “repetitive projects”. ToRs, in the present EIA notification, perform the function of listing all the aspects that an EIA for a project should cover, based on its characteristics, location and other specifications. To recommend that all projects with similar technology be issued a standard ToR indicates an understanding of impacts assessment procedures as merely a common inventory of items that need to be collected for a decision to be made. It is akin to collecting and submitting all required documents to obtain a passport or running a common set of diagnostic tests irrespective of which part of the body is suffering an ailment. With each new project of similar or varied kind that is added to an area, the ToR for subsequent projects is likely to change as the physical landscape and the sociocultural parameters have been altered. The standardisation of ToRs will no doubt reduce the time taken to decide on clearance but it will also limit the information that will be available for decision-making both in quantity and quality.

In the expert committee’s report, though “community rights” are stated towards the end, throughout much of the report, the environment is spoken of as if it only comprises a bunch of “data” that is to be collected for the purpose of the clearance. That these landscapes are populated with people who may have differing views on how they would like to live is absent from the imagination of this committee. Human communities in these landscapes have their own interpretations of what constitutes impacts and what are unacceptable risks. In public discussions or hearings on these projects, the views of communities often collide with the views of investors in irreconcilable ways. At public hearings, the project also gets implicated in the political, cultural and social environments thus opening windows through which to view the project, which data on the physical environment do not reveal. At this stage, the environment clearance process becomes especially “cumbersome” and “time-consuming” for those pushing the project.

So it is only to be expected that any plan to reduce “clearance delays” would seek to regulate public hearings and its messy influence on the information collected for decision-making. In order to prevent what the expert committee calls “roving hearings”, it has recommended that standard questionnaires be distributed in advance and public hearings be held only if issues of dispute are apparent in the information collected through.
these. This recommendation, if realised, will systematically bring the practice of public hearings, the only democratic space in an otherwise bureaucratised process, to an end. These hearings have emerged as platforms where citizens have challenged conventional scientific wisdom on development issues and expressed diverse ways of viewing nature through their cultural contexts. Curring these hearings will not only leave EIA processes poorer of quality but will mean going against democratic practice.

Investors and developers also believe that delays in public hearings are caused due to inefficiency on part of agencies given the responsibility of conducting these hearings – the state pollution control board (spcb) or the union territory pollution control committee (utpcc). On the recommendation of the expert group, the moef’s seeks amendments to rectify this problem by allowing agencies other than the pollution control boards to conduct these hearings. If agencies like the state industrial development boards are allowed to perform this role, as envisaged by the expert group, the outcome is likely to be biased in favour of industry.

A widely prevalent cause for “delay”, beyond the stipulated 45 days, is the public opposition to proposed projects. The public hearing for the Dibang Multipurpose project in Arunachal Pradesh for example, has been postponed 10 times as the local communities are totally against the project and have not allowed for the public hearing to take place. There have been several other instances where public hearings have been postponed as the EIA consultant was unable to respond satisfactorily to queries raised at the public hearing. In such instances, the principles of natural justice demand that the process is not pushed through to keep to time schedules.

The Clearing House
The most significant and dangerous recommendation made by the expert committee is for deemed clearance, that is of authorisation obtained automatically, if the moef fails to complete the approval process within an identified time period. This will effectively turn the process of seeking environment clearance into a clearinghouse. With a ministry that is crumbling under the weight of the paperwork related to scores of projects – the sign of an economy on steroids – this clause will offer the shortest route for undeserving projects to dodge the scanner. The reason for the ministry’s “backlog” is not its limited administrative staff strength but the number of infrastructure projects, especially in urban areas, that have burgeoned over the last four years and added to its clearance portfolio. The time schedules for the grant of clearance are already unrealistically short to allow any comprehensive assessment. As a result of this, their cupboards are bursting with “pending” files. Projects from hundreds of developers and several ministries such as mining, water resources, urban development, industry, shipping and power, reach the tables of the impact assessment division of the moef. How can these files be disposed of at the rate at which they come unless the quality of the clearance process itself is compromised? Any recommendation to do so is equivalent to advising that long pending cases in our courts be disposed of without hearing the parties involved in them.

Head-on Collisions
The officials of the moef often complain of the increasing amount of time spent in litigation as more contestations are being played out in several courts and grievance redressal committees over the subject of clearances granted by them and project impacts such as pollution and groundwater contamination. This is the result of compromises made in the past to the eia process based on unilateral views and recommendations of committees such as the expert group of the Finance Ministry. If the new amendments proposed by them are accepted, these consequences will be compounded. Environmental decision-making on projects based on faulty and inadequate EIA reports, restricted public hearings and hurried appraisals may exhibit a fast rate of clearance, but such projects will invariably suffer political and legal snags due to challenges from various sections of the public. Speedy clearances will come out as brakes later. The recent case of the Allahabad High Court’s stay on the Mayawati government’s Ganga expressway project illustrates this point. The division bench withdrew the environment clearance granted to the project after the petitioner, an NGO, proved that the entire process was completed in haste (Indian Express 2009).

The only workable solution is for the EIA process to recognise and accept pluralities in the ways of viewing and understanding nature rather than restricting them. A process based on principles of justice and replete with clauses that allow for the democratic practice of open discussion and negotiation not just on projects but on larger aspects of development may hold the key to good environmental decision-making. Initial delays due to these factors will actually strengthen the entire process of development by giving a voice to all those involved and impacted by the process.

An order of the Central Information Commission (CIC) dated 27 January 2009, on an application filed by Kalpavriksh, regarding the secrecy involved in drafting amendments to the EIA notification states that

The commission accordingly urges the CPIO to include civil society groups in the list of interested groups with whom the ministry claims that it interacts before finalising the Notification, to make the finalisation process more participatory in nature. A copy of the proceedings of meetings with civil society groups, whenever it takes place, to be shared with the commission and also to be placed on the web site along with proceedings of interactions with other groups, as they emerge, as mandated in the RTI Act.... (CIC 2009).

For a new government just settling into its seat, this would be a good point to start from.

REFERENCES
Ministry of Finance (2008): Expert Group to Examine the Schemes of Statutory Clearances for Industrial and Infrastructure Projects in India.