

Orientation on Environmental and Forest Clearance Processes and National Green Tribunal

On 6 June 2013

At Bangaluru (Karnataka)



Organized by

EIA Resource and Response Centre (ERC),

Nilgiri Unit, Kotagiri, Tamil Nadu

&

Nature Conservation Foundation (NCF), Mysore

A one day orientation on Environmental and Forest Clearance Processes and the National Green Tribunal (NGT) Act was organised by EIA Resource and Response Centre (ERC) in collaboration with Nature Conservation Foundation (NCF) at Manorama Hall, The Indian Institute of World Culture Bangalore on 6 June 2013. More than 30 participants, mostly from Karnataka and Goa who work actively on the environmental issues, included lawyers, university students, IT people, NGOs, activists and scientists.

Welcome and Introduction

The Orientation started at 10.00 am with a welcome by Mr. H. C. Poornesha (NCF), Mr. Ritwick Dutta, Environmental Lawyer from Legal Initiative for Forest and Environment (LIFE) / ERC explained the background and importance of the NGT. There was a round of brief introduction by participants.

Agenda for the Orientation

Time	Programme
10:00 -10:30	Introduction to the Orientation by NCF & ERC
10:30 -10:45	Brief introduction by participants
10:45 -11:30	Environmental and Forest Clearance Processes by Mr. Neeraj Vagholikar (Kalpavriksh) and Mr. Ritwick Dutta
11:30 - 11:45	Tea
11:45 - 12.30	Environmental Clearance and Forest Clearance Process continued
12:30 - 01.00	NGT Act: Key provisions of the Act and decisions of the Tribunal (locus standii, limitation, structure, jurisdiction) by Mr. Ritwick Dutta
14:00 - 14:00	Lunch
14:00 – 17:30	NGT Act continued... (appellate and original jurisdiction, nature of relief, non compliance of orders) and Open Discussion related to NGT Act

Environmental and Forest Clearance Processes by Mr. Neeraj Vagholikar (Kalpavriksh) and Mr. Ritwick Dutta

This session was conducted Mr. Neeraj Vagholikar and Mr. Ritwick Dutta jointly. Mr. Neeraj started with Environmental decision making for development projects and activities under EIA (Notification) 2006. The presentation started with the need for EIA (Notification) 2006 and different stages in the EIA process. As per EIA (Notification) 2006, the projects are divided into broadly 8 categories and 38 sub-categories.

These projects are further sub-divided into category A or B. This is based on the spatial extent of potential environmental impacts and potential impacts on human health, and natural and manmade resources.

For category A projects, the regulatory authority is the Ministry of Environment & Forests (Central Government) and the projects are reviewed by the Expert Appraisal Committees (EACs) – sector wise, for category B projects regulatory authority is the State Environment Impact Assessment Authority (SEIAA) and the projects are reviewed by the State Expert Appraisal Committee (SEAC).

If a category B project is located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wildlife (Protection) Act, 1972, (ii) Critically Polluted Areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-Sensitive Areas, (iv) inter-State boundaries and international boundaries, it is generally treated as Category A, as per the General Condition (GC) as per the EIA (Notification) 2006.

Mr. Neeraj explained about the Application documents for prior Environmental Clearance - *Form 1, 1A, Pre-feasibility report*. The information provided in Form 1 can be used for litigation purpose if any misleading information is provided for getting the clearance.

In Form 1, cumulative impact of different projects were discussed by Mr. Ritwick by giving the example of Mr. Jeet Singh vs UoI case at NGT of a proposed Thermal Power Plant.

Mr. Neeraj explained about the Stages in Environmental Clearance process like Screening, Scoping, Public Consultation and Appraisal.

Forest Clearance by Mr. Neeraj Vagholikar

According to the Forest (Conservation) Act, 1980 all development projects have to get Forest Clearance (FC) if forest land is involved in which ‘No State Government is to make an order diverting forest land for non-forestry purposes without the prior approval of Central Government’.

If the forest land is more than 40 hectare, diversion is to be approved by MoEF, which is generally based on the recommendation of the Forest Advisory Committee and if a project involves up to 40 hectare, MoEF regional office handles this with state group. Generally, MoEF grants clearance in 2 stages: In-principle and final. But the decision would be taken based on scrutiny of up to 5 hectare directly by MoEF regional office; 5 – 40 hectare by REC : and above 40 hectare by FAC.

He explained about Form A and Form B which require information and opinion by the State government, cost-benefit analysis by User Agency etc. Part IV of the forms are to be filled by Nodal Officer or PCCF of the State Forest Department: providing detailed opinion and specific recommendation of the State Forest Department for acceptance or otherwise of the proposal with remarks.

Finally he explained about the Forest Rights Act compliance for Forest Clearance.



National Green Tribunal (NGT) by Mr. Ritwick Dutta

Mr. Ritwick explained the need of NGT with an example of the Yamuna river pollution case. He explained the difference between a court and a tribunal. The Supreme Court and the High Courts can take environmental cases and look at the procedural faults. But in the case of a tribunal, it is the expert above the experts, and can go into the merit of cases, as in the case of NGT, each bench comprises of judicial as well as expert members.

Mr. Ritwick explained the NGT Act 2010 by reading the important sections of the Act. He explained about the compensation for law violation.

He started with the qualification and the recruitment process for the expert members of the NGT. He explained about the different benches in different regions and he mentioned that New Delhi is the principal bench for NGT. At present only Bhopal, Chennai and Delhi Benches are functional.

He explained Chapter III on jurisdiction, powers, proceedings of the tribunal, and penalty.

Further he explained the Schedules I, II and III.

Later, he shared and explained some important judgements by NGT, like Jeet Singh vs UoI, Adivasi Mazdoor Kisan Ekta Sangathan vs MoEF and Sandeep Desai & others vs MoEF, State of Goa & others. This was an interactive session.

Discussion of Environmental Issues

The last session was a discussion on local environmental issues brought forward by the participants to explore the possibilities of judicial action if required. Three important cases are briefly outlined here.

Issue 1: Yettinahole river diversion project

Name: Anup Prakash

Organisation: NCF- Volunteer

Place: Bangalore

Contact: 9964207227

General description and issues: Diversion of water source of millions of people. No studies done on the impact on biodiversity. This project will cause intense impacts on freshwater biodiversity and evergreen forests.

Response by Panel: Study need to be done regarding the impact of the diversion of the water.

Issue 2: Sand mining across all rivers

Name: Hari Sridhar

Organisation: CSE, IISC

Place: Bangalore

Contact: 9449037345

General description and issues: Loss of substrate for flora and fauna. Cause of floods and loss of agriculture in river areas.

Response by Panel: Please refer to sand mining judgment in Deepak Kumar vs State of Haryana decided by the Supreme Court of India in 2012. If they are violating the rules, one can go to the NGT.

Issue 3: Dilution of FRA with respect to linear intrusions

Name: Anup Prakash

Organisation: NCF- Volunteer

Place: Bangalore

Contact: 9964207227

General description and issues: In spirit, violation of the FRA. Most powerful check of the Act will be destroyed.

Response by Panel: Already a case is being considered, and it will be followed through.

List of Participants

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