Public Participation and EIA process in India

3rd and 4th November, 2016
Osaka, Japan

Ritwick Dutta
Legal Initiative for Forest and Environment
India
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.

Table 1 shows the first-level categorization of conflicts in India. Conflicts related to the ‘water management’ category appear highest resistances in India, which are located across the country in almost every state and union territory. Table 1 shows the

![Figure 1. Top 11 countries reporting environmental conflicts on EJAtlas.org portal.](image)
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
'55% of deaths due to air pollution in India, China in 2013'

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

ASHINGTON: 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
Here goes the entire list of 20 most polluted cities of the World:

- Delhi (India): 153 micrograms per cubic metre
- Patna (India): 149 micrograms per cubic metre
- Gwalior (India): 144 micrograms per cubic metre
- Raipur (India): 134 micrograms per cubic metre
- Karachi (Pakistan): 117 micrograms per cubic metre
- Peshawar (Pakistan): 111 micrograms per cubic metre
- Rawalpindi (Pakistan): 107 micrograms per cubic metre
- Khornabad (Iran): 102 micrograms per cubic metre
- Ahmedabad (India): 100 micrograms per cubic metre
- Lucknow (India): 96 micrograms per cubic metre
- Firozabad (India): 96 micrograms per cubic metre
- Doha (Qatar): 93 micrograms per cubic metre
- Kanpur (India): 93 micrograms per cubic metre
- Amritsar (India): 92 micrograms per cubic metre
- Ludhiana (India): 91 micrograms per cubic metre
- Idgir (Bangladesh): 90 micrograms per cubic metre
- Narayonganj (Bangladesh): 89 micrograms per cubic metre
- Allahabad (India): 88 micrograms per cubic metre
- Agra (India): 88 micrograms per cubic metre
- Khanna (India): 88 micrograms per cubic metre

Data: WHO Report 2014
Environmental degradation costing India 5.7% of its GDP: World Bank

Madhavi Rajadhynaksha | 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
Pre Rio Conference

Rio Declaration, 1992

Public Hearing, 1994

National Green Tribunal’s direction on Public participation

Public 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”
......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.”
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

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

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 tribal and forest dwellers living in...
Results of India's first environment referendum: 12 nays; 0 ayes

Will Vedanta and Odisha government pursue rights to mine the hills revered by the Dongria Kondhs in the Supreme Court?
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”
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 ...

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

PRESS TRUST OF INDIA

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
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
A bird, a dam and a belief

Can the crane shift the dam?

Can the crane shift the dam?

Ananda Banerjee

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

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 megwatts (MW) Nyamjang Chhu hydroelectric project.

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
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.

By Naresh Mitra, Times of India

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 SMTB banner, had filed a case before the National Green Tribunal in 2012 against the environmental clearance given to the project. One of SMTB’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.

Gumahati: When Lham Tseering photographed two black-necked cranes in December last year, in the Zoimthang area of Arunchal Pradesh’s Tawang district, it did not take him much time to realize that the graceful birds had much more to them than the religious significance.

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 (Gyalawa 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 Zemithang and Zoimthang, 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.

Rale gaars are build mostly in the open space, a dried peaddy 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 Panadwas and Kaurwas from the Mahakhanta.

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

The Rajoengshi, Rabbas and Dimahsa believe that a burning meji is a representation of the funeral pyre of Shishama.

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

Clockwise from left: A balela ghar being erected in Gohapara; Women busy preparing peetha in Gohapara; Rabha women giving meal with uru (traditional grinder) in Gohapara; Sweet delicacies being prepared in Gohapati ahead of Bihu.

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Bird hit: NGT halts Tawang hydro power project

JACOB KOSHY

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

The threat to the future of a vulnerable black-necked crane species has halted the Rs. 6,400-crore hydro power project in Tawang, Arunachal Pradesh.

The National Green Tribunal (NGT) has suspended the Union Environment Minister’s clearance for the project granted in 2012. The NGT noted the court’s earlier directive to assess the impact of the hydro project – promoted by the 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.
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.
Arunachal anti-dam protests: Buddhist ‘monk’ among two killed in Tawang police firing

While prohibitory orders under Section 144 were promulgated, 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

1. Union of India
Through the Secretary,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodi Road, New Dehi- 110003,
(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.
In a first, Himachal villagers get a say in hydel power projects

Debabrata Ghose  May 8, 2016 10:39 IST
#ConnectTheDots #Forest Rights Act #FRA #Gram Sabha #Himachal Pradesh #Hydel Projects #Kinnaur #Lippa #Ministry of Environment and Forest #MoEF #National Green Tribunal #NGT #Spiti Valley

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.
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.

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 Niyangiri hills which is inhabited by tribals. Photo Mint
Himachal withdraws appeal against NGT judgment on Rahul Gandhi’s intervention

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

Hands tied

The empowerment of villages by the National Green Tribunal is causing further trouble for India. A water tank driver became Mr Asia 2016, Ex-jawan's death over JROI

Empowered villagers challenge Modi's easing of doing business

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

MORE THAN three quarters of the Environment Ministry’s Environmental Supplement Plan (ESP) – an estimated 2,850 of the 3,400-word draft – are cut and pasted from US documents.

The draft is claimed to be based on the final version of the US Environmental Impact Assessment (EIA) of the US Army Corps of Engineers.

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

Prayers not spared, terror strikes largest Bangladesh Eid gathering

Stray bullet kills Hindu woman, two policemen among 4 killed

Centre asks Assam and Bengal to look for Bangla terrorists

Farm poll signal: Govt to take back dead land Bill

THIS ISN’T ISLAM, SAYS SHEIKH HASINA

Prayers not spared, terror strikes largest Bangladesh Eid gathering

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Centre asks Assam and Bengal to look for Bangla terrorists

FARM POLL SIGNAL: Govt to take back dead land Bill

ANANDNEYEE
NEW DELHI, JULY 1

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 13. The move comes at a time when the SIT is hearing the case of the farmers of Nirmali village in New Delhi. The government also decided to introduce the Land Acquisition (Amendment) Bill. Sources said the issue of withdrawing the Bill was discussed informally at the June 20 meeting of the Cabinet Committee on Maritime Affairs, which was attended by the Prime Minister and the Finance Minister.
Tigers crucial, but development more important, says Supreme Court

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

Ramesh Aggarwal: Jindal Coal Mine