Comments on the recommendations of the 'secret' report of the Expert group to examine the schemes of statutory clearances for industrial and infrastructure projects in India, November 2008
<u>**Sunita Narain, Centre for Science and Environment, February 2009**</u>

1. The expert group studied 10 different case studies and found that the time taken for clearance was much in excess of prescribed norms. It concluded that this is leading to inordinate delay in clearing projects.

But are these projects studied by the expert group representative? The committee seems only to be concerned by the 'delay' in projects and not the core issue of the quality of assessment and its effectiveness for meeting the purpose – environmental integrity and local livelihood security. This is despite the fact that MoEF informed the committee of its huge institutional capacity constraints. The committee makes no reference to this issue in its final recommendations. Our assessment based on the minutes available on the MoEF website shows that between January 1, 2008 to February 17, 2009, a total number of 3463 projects were assessed; of which 75 per cent were cleared; 24 per cent are pending and only 0.8 per cent are rejected (see table). The question that should be asked is why so few projects are rejected? In fact, what is important to note is that a key reason for delay is that companies are constantly asked to 'justify' the feasibility of the project so that it can be 'cleared'. In fact, we have found that every time local people dispute the project, the company wants the process delayed so that the matter dies down.

Responses to the specific recommendations made:

2. The group recommended:

a. **Review of the format of the EIA forms; data to be relevant to local areas**;
We agree. The report formats need to be revised as currently, a steel project and a thermal project and a mining project have the same format.

b. **Cancellation of project if data found not to be correct**
Firstly, we must understand this provision is in place, but is not implemented. Secondly, the report does not even address the issue of a large number of reputed consultancy companies who have been indicted for forging data and for getting "clearance" not assessment (Satyam-style). But no action has been taken against them. We need blacklisting of consultancy companies. All EIA's should be available on the website.

c. **Discussions in public hearings to be limited to only those issues, which are in dispute**.
This is already the case. The problem is that issues disputed and

projects vetoed in public hearings are not listened to. This has to be changed. The decision taken in public hearings must be recognized and projects rejected.

d. Process of public hearings should be liberalized to include more agencies, authorized to conduct the hearing.
This recommendation has already been incorporated in the draft notification. But we do not believe it will help in any way. The problem is that the public hearings are not treated as vital testimonies. Projects are cleared even if people have given a unanimous decision against the project, which leads to tensions in the area. This is bad for the proponent and destroys the integrity of the EIA process.

e. **The entire process should be web-enabled**.
We agree. This is important and must also include all clearances being given by s tate authorities. But more important is to work to monitor the progress in the project. We need to know, what are the conditions laid down at the time of clearance and how and who will monitor compliance. Reports on compliance are as important as the reports on clearance.

d. The appraisal and clearance should be outsourced.
This is completely unacceptable. In fact, the effort should be to build capacity of the regulatory system so that it can do its work better.

f. The timelines should be defined and processing of applications expedited and concluded within specified period.
This is clearly desirable. But it will require substantial upgrading of facilities to the clearance agencies for both assessment and monitoring.

g. The project will be deemed to be cleared, if timelines not adhered to or extension not given
This will not be desirable. In the past all provisions of "deemed" clearance have been misused by industry, by simply getting files to "disappear". It will lead to bad projects being cleared and the process further demeaned.

h. The responsibility of clearance should be fixed at different levels so that delays can be attributed
No problems. But equally important is to track the conditions for final clearance and compliance. The responsibility for monitoring the clearance conditions should also be fixed and assigned. It should be clear that if any conditions, set out in the clearance letter, are not adhered to, the project will be cancelled and the company blacklisted.

i. The legal provisions under which clearances are sought and granted should be compressed into one – sections 3,6, 25 of the EPA.

It would be important to bring cohesion into the process. But most important is to ensure that the post-project monitoring is integrated. Currently, there are c learances given under different acts – EMP, annual environment statement, NOC, inspection reports. We need to ensure that the monitoring of compliance is made much more stringent. For instance, the EMP and other conditionalities should become part of the c onsent to establish. Currently, MoEF regional offices are supposed to monitor EMP implementation, for which they do not have capacity and state boards are required to monitor the conditions under the consent to establish. We need institutional reform.

j. State EIA authorities should be constituted without delay

Important. But more important is to sort out the issues of capacity of these authorities and their technical back-up for clearance and monitoring. The current system is only designed to 'facilitate' clearance. There are pending administrative issues that need to be sorted out between the current institutions – the state pollution boards and the state EIA authorities. The big question is who is responsible for monitoring compliance and if the conditions are not met, how the state EIA authority is held accountable for clearance.

k. **Standardised TOR should be evolved for repetitive projects.**

Important and should be done, keeping in mind that locations will differ and so will the impact on the environment. For instance, the assimilative capacity of the local environment is critical.

l. Developers should avail of public consultation through agencies other than state pollution control boards.

Not clear: Are we out-sourcing government? Also, is the committee working to promote private consultancy companies in this report? Not clear.

j. Forest clearance guidelines should be streamlined.

No problem. But not clear, what this 'streamlining' entails.

h. Standard guidelines for clear ance for groundwater usage by CGWA.

This is critical recommendation. Currently, there are no mandatory provisions for clearance for groundwater usage and in particular, no way of monitoring how much the project proponent extracts after clearance. This issue needs careful examination and strengthening.

i. Evolution of a single -window clearance – e-biz of

**department of industrial policy and promotion dovetailed
in the proposed framework**

The committee has completely missed the point that there are
different roles – the promotion of industry cannot be dovetailed
into the regulation of industry. What we need to discuss instead is
the strengthening of the regulatory agencies for better project
assessment (not just clearance); its personnel requirements and
infrastructure needs. It is important to focus on the monitoring
aspects post-clearance, not just the 'transaction costs' in
clearance.

3. Additional issues to be discussed

In addition, we would like the following issues to be discussed so
that the process of environmental assessment can be
strengthened and its integrity and efficiency improved.

1. We need a process of regional (or cumulative) EIA's because
individual EIA's do not address the assimilative capacity of the
region – for instance, mining in Goa or hydroelectric projects in
the Ganga, where a large number of singe projects are cleared
but the total impact of these projects is not factored in.

2. We need to ensure that project proponents link the different
parts of their project, which will need clearance, for singlewindow.
For insta nce, between mine lease and production
plant (i.e. Vedanta case) or between port project and
production plant (i.e. Posco case). All activities of a proposed
project should be integrated while giving the environmental
clearance process.

3. Expert committee must be required to visit the area before
giving the conditions for clearance or large projects and
projects located in the sensitive areas. They should listen to
the concerns of the people and justify each issue raised by
people in their complaint to explain the basis of clearance and
the provisions for monitoring.

4. There must be mandatory accreditation of EIA consultants with
provision for acting on public complaints and provision for black
listing and financial penalty. All EIA documents must be
available online.

5. We need a higher rejection rate. In other words, as done
across the world 'no-project' should be a real option in the
decision making process. Currently, almost all projects are
cleared.

6. Rainwater harvesting cannot be used as an excuse to exploit
groundwater in critical areas. CGWB should clearly state that

no groundwater use will be allowed in critical areas for industrial purpose as it has no mechanism for ensuring compliance against over-extraction or inadequate recharge of the aquifer.

7. We need a massive programme for capacity enhancement for the environmental clearance mechanism.

Table: Project Rejection/Approval by Additional Expert Committee since January 1, 2008 to February 17, 2009

	Numbers	**Percentage (%)**
Pending Project	850	24.5
Rejected Project	27	0.8
Approved Proved	2586	74.7
Total	3463	

Source: Minutes available on Ministry of Environment and Forest's website