

30 June 2020

The Secretary,  
Ministry of Environment, Forests & Climate Change  
Government of India, Paryavaran Bhavan, Jor Bagh Road, Aliganj,  
New Delhi 110 003

**Sub:** Draft Environment Impact Assessment Notification (EIA), 2020

Dear Madam/Sir,

The draft Environment Impact Assessment Notification 2020 (“EIA 2020”) was put up on the website of the Ministry of Environment, Forest, and Climate Change (“MOEFCC”) on 23 March 2020. You had advertised the above notification and requested any objections or suggestions to be sent by 30 June 2020. Our observations, comments and suggestions on the draft EIA 2020 are as under:

#### **I. Introduction:**

A detailed analysis of the draft EIA 2020 reveals that these regulations:

- seriously weaken existing environmental regulations and promote high-risk activities contrary to the well-established principles of precautionary approaches, intergenerational equity, and sustainable development as recognised in environmental law and policy;
- continue to rely on an ineffective institutional design that does not satisfy the requirements of effective implementation, post-clearance monitoring, transparency and accountability, and strict punishment of environmental violators;
- further reduce the steadily shrinking spaces for public participation in environmental decision-making across the country;
- introduce a slew of irrational new exemptions and specious new processes (particularly the process of post-facto clearance) that are contrary to well-established and globally accepted principles of environmental impact assessment;
- will be ineffective in achieving their stated purpose of effectively regulating harmful environmental activity, in protecting the environment in general, and in complying with our constitutional vision towards environment, democracy and justice.

Further, the lack of dissemination of these draft regulations in vernacular languages apart from Hindi, the rushed effort to finalise these regulations despite the disruption caused due to a global pandemic, and the lack of meaningful efforts to proactively facilitate public deliberation on these proposed changes through regional public forums etc. are also serious causes for concern. Without prejudice to the foregoing, the comments below suggest the urgent need for EIA regulations in India **to anticipate and respond specifically to immediate and imminent challenges presented by climate change in the context of India.**

The draft EIA 2020 evidences minimal consideration of the real and present risks of climate change and also of India’s international and domestic obligations in this context. The draft EIA 2020 is exceedingly inadequate in its treatment of the mitigation, adaptation, resilience, and

human rights considerations raised by climate change and climate justice in the context of India.

India's current climate situation includes skyrocketing pollution, increased biodiversity loss, rampant deforestation, increase in incidence of disease-carrying insect vectors, increasing water insecurity, large-scale displacement of *adivasi* and rural populations due to climate disasters and developmental projects, rising overall temperatures, extreme weather events including floods and heatwaves and droughts in different parts of the country, increasing insecurity of food systems, and an overall increase in vulnerable and precarious communities due to changing climates and associated effects. This strongly indicates the critical need for well-designed laws, policies and regulations concerning the environment that focus on the specifics of climate change and the best way to respond to immediate and imminent crises situations. The current model of carbon intensive development in India also runs afoul of what climate science tells us is imperatively needed in terms of global mitigation efforts. In fact, specific carbon-intensive pathways such as increased coal-mining, oil exploration and coal-based energy production that the draft EIA 2020 seek to "fast-track" further devastate the natural environment and imperil health, livelihoods, well-being, and sustainable futures for a large number of people in the country.

Article 4.1(f) of the United Nations Framework Convention on Climate Change (UNFCCC) explicitly imposes an obligation on signatory countries, including India, to take "climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions". The National Green Tribunal's 2019 order in the *Ridhima Pandey case* has confirmed that climate change considerations are certainly to be covered in the process of impact assessment and has presumed that the Government of India is considering climate-related factors while granting environmental clearances.<sup>1</sup>

Unfortunately, empirical study of the environment clearance process in India show no convincing indication that climate change considerations are an important part of the EIA and environmental clearance process. The draft EIA 2020 shows no indication that the scientific, policy, legal, and moral considerations of climate change and its relation to India have been given careful thought. This is a massive lost opportunity to make India's environmental clearance regime amongst the best climate-responsive regulatory regimes in the world.

We submit that the draft EIA 2020 in current form is seriously flawed, dangerous, and inconsistent with the best-practices of responsible environmental and climate regulation. Research, including the 2016 report of the Comptroller and Auditor General of India,<sup>2</sup> on the environmental clearance process in the country, indicate that non-compliance of environmental conditions, poor monitoring, and shortcomings in the conduct of public hearings plague even the existing process (tracing back to the EIA Notification, 2006) in India. The new draft EIA 2020 exacerbates this unhappy situation at a time when multiple climate

---

<sup>1</sup> The order is available at: <https://static1.squarespace.com/static/571d109b04426270152febe0/t/5cb424defa0d60178b2900b6/1555309792534/2019.01.15.NGT+Order-Pandey+v.+India.pdf>

<sup>2</sup> Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring (2016), Union Government – Ministry of Environment, Forest and Climate Change [https://cag.gov.in/sites/default/files/audit\\_report\\_files/Union\\_Government\\_Report\\_39\\_of\\_2016\\_PA.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Union_Government_Report_39_of_2016_PA.pdf)

crises are already upon us and the need for decisive and urgent climate action has never been clearer. We accordingly request, respectfully, that the draft EIA 2020 be scrapped in entirety, and a new process for strong and effective environmental clearance regulations in India be immediately initiated based on truly deliberative, transparent, scientific, and pro-environment values and mechanisms.

## II. Background:

On the mitigation side of the issue, it is important for the draft EIA 2020 to take note of the existing position under the Paris Agreement. India is a signatory to the Paris Agreement, 2015, which was instrumental in bringing together nations to undertake ambitious efforts to combat climate change and adapt to its effects. The Paris Agreement recognised climate change as a global critical issue that needed immediate attention of citizens and world leaders alike. Further, the Paris Agreement expressed an in-principle commitment to strengthening the global response to climate change, including by “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels,” and “increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production”. The parties to the Paris Agreement were to “undertake and communicate ambitious efforts” in the form of nationally determined contributions (NDCs) to achieve the goals of the agreement.

India’s quantified NDCs under the Paris Agreement are:

- reducing the emission-intensity of its gross domestic product (GDP) by 33%–35% (relative to 2005) by 2030;
- achieving 40% cumulative electric power installed capacity from non-fossil fuel-based energy resources by 2030;
- creating an additional carbon sink of 2.5–3 billion tonnes of CO<sub>2</sub> equivalent by 2030 through additional forest and tree cover.

Unfortunately, the logics and provisions of the draft EIA 2020 seem to take scant note of the first of the above NDCs and actively works against the second and third NDC by promoting coal-mining, oil-drilling, and fossil-fuel based energy-production, by facilitating expedited clearances in forested areas with minimal safeguards, and by promoting unregulated urban mega-infrastructure projects (that usually result in significant tree-fellings) without effective checks and balances in place.

On the impact, adaptation and resilience fronts, the situation looks even more worrisome. The Ministry of Earth Sciences, Government of India, has recently released a book titled “Assessment of Climate Change over the Indian Region”.<sup>3</sup> A fundamental finding of the book is that the temperature in India is set to rise by at least 1.5°C in the next 30 years, and that this will trigger a large rise in the frequency and intensity of extreme weather events. Some of the major consequences of temperature rise, the book reports, will be an increase in heat

---

<sup>3</sup> R.Krishnan and others, Assessment of Climate Change over the Indian Region – A Report of the Ministry of Earth Sciences, Government of India, Springer Open 2020, <https://link.springer.com/content/pdf/10.1007%2F978-981-15-4327-2.pdf>

waves, increasing variability of the monsoon, and an increase in the intensity of droughts and floods. The landmark IPCC 1.5°C report of 2018 has already unequivocally indicated that India is one of the most vulnerable countries in the world in the context of global warming, and the country will likely face devastating effects including heavy precipitation events such as flooding and tropical cyclones, increased number of hot days, coastal flooding from sea level rise and high risk to coastal communities due to loss of coastal ecosystems, significant impact on economic growth, decreased food availability, severe negative impact on livestock, increased risk of vector-borne diseases, and increased extinction rate for plants, vertebrates and insects.<sup>4</sup>

In the last couple of months, India has been reeling under several climate catastrophes that have rendered thousands of people homeless and caused widespread devastation and destruction. These include the following:

Cyclone Amphan – the super cyclonic storm ravaged the eastern states of West Bengal and Odisha on 20 May 2020. Before Amphan hit West Bengal, scientists categorised it as a category 5 super cyclone, the first such since the devastating Odisha cyclone in 1999. This follows last year (2019) being the most active cyclone season in the North Indian Ocean in recorded history. Several scientists who study climate science, cyclones and typhoons have stated that elevated global atmospheric as well as sea surface temperatures due to human-caused climate change were causing the increased intensity of events such as the Amphan. It is extremely concerning that despite the cyclone having reduced to a category 3 storm by the time it hit landfall in the two states, it caused such widespread devastation and destruction.

Climate change amplifies the cyclonic storms that typically form in the northern Indian Ocean. Increasing sea surface temperatures can make cyclones more powerful. Warmer oceans mean there is higher rainfall during storms. Rising sea levels due to global warming make for higher storm surges, which reach larger inland areas. Higher temperatures also lead to cyclones forming much faster, as was the case with Nisarga (that hit Mumbai on 01 June 2020) and Amphan.<sup>5</sup>

“This year both Arabian Sea and Bay of Bengal were about 1 degree warmer than normal (in early May) and hence the conditions were conducive to increasing the strength of the cyclones”, said Jayaraman Srinivasan, scientist at Divecha Centre for Climate Change at the Indian Institute of Science. “A warmer ocean does not automatically mean there will be more cyclones, but if the cyclones are born, they will become stronger on account of a warmer sea.”<sup>6</sup>

The desert locust infestation – Swarms of millions of desert locusts invaded more than two dozen districts covering more than 50,000 hectares of desert areas of western India. K.L.

<sup>4</sup> See Intergovernmental Panel on Climate Change, Global Warming of 1.5°C, 2018, [https://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf)

<sup>5</sup> Sowmya Sarkar, Cyclones rise as climate change heats up the Indian Ocean, 2020, <https://indiaclimatedialogue.net/2020/06/05/cyclones-rise-as-climate-change-heats-up-indian-ocean/#:~:text=Climate%20connection&text=Warmer%20oceans%20mean%20there%20is,case%20with%20Nisarga%20and%20Amphan.>

<sup>6</sup> Ibid.

Gurjar, deputy director of India's Locust Warning Organisation, stated that this was the biggest infestation seen in three decades. This infestation has also been linked to climate change. Locusts thrive following periods of heavy rainfall that trigger blooms of vegetation across their normally arid habitats in Africa and the Middle East. Experts say that a prolonged bout of exceptionally wet weather, including several rare cyclones that struck eastern Africa and the Arabian Peninsula over the last 18 months, are the primary culprit. The recent storminess, in turn, is related to the Indian Ocean Dipole, an ocean temperature gradient that was recently extremely pronounced, something that's also been linked to the devastating bushfires in eastern Australia.<sup>7</sup>

In addition to the above, India has also seen an increased occurrence in floods that displaced millions, record breaking heat waves, droughts owing to crop damage and depleting water supply in the last decade. These extreme weather events, which have happened in a span of two months, highlight the impact climate change has had in the country.

Unfortunately, the draft EIA 2020 does not address any of these high-risk climate impacts in any kind of specific or confidence-inspiring manner.

It is evident that there is an urgent need for India to integrate climate change considerations into its environmental law, policy and regulatory design. Currently, it is only the EIA regulatory framework that allows for a careful consideration of climate issues before granting or rejecting clearance for a proposed project.

### **III. Need for Climate Impact Assessment in the EIA 2020**

Adaptation, resilience, and climate justice considerations are conspicuously absent in the language of the draft EIA 2020. The draft EIA 2020 appears to be oblivious to the climate crisis that already engulfs vast parts of India and to what this might mean for long-term national economic security, vulnerable human communities, and threatened biodiversity.

FORM-1 included as an appendix to the draft EIA 2020 has some basic mention of certain climate considerations. This form, which is to be submitted at the start of the environmental clearance process by projects categorised as 'A' and 'B1', contains cursory references to the requirement of details of environmental sensitivity of the project insofar as adverse climatic conditions might be present in the area of the project that would make it susceptible to natural hazards, risk of the project being affected by natural disasters, changed living conditions of people and details of vulnerable groups of people who could be affected by the project, and emissions from combustion of fossil fuels and burning of waste. The pre-feasibility report that is to accompany this form, also included as an appendix to the draft EIA 2020, has mention of "climatic data from secondary sources" as part of the site analysis. Form 1A which is to be submitted by building or construction projects listed as category 'B2' has slightly greater detail in terms of mention of building materials, energy conservation measures, renewable energy uses, and generic requirements of details of micro-climate impacts.

---

<sup>7</sup> Madeline Stone, A plague of locusts has descended on East Africa, climate change may be to blame, 2020 <https://www.nationalgeographic.com/science/2020/02/locust-plague-climate-science-east-africa/>

It must be pointed out that the manner of inclusion of a few arbitrary climate-considerations as elements of the application forms or pre-feasibility report do not require or encourage proponents to provide detailed climate-specific information. The draft EIA 2020 simply does not prioritise climate change as a relevant part of the environmental decision-making. It would certainly be very useful for the regulatory authority to have a detailed understanding of the climate emissions, risks and impacts of a proposed project, so that specific Terms of Reference for the project's EIA report can be formulated. It is critical that the project proponent, in the initial steps of the EIA process, should determine and document how the proposed project contributes to carbon emissions, what risk is present for the project due to climate change, and how the project might exacerbate specific climate impacts (for example, water scarcity or increasing heat island effects) with a particular focus on vulnerable communities and endangered biodiversity. Unless climate-considerations are prominently required by the EIA regulations, it is unlikely that they will meaningfully feature in the scoping, EIA report formulation, appraisal, public consultation and final approval processes.

Moreover, projects categorised as 'B2' do not even have to undergo the process of scoping in being granted Prior Environment Clearance or Prior Environment Permission. Therefore, not even the ineffective and superficial climate check being carried out for 'A' and 'B1' projects are being carried out for 'B2' projects. Pertinently, many projects that have been categorised as B2, and can legally circumvent scoping and public consultation under the draft EIA 2020, are of the nature that they can have far reaching mitigation consequences if planned well, and could exacerbate problematic climate impacts if planned poorly.

The absence of detailed Climate Impact Assessments prior to commencing projects can also lead to potential increase of temperatures in the area, loss of bio-diversity and ecology, disrupted rainfall patterns, and an increased frequency of extreme climate events. While attribution science on the exact contribution of projects of different scales to local climate conditions is still emerging, there is no doubt that ill-planned projects can exacerbate water stress, biodiversity loss, and food insecurity in an area that is already being impacted by climate change and global warming.

A good example to consider is the recent disaster involving Oil India Limited in Baghjan, Tinkukia district, Assam. While Oil India Limited has been carrying out its operations in the state of Assam for several years now, its plan to expand its operations in 2018 included exploration for hydrocarbons under the ecologically sensitive Dibru Saikhowa National Park and the Dangori river. Although this move was widely protested in many quarters, the management of Oil India Ltd justified the project by suggesting that their usage of state-of-the-art Extended Reach Drilling technology would enable their activities without having to even enter the National Park. A close look at the final Environment Impact Assessment Report filed by the project proponent reveals that there was little to no consideration of emissions caused by the project, possible mitigation measures, potential climate risks, and possible measures to address such risks.<sup>8</sup> The report also does not provide for extensive mitigation measures with respect to air emissions. While the report does contain some baseline data in

---

<sup>8</sup> The EIA report for this project is available at: <http://www.environmentclearance.nic.in/DownloadPfdFile.aspx?FileName=d0p9oufTYtXsMSy1jOjO7KW3AjZ55ApCTNFrwsW27XFZwiBouDjMm82WZ5huRbtPDPACImlCXvW+muRqhqc1XJnPtP8HHMiuO+p+J9M9sH8dcWTtA4jccsqWTdb2t4j&FilePath=93ZZBm8LWEXfg+HAIQix2fE2t8z/pgnoBhDIYdZCzUeqEISsDpNmaozay3MPM7v>



relation to the climate of the region, the report does not contain details of any potential adverse climatic events caused due to the expansion, the overall climate risks of the project, and the overall carbon emissions that would result from the project. It has recently been revealed that the management of Oil India Limited also managed to circumvent public hearings for the expansion of project by citing wholly untenable reasons.<sup>9</sup> However, this project was still granted clearance to commence its expansion operations in May 2020.

Within a month of such clearance being provided, oil and natural gas began to gush out uncontrollably from the Baghjan oil field, a couple of kilometers from the Dibru Saikhowa National Park. While the management of Oil India Ltd scrambled to contain the blowout, a fire broke out in the plant, leading to a towering inferno on the site. In addition to the project itself having long-lasting ecological impact on the forests and biodiversity, the blowout and the fire on the site of the project will also add much carbon to the atmosphere apart from reducing the overall resilience in the immediate ecosystem.

In light of the above incident, it is ironic that projects involved in exploration of oil and natural gas have been categorised as 'B2' and therefore will be subject to very little government scrutiny and absolutely no public scrutiny under the EIA 2020.

It is essential that Climate Impact Assessment is made an integral part of the entire EIA procedure from its very inception. The EIA 2020 neither anticipates climate change as a direct result of carbon-intensive development nor does it take into account climate science relating to impacts and resilience. It is important to note that the inclusion of climate change considerations into the EIA process will require no major changes to the essential steps or sequence of the process, but will require obligations by project proponents to analyse and disclose information relating to carbon emissions, climate risks, potential additional impacts on communities struggling to adapt to climate change impacts, and overall effect on climate resilience.

While this is an area that requires sustained discussions across communities and experts from multiple disciplines, we propose a few primary steps to be taken into account in incorporating climate change considerations into the EIA process:

- a. The laws and regulations on Environment Impact Assessments need to lay down in detail what specific climate change factors project proponents are required to deal with in their initial applications, pre-feasibility report, environment management plans, and draft and final EIA reports. Detailed guidance on the different scenarios involved and best practices to be followed must necessarily be made available by the government. Not only will this manifest efficiency and effectiveness in the process, but will also provide project proponents with a ready reckoner on what factors they need to study, analyze and account for, before projects are granted clearance.
- b. It is prudent that project proponents determine and document in detail whether and how climate change is a consideration in the proposed project at the very inception

---

<sup>9</sup> Jayanta Kalita, Oil India skipped public hearings before expanding drilling in Assam's Baghjan, 2020, <https://science.thewire.in/environment/exclusive-oil-india-skipped-public-hearings-before-expanding-drilling-in-assams-baghjan/>

of the EIA process, *i.e.*, at the time of submitting their applications seeking clearance. This will not only ensure climate efficiency from the very beginning, but will also ensure that the regulatory authority is able to issue streamlined, effective and specific terms of reference for the preparation of the draft EIA report.

- c. A perusal of Appendix-X to the EIA 2020 (generic structure for an EIA report), reveals that climate change is not explicitly included as a consideration to be taken into account in preparing the report. Similarly, the format for disclosure of accredited EIA consultant organisations has no indication that climate-specific expertise is required by the consultants in carrying out the EIA assessments. In this context, the draft EIA 2020 needs to explicitly mention climate-specific considerations as a critical component of the environmental clearance process and mainstream this into every step of the decision-making process.
- d. It must be mandatory for project proponents to carry out detailed climate-focused scoping and further assessment must be carried out on the basis of the Terms of Reference issued by the Regulatory Authority. This will ensure thorough and exhaustive assessment of carbon emissions, climate risk, and exacerbation of pre-existing climatic impacts on the temperature, ground water, resident communities, biodiversity, rainfall patterns, forest cover etc. Any changes that may occur to primary and secondary climate parameters (temperature, wind characteristics, precipitation and sea states) and also to relevant tertiary parameters over the life span of the project and its impacts (such as ecological conditions, growing season, groundwater elevation, etc.) must be explicitly addressed and accounted for. This analysis must also include the extent of the impact geographically, the duration and frequency of carbon emissions, the overall impact on adaptation and climate resilience, and whether any such impacts are irreversible or not. Such measures will ensure that projects are indeed accurately evaluated on their environmental and climate impacts before granting clearance, and that detailed and coherent information on the fundamental impacts of the project are in the public domain.
- e. The draft EIA 2020 mandates that the EIA report must contain baseline data of the project site, the collection and analysis of which must be carried out by environment laboratories duly notified under the Environment (Protection) Act, 1986. Baseline data only deals with environmental and climatic conditions (if any) prior to the commencement of the project, and does not in any manner deal with what prevailing climatic and environmental conditions could be post-project and post-development. Climate scenario analysis as a result of the project should feature in the EIA reports. Factoring in and providing a detailed study of what will be the impact of the project on the climate resiliency of the area, its pre-existing natural resources, and biodiversity must be mandated. Mandatory disclosure of the expected annual and total emissions of green house gases (along with other pollutants) from the project can also be factored in.
- f. While providing details of predicted emissions from the project, it is also important to factor in emissions that have an indirect co-relation with the project – such as those caused during transportation of raw materials, transportation of the finished product,



incineration of waste, emissions caused by employees residing on the site of the project, vehicular movement etc.

- g. Depending on the Terms of Reference and the public consultation that ensues, project proponents must provide cogent, viable and feasible alternatives and mitigation steps for emissions, climate risks to the project, exacerbation of pre-existing climatic conditions, and for any future climatic impacts caused by the project. Mitigation steps must also factor in health and wellbeing of the inhabitants/indigenous population residing in close proximity to the site of the project. It must be kept in mind that the alternatives proposed need to be relevant and technically and scientifically feasible. They should clearly relate to the cause-effect relationship between the proposal and climate change and have meaningfully different climate change-related effects when compared to the proposal.
- h. Overall, the EIA laws as reformulated must perform their role of preventing or controlling developmental projects that contribute to the climate crisis in a way that is not in consonance with our national and international climate obligations, of checking for climate risks to the project, and to ensure that the projects do not reduce climate adaptation or climate resilience in particular areas of the country.

Thanking you for your consideration.

Sincerely,

Anjali Joisa, Abhayraj Naik, Jai Warriar, Vinay Prakash, Hari Dilip Kumar, Vedita Agarwal, Anshika Srivastava, Namrata Kabra, Vani Garg and Anagha Sasidharan

Initiative for Climate Action, 30, 1, Yesvantpur Industrial Suburb, Yeshwanthpur, Bengaluru – 560086, Karnataka, India

Email: [info@actionclimate.org](mailto:info@actionclimate.org)

Website: [www.actionclimate.org](http://www.actionclimate.org)