

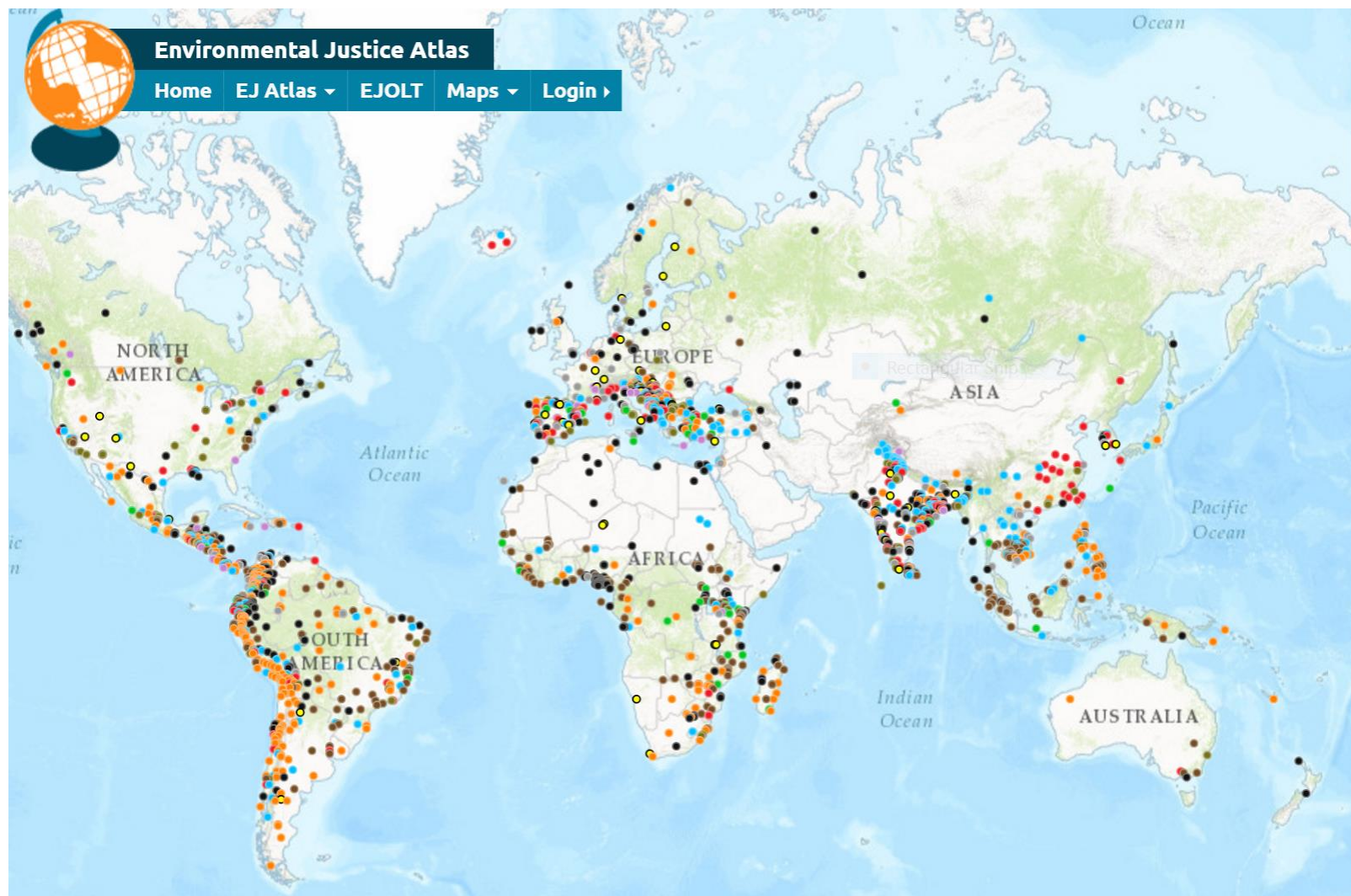
Public Participation and EIA process in India

3rd and 4th November, 2016
Osaka, Japan

Ritwick Dutta
Legal Initiative for Forest and Environment
India



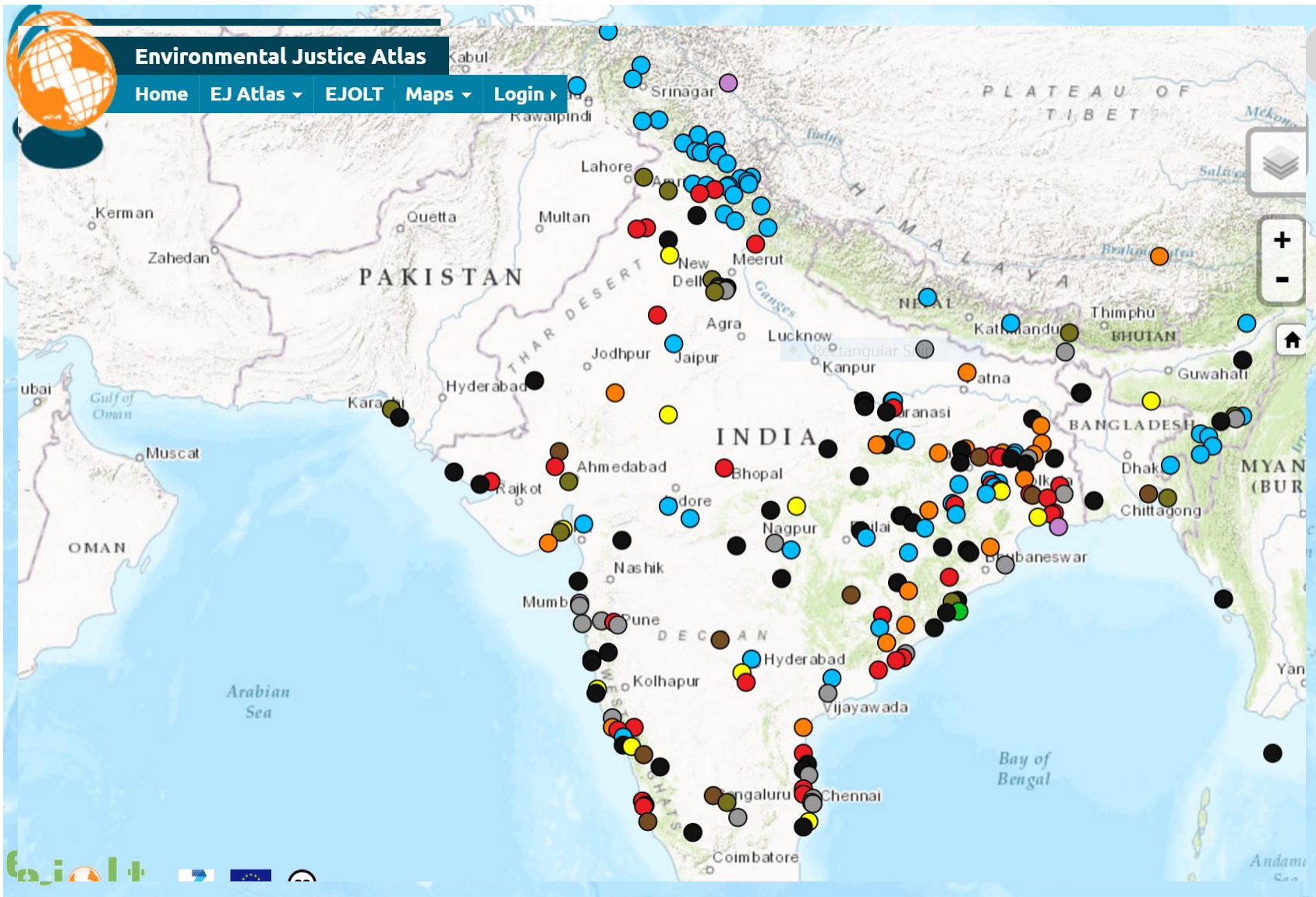
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Environmental Justice Atlas (EJAtlas.org): India reaches the top while mapping the ecological conflicts and environmental injustices

The Environmental Justice Atlas or EJAtlas.org is a freely accessible on-line interactive information portal that helps academic scholars and public policymakers across the world in identifying exemplary cases of peoples' resistance against climate change and environment degradation. EJAtlas.org is conceived by the EJOLT project – an acronym for the 'Environmental Justice, Liabilities and Trade' project. EJOLT is a European Commission FP7 programme-funded global research project operated during 2011–2015 and concluded recently. It represents a global distribution map of the ecological conflicts, resistances and environmental injustices, which are mostly located in the Global South. The stated purpose of the project is: 'EJOLT is a global research project bringing science and society together to

resistances in India, which are located across the country in almost every state and union territory. Table 1 shows the

first-level categorization of conflicts in India. Conflicts related to the 'water management' category appear highest

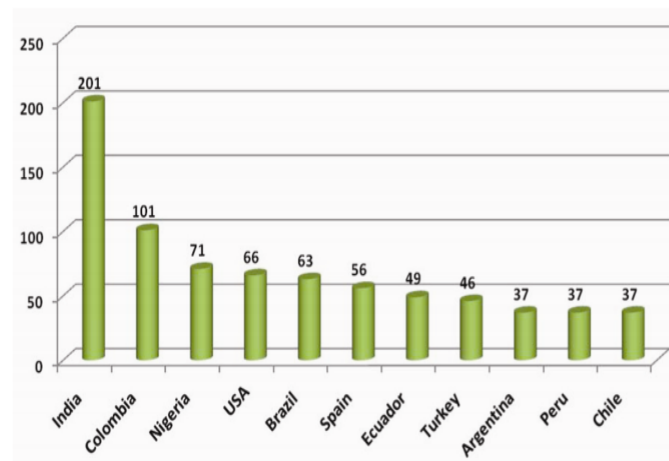


Figure 1. Top 11 countries reporting environmental conflicts on EJAtlas.org portal.



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Half of world's air pollution deaths occur in China, India

More than 5.5 million people die prematurely each year due to air pollution with over half of those deaths occurring in China and India

By: PTI
Washington

Published: Feb 13, 2016, 13:48

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Opposition: CPM



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'55% of deaths due to air pollution in India, China in 2013'

IANIS | Feb 14, 2016, 07:14 AM IST



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WASHINGTON: More than 5.5 million people worldwide die prematurely every year due to household and outdoor air pollution, and India and China together account for 55% of these

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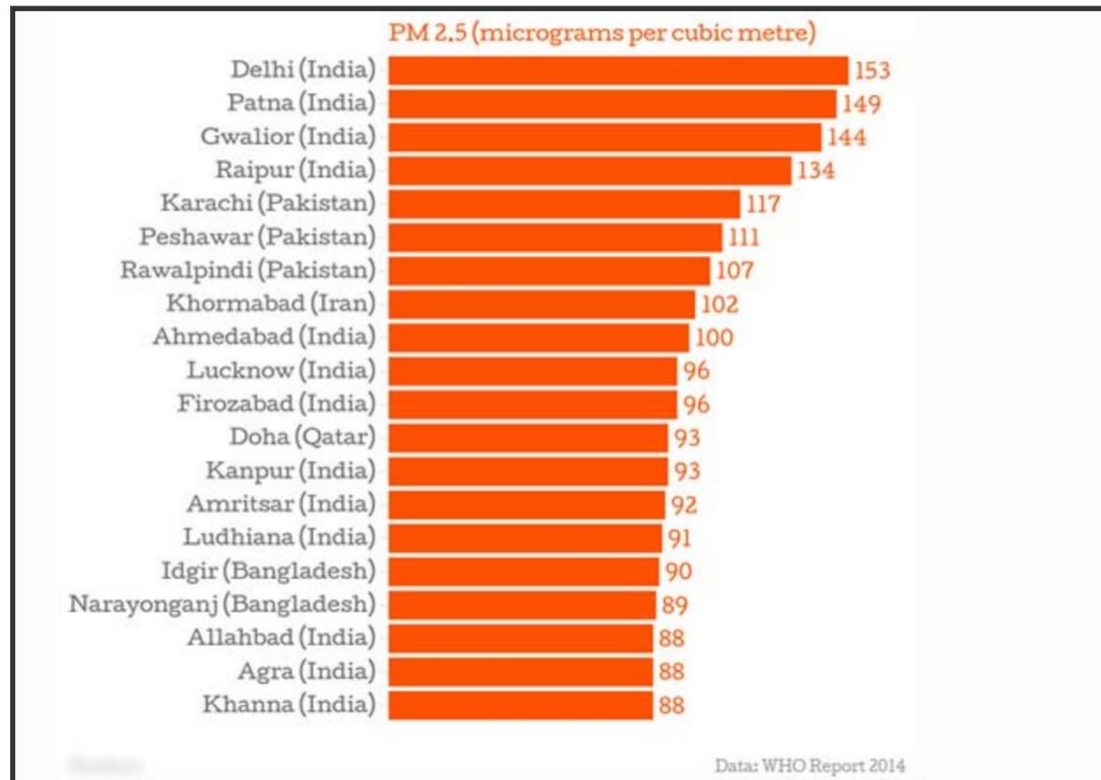
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Environmental degradation costing India 5.7% of its GDP: World Bank

Madhavi Rajadhyaksha | TNN | Jul 17, 2013, 05:55 PM IST



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MUMBAI: At a time when many of India's infrastructural projects are caught in the throes of an environment versus development conundrum, a new report released by the World Bank estimates that

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Pre Rio Conference

Rio Declaration,
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Public Hearing,
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National Green
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participation

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Consultation, 2006

EIA Process in India



Statutory Appeal
before National
Green Tribunal

Decision to Grant or Reject
Environmental Clearance
(Environmental Clearance)

Public Consultation
(Public Hearing & Written
Representations)

Screening, Scoping (Terms of Reference for EIA
Report)

The Public Participation under the 2006, Notification

*“Public Consultation” refers to the process by which the **concerns of local affected persons** and **others** who have a **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”*



Samarth Trust *Versus* Ministry of Environment and Forest
Delhi High Court

.....it seems, prima facie, that so far as a public hearing is concerned, its scope is limited and confined to those locally affected persons residing in the close proximity of the project site. However, in our opinion, the (EIA) Notification does not preclude or prohibit persons not living in the close proximity of the project site from participating in the public hearing - **they too** are permitted to participate and express their views for or against the project.

“40. ... We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.”

*Delhi High Court’s decision in
Utkarsh Mandal v. Union of India & Ors.*

Issues with Respect to Public Participation

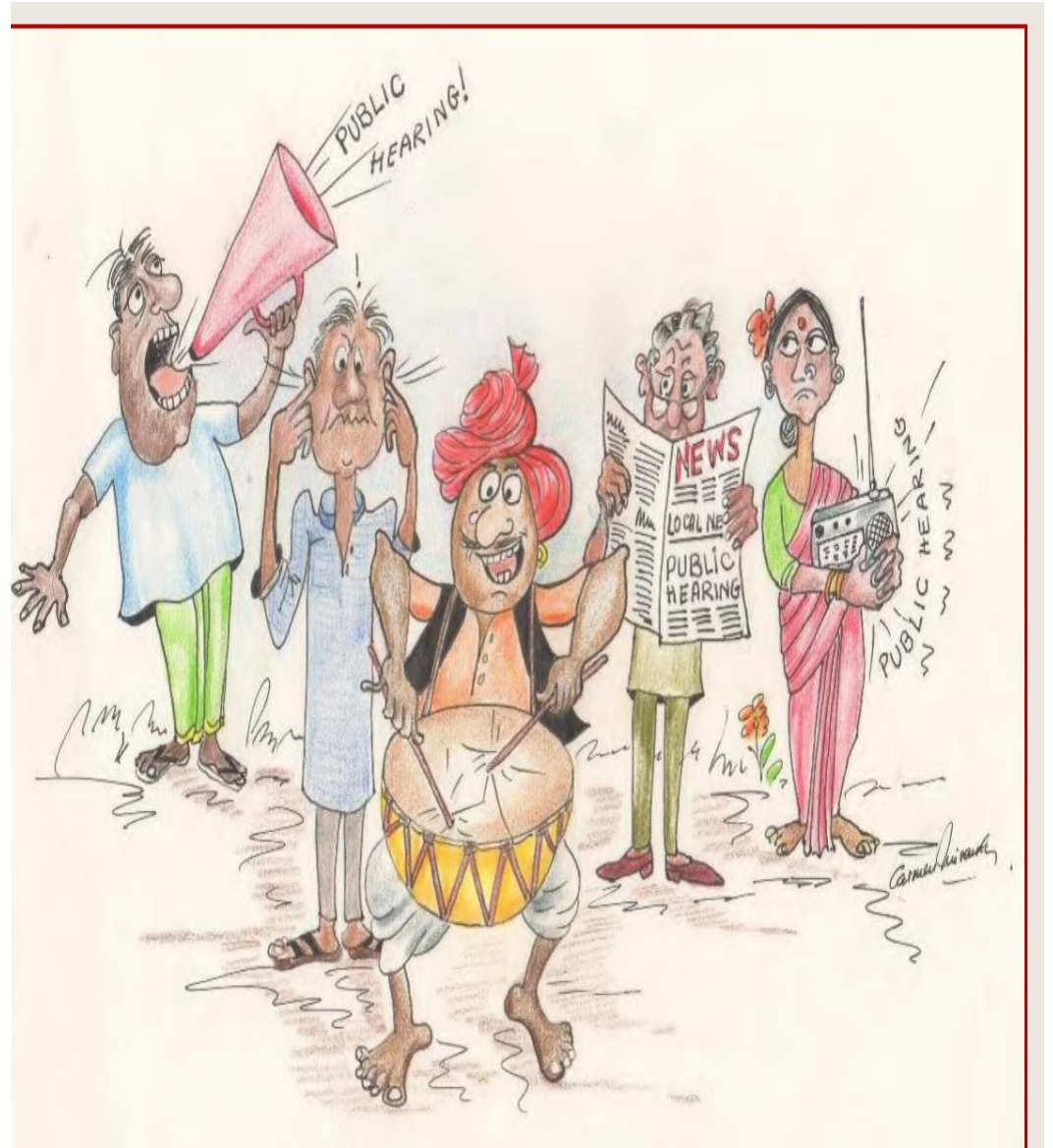
Public Participation
is EIA Centric

Significant categories
of project do not
require public
consultation

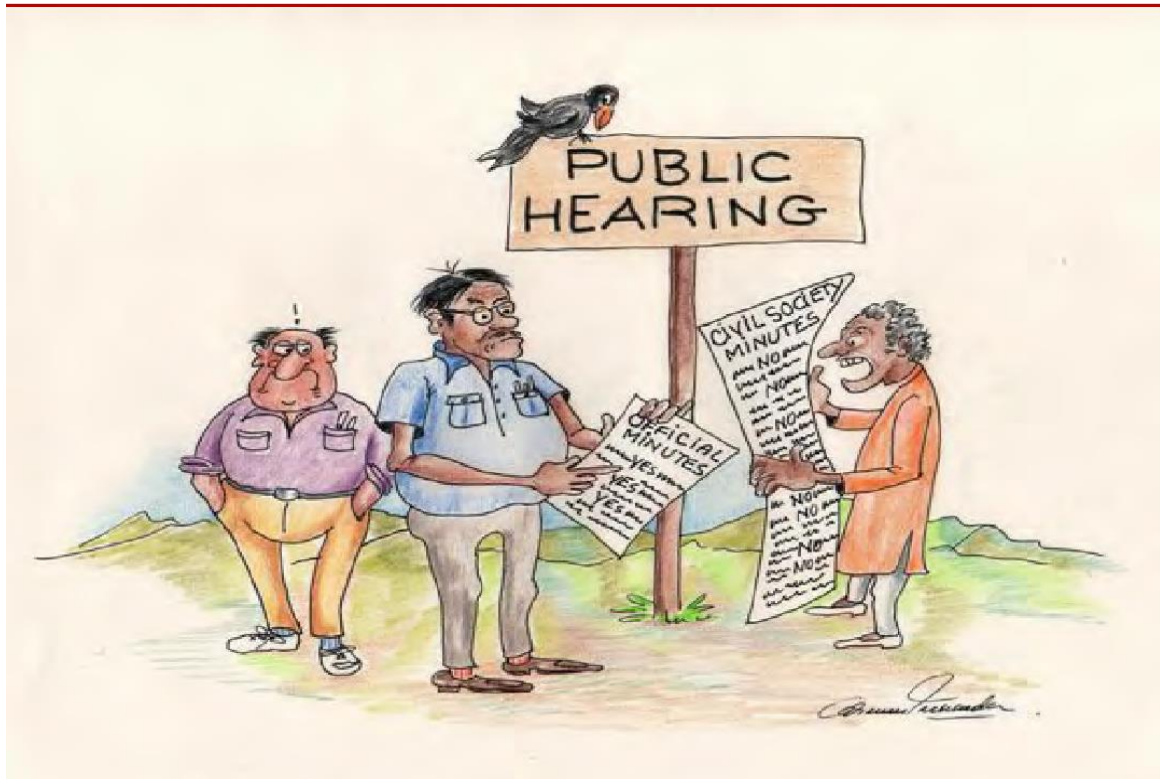
Projects circumvent
Public consultation

Environmental laws
do not provide for
much scope for
public consultation.

Disputes around communication

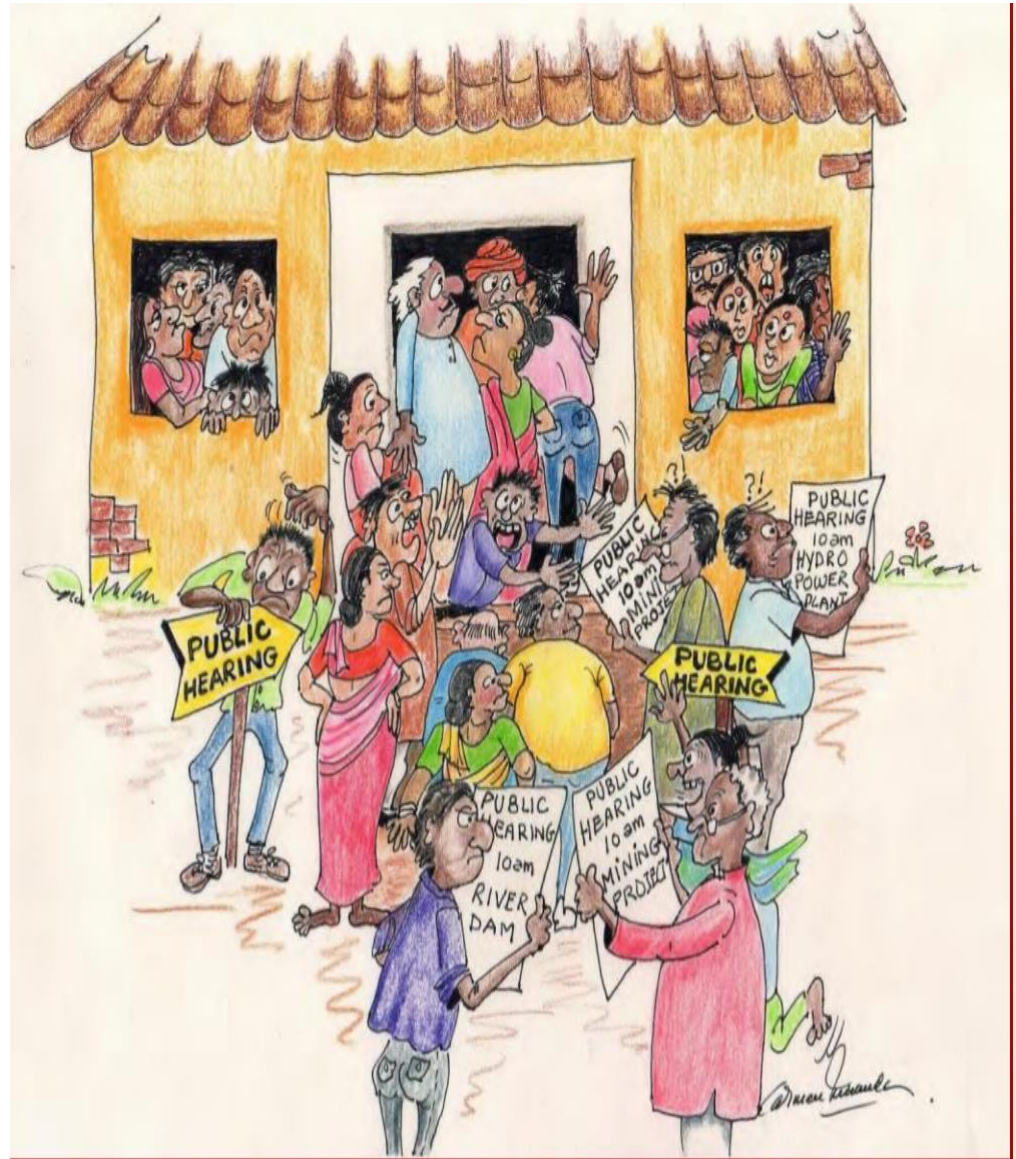


Disputes around '*minutes of the public hearing*'



Venue of Public Hearing

“A Public Hearing is one of the components of Public consultation and is the process by which concerns of local affected persons who are likely to suffer due to the environmental impact of project or activity, are ascertained. Naturally, therefore it is expected to hold a public Hearing at or in close proximity to the project site in order to ensure and facilitate wide participation of the Public particularly those who are likely to be affected by the project, being in close proximity.”



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Supreme Court tells Vedanta to get gram sabha nod for Niyamgiri mining

Utkarsh Anand , Utkarsh Anand : New Delhi, Thu Apr 18 2013, 21:48 hrs

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India has been limiting leases, mainly because of protests over land acquisition. (AP)

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The Supreme Court on Thursday ruled that the Vedanta Group's bauxite mining project in the Niyamgiri Hills of Orissa will have to get clearance from the gram sabha, which will consider the cultural and religious rights of the tribals and forest dwellers living in



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Indian Environmental Court

“THE NATIONAL GREEN TRIBUNAL”



Aggrieved Person Interpreted:

Save Mon Region Federation vs Union of India

National Green Tribunal

- “Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. **The term 'any person' has to be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project.** The expression 'aggrieved', again, has to be construed liberally. **The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest.** The grievance of a person against the Environmental Clearance may be general and not necessarily person specific”



National Green Tribunal stalls POSCO - Centre for Science ...



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In a stirring judgement passed by the **National Green Tribunal (NGT)**, the green signal given to South Korea's Pohang Iron and Steel Company (**POSCO**) to ...

National Green Tribunal suspends Posco project - India Today



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Mar 31, 2012 - The **National Green Tribunal** has suspended the **Posco** project in Odisha over ... "I have to go into it (**order**) in detail and study the judgment and ...

Unable to execute project in Odisha: POSCO tells NGT

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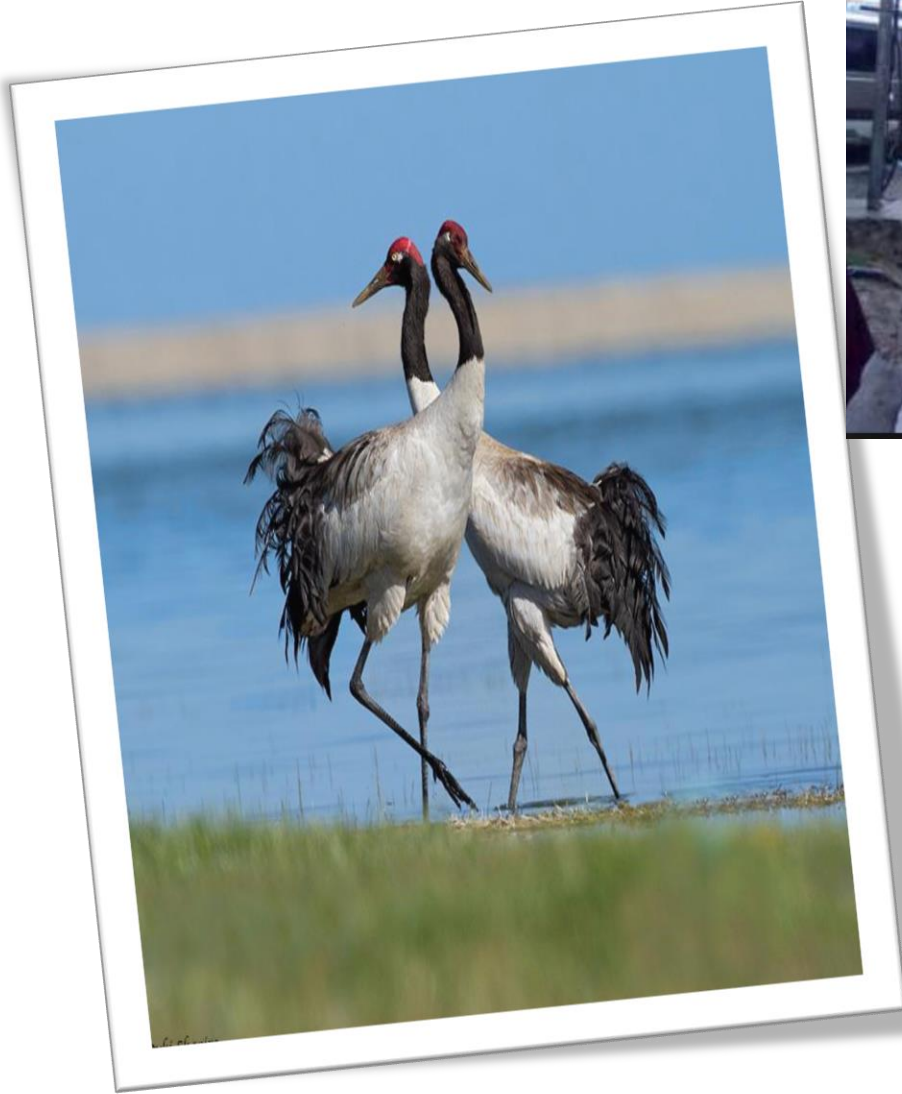
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Project in Odisha is over, says Posco

Says current extension of environmental clearance too short for completion and it wishes to end the entire idea

NITIN SETHI | New Delhi
April 9, 2016 Last Updated at 00:46 IST



Save Mon Region Federation

Local Buddhist Federation
challenges the 780 MW
Hydro Power Project
(2012)

EIA Report did not
mention about the
presence of the Black
Necked Crane

Statutory Appeal filed
before the NGT
(2012)

Final Judgment of the
NGT
(2016)

NGT heard the case over
a period of two years

OPINION » COMMENT

Updated: August 12, 2015 02:25 IST

A bird, a dam and a belief

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Can the crane shift the dam?

Can the crane shift the dam?

Ananda Banerjee

First Published: Wed, Feb 08 2012. 09 06 PM IST

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Sacred symbol: Black-necked cranes are revered as the embodiment of the sixth Dalai Lama by the Monpa tribe in the Zemithang valley. Photo Courtesy: Pankaj Chandan/WWF India

Updated: Wed, Feb 08 2012. 09 06 PM IST
New Delhi: The Zemithang valley in Arunachal Pradesh isn't a part of any national park, sanctuary, biosphere reserve or elephant corridor, and does not have any significance from an archaeological point of view, and it is likely that India's environment ministry will find no reason to block the planned 900 megawatts (MW) Nyamjang Chhu hydroelectric project.

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Ghars tower over fields

Structures Herald Arrival Of Harvest Festival



(Clock wise from left)
A bhela ghar being
erected in Goalpara;
Women busy
preparing peetha in
Guwahati; Rabha
women grind rice
with ural (traditional
grinder) in Goalpara;
Sweet delicacies
being prepared in
Guwahati ahead of
Bihu

cultural significance.

Encased in rustic design that is simple but robust, a bhela ghar can accommodate a couple of people who opt to spend the uruka night inside it.

As men devote time in building bhela ghars, the women put their best gastronomical skills to test, focusing on the community feast for uruka night and the main gourmet meal on Bihu.

Bhela ghars are build mostly in the open space, a dried paddy field provides a safe option as it is burnt in full spirit on Bihu.

Meji, on the other hand, is mostly made from wood, bamboo, straw, hay and with dried banana leaves, heaped on the fields.

Some communities believe that a Meji is a representation of the funeral pyre of the godfather of the Panadavas and Kauravas from the Mahabharata.

The custom is, after taking a bath people crowd around the meji and lit it with a bamboo flame. They pay their obeisance and seek blessings from the holy pyre. They then offer peetha, lentils, sesame, and sweets, to the holy fire.

The Rajbongshis, Rabhas and Dimasas believe that a burning meji is a representation of the funeral pyre of Bhisma.

Paying obeisance on Bihu is an important part of Bihu, said Upen Rabha Hakcham, academician, associated with Gauhati University

Naresh.Mitra@timesgroup.com

Guwahati: When Lham Tsering photographed two black-necked cranes in December last year, in the Zemithang area of Arunachal Pradesh's Tawang district, it did not take him much time to realize that the graceful birds had much more to them than their religious significance.

The Buddhist Monpa tribe in the state welcome the arrival of the black-necked crane as messenger of good fortune. They revere the bird as an embodiment of the sixth Dalai Lama (Gyalwa Tsangyang Gyatso), a Monpa hailing from Tawang.

However, for the Buddhist lamas who are opposing the proposed 780-MW Nyamjang Chhu hydroelectric project, the arrival of black-necked cranes this season is an incontrovertible evidence that the site, where the dam has been proposed, is a place where the birds winter.

A short 3-km stretch along the Nyamjang Chhu, between Brokenthang and



Zemithang, is one such site where black-necked cranes take shelter during winter. It is also a proposed project site. The birds started arriving in the stretch from mid-December last year.

"Villagers and members of our organization have sighted and even photographed black-necked cranes this winter. The arrival of the cranes in the place, where the hydropower project is proposed, proves beyond doubt that the area is a winter refuge for the birds. These birds have immense cultural, religious and ecological significance for our people," Buddhist lama and Save Mon Region Federation (SMRF) general secretary Lobsang Gyatso said.

Rare cranes arrive in Tawang, stake claim to hydro project site

The Buddhist Monpa tribe in the state welcome the arrival of the black-necked cranes as messengers of good fortune. They revere the bird as an embodiment of the sixth Dalai Lama

The Bombay Natural History Society (BNHS) has identified the stretch as an Important Bird Area (IBA). Villagers have, for the last eight years, been documenting the birds on the stretch. The globally-threatened species is included in the Schedule I of the Wildlife (Protection) Act, 1972.

The Buddhist lamas, under SMRF banner, had filed a case before the National Green Tribunal in 2012 against the environmental clearance given to the project. One of SMRF's contentions was that the project developers allegedly did not disclose during environmental clearance that the site was actually the winter habitat of the black-necked cranes.

Bird hit: NGT halts Tawang hydro power project



JACOB KOSHY

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Green tribunal steps in to save the future of the vulnerable black-necked crane



In bird heaven: The black-necked crane is listed in the Wildlife Act as a Schedule 1 species.— Photo: special arrangement

The threat to the future of a vulnerable species has halted the Rs. 6,400-crore hydropower project in Tawang, Arunachal Pradesh.

The National Green Tribunal (NGT) has suspended the Union Environment Ministry's clearance for the project granted in 2012. The clearance, the court noted, didn't consider the impact of the hydro project — promoted by Noida-based textile-to-steel conglomerate, Bhilwara Group — on the habitat of the black-necked crane, a species that breeds on the Tibetan plateau and migrates to Tawang for winter. The bird, most commonly found in China, is legally protected in Bhutan and India and is considered sacred to certain Buddhist traditions.

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Guess who made our green panel stall an Arunachal hydel project

NIHAR GOKHALE @nihargokhale | Updated on: 12 April 2016, 18:03 IST



Directions in Save Mon region Federation

-) The MoEF&CC shall cause to be made a separate study of E-flow requirement for protection of habitat of the Black necked Crane and for conservation of the Black necked Crane through the Wildlife Institute of India, Dehradun, as expeditiously as possible and make such study report along with Tawang River Basin study available for 'public consultation' and shall hold 'public consultation' in compliance of the aforesaid direction in accordance with law.



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Arunachal anti-dam protests: Buddhist 'monk' among two killed in Tawang police firing

While prohibitory orders under Section 144 were promulgated to prevent a flag march, sources said.



**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

APPEAL NO. 28 OF 2013

In the matter of :

Paryawaran Sanrakshan Sangarsh Samiti Lippa

Village & Post - Lippa

Tehsil Moorang

District - Kinnaur

Himachal Pradesh – 172109

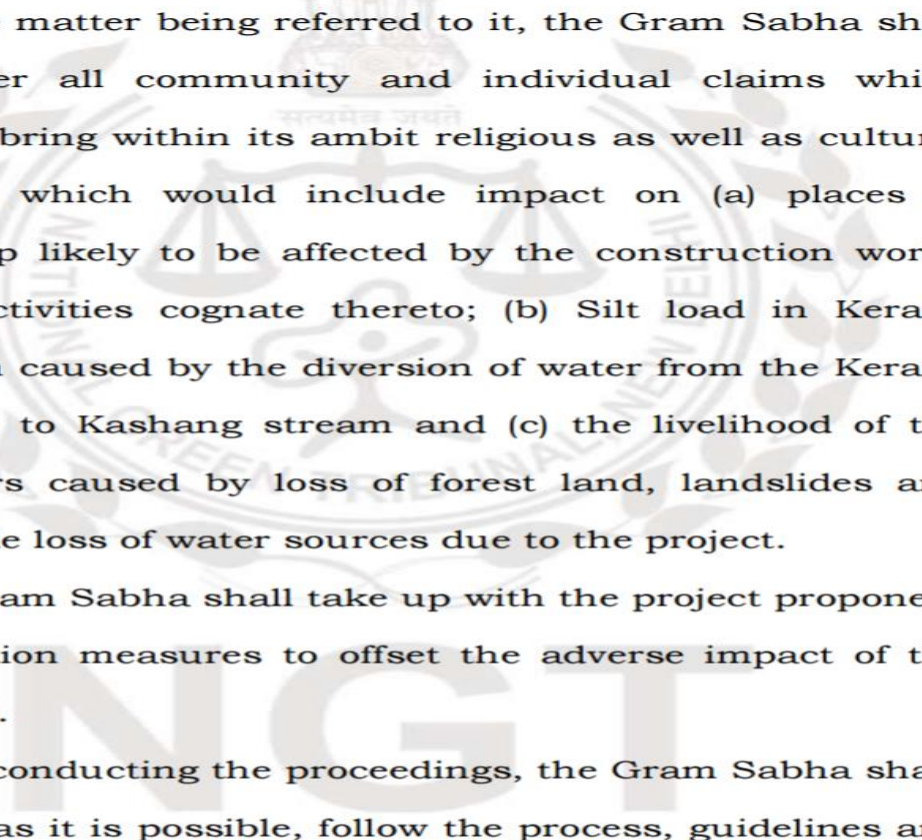
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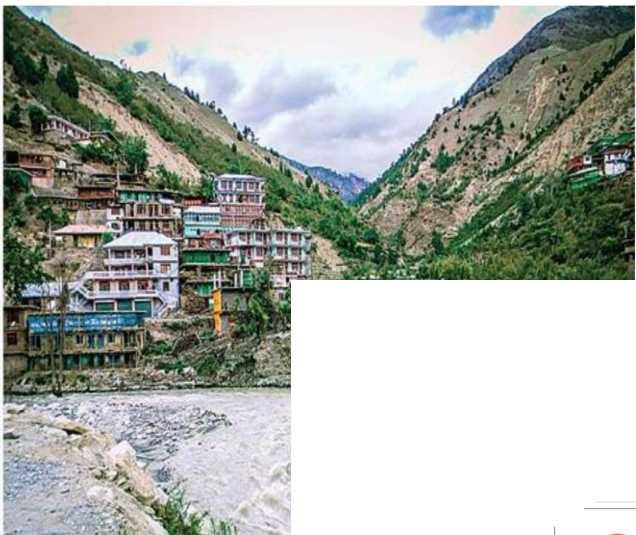
Through the Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Dehi- 1100003,

- (i) The Respondents No.1 and 2 shall ensure that the entire proposal pertaining to Forest Clearance in respect of Stages II and III of 130 MW Kashang Integrated Hydro Electric Project is placed before the Gram Sabha of

villages Lippa, Rarang, Pangi and Telangi in Kinnaur District of Himachal Pradesh as prescribed under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 as required under Condition 16 of the Forest Clearance dated 22.03.2011 issued by the Ministry of Environment and Forests;

- 
- (ii) On the matter being referred to it, the Gram Sabha shall consider all community and individual claims which would bring within its ambit religious as well as cultural claims which would include impact on (a) places of worship likely to be affected by the construction works and activities cognate thereto; (b) Silt load in Kerang Stream caused by the diversion of water from the Kerang stream to Kashang stream and (c) the livelihood of the villagers caused by loss of forest land, landslides and possible loss of water sources due to the project.
- (iii) The Gram Sabha shall take up with the project proponent mitigation measures to offset the adverse impact of the project.
- (iv) While conducting the proceedings, the Gram Sabha shall, so far as it is possible, follow the process, guidelines and the procedure prescribed by the Ministry of Environment and Forests in its various letters from time to time.

Kashang hydro project: NGT order gives respite to tribals



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In a first, Himachal villagers get a say in hydel power projects

Debobrat Ghose May 8, 2016 10:39 IST

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488



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3

It's a big victory for some 1,200 people of Lippa village in Kinnaur district in . After a seven-year struggle, the villagers have become the first grass-root people in the hill state to get empowered under *Gram Sabha* (village body of locals) to decide whether a hydel power project would be set up in their area or not.

The empowerment came when the rights of the villagers under the Forest Rights Act (FRA) were recognized following a judgment of National Green Tribunal (NGT) on 4 May.

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Last Modified: Sun, Sep 04 2016. 09:36 PM IST

Himachal Pradesh govt moves SC against NGT order on Kashang hydro project

The National Green Tribunal stopped the 130 megawatt Kashang hydropower project in Himachal Pradesh until gram sabhas of 19 villages cleared it

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Mayank Aggarwal



The Supreme Court in 2013 had ruled that 12 gram sabhas would decide whether to allow Vedanta Ltd's bauxite mining proposal in Odisha's Niyamgiri hills which is inhabited by tribals. Photo: Mint

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Himachal withdraws appeal against NGT judgment on Rahul Gandhi's intervention

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The Himachal Pradesh government has withdrawn its appeal against the recent judgment of the National Green Tribunal (NGT) filed in the apex court. Reaching out on telephone, Coordinator Himalaya Niti Abhiyan Guman Singh told Daily Post that on the intervention of AICC vice president

Empowered Villages Are Causing Headaches for India's Modi

by Bibhudatta Pradhan
bibhu_pradhan

October 10, 2016 — 1:31 AM IST



■ Narendra Modi, Photograph: Dhirej Singh/Bloomberg

- ▶ Companies struggle to acquire land as villagers assert rights
- ▶ "There will be more conflict," says environmental lawyer

Hands tied

The empowerment of villages by the National Green Tribunal is causing further

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Empowered villagers challenge Modi's easing of doing business

14:15, 10 Oct 2016

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While Narendra Modi is promoting the ease of doing business in India, he is restrained from overhauling the Forest Rights Act to free up more land for companies



Report
HIGH LEVEL COMMITTEE
to review various Acts administered

by

Ministry of Environment, Forest & Climate Change,
Government of India
November 2014

High Level Committee to Review Environmental Laws

Public Hearing/ consultation not required for:

- Projects of National Importance
- Projects of Strategic Importance
- Projects in Manufacturing/ Industrial Zone
- Projects in areas of high Pollution zone
- Projects located in areas which are away from settlement (Pristine areas)
- Projects related to power, coal, transmission lines, Highways etc

Parliament Panel Rejects Report Seeking to Streamline Green Laws

All India | Written by Sidharth Pandey | Updated: July 26, 2015 20:14 IST

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MAIN ACCUSED IN BHAJANPURA MURDER CASE ARRESTED

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By Ramachandra Guha

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By Bhupendra Yadav & Vilasini Banerjee, P15



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THREE QUARTERS OF ENVIRONMENT SUPPLEMENT PLAN IS CUT-PASTE OF US DOCUMENT

Environment Ministry's rules for polluters in India, copied word for word from the US

JAY MAZOOMDAR
 NEW DELHI, JULY 7

MORE THAN three quarters of the Environment Ministry's Supplemental Plan (SP) — around 2,000 words of the 3,850-word draft — is almost 100 per cent copy-paste of the US Environmental Protection Agency (EPA) documents adopted by the United States in March 2015.

The draft notification proposes to allow those who go ahead with project work without prior environmental clearance under Environment Impact Assessment Notification (EIA), 2006, to "remediate the

damage caused" and compensate by implementing the ESI. Under existing law, there are criminal offences punishable with imprisonment.

The Ministry notified and put up the draft on its website on May 10, inviting public feedback over a two-month window.

Consider these substantive samples of the cut-paste that became the notification:

■ **US (Introduction A):** Supplemental Environmental Project (SEP) is an environmentally beneficial project or activity that is not required by law, but that a defendant agrees to undertake as part of the settlement of an environmental action.



High lighted portion has been copied from the US document

India (Clause 1): An Environmental Supplemental Plan (SEP) is an environmentally beneficial project activity that is not required by law, but that an alleged violator of environmental law agrees to undertake as part of the process of environmental clearance.

■ **US (B):** SEP provide defendant the opportunity to develop and demonstrate new technologies that may prove more protective of human health and the environment than existing processes and programs.

India: (4 (B): Innovative Technologies. Environmental



The EPW in Maputo, Mozambique. Thursday P11 PAGE 7

Farm poll signal: Govt to take back dead land Bill

ANANDMEHRA
 NEW DELHI, JULY 7

THE GOVERNMENT is contemplating withdrawal of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 during the monsoon session of Parliament starting July 18.

The move comes at a time when the BJP is bracing for the assembly polls next year in Uttar Pradesh, along with Gujarat state. Ahead of the Bihar assembly elections last year, the government decided not to issue the land ordinance for the four times, hoping to blunt opposition attacks on its "anti-farmer" Land Bill.

Sources said the issue of withdrawing the Bill was discussed briefly at the June 29 meeting of the Cabinet.

Continuation of Parliament Affairs during which a senior minister said it was time to withdraw the Bill since the Joint Parliamentary Committee on Mining the issue had decided with consensus to remove most provisions of the bill or to make quantum Act.

Home Minister Rajnath Singh, sources said, was of the view that withdrawing the Bill was no longer required since states had been asked to come up with their own versions of land acquisition laws and many had already done that.

Sources said M Venkatesh Narayan, who was the then Parliamentary Affairs Minister, agreed but said the withdrawal could take place after the parliamentary session report is submitted to the report.

The 30-member joint committee on the land Bill, sources

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Centre and Mumbai to probe Zakir Naik's funds, speeches

EXPRESS NEWS SERVICE
 NEW DELHI, MUMBAI, JULY 7

WARNING: The speeches of Zakir Naik, preacher and founder of Mumbai-based Islamic Research Foundation, as "objectionable", Union Information and Broadcasting Minister M Venkatesh Narayan said on Thursday that appropriate action will be initiated by the Ministry of Home Affairs.

Also Thursday, the Maharashtra government asked Mumbai Police to probe Naik's speeches that reportedly incited at least one of the seven men involved in last Friday's Dhaka attack that killed 22 people.



Zakir Naik

THIS ISN'T ISLAM, SAYS SHEIKH HASINA

Prayers not spared, terror strikes largest Bangladesh Eid gathering

Stray bullet kills Hindu woman, two policemen among 4 killed



SHEIKH HASINA
 JULY 7

SDI DAVIS after the terrorist attack at the upscale Gulshan neighbourhood in Dhaka, were among those killed. A Hindu woman



ATV grab of the injured after an attack in Dhaka, Bangladesh, on Thursday

Centre asks Assam and Bengal to look for Bangla terrorists

PRAVEEN SWAMI
 NEW DELHI, JULY 7

THE NATIONAL Investigation Agency (NIA) has asked the West Bengal and Assam governments to urgently step up the hunt for the long-jailed Bangla terrorists who are believed to be operating from bases inside India, highly placed government sources have told ET and the Express.

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Tigers crucial, but development more important, says Supreme Court

Last Updated: Thursday, January 21, 2016 - 09:32

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Key Challenges for public participation

- Public participation in the era of '*Ease of Doing Business*'
- Trying to replicate models of growth followed by other countries in a democratic set up.
- Consultation, participation and Consent
- The general feeling that there is *too much of democracy*.
- Public Participation takes place too late in the decision making process. (Investments made, land acquired)
- The Supreme Court's obsession with 'economic development' at all cost.



Prafulla Samantra: Posco and Vedanta



Lama Lobsang Gyato, Nyamjanchu Dam



Kumti Majhi: Vedanta



Ramesh Aggarwal: Jindal Coal Mine