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The Road Ahead for Environmental Impact Assessment in India: Insights from Expansion in Coal Mining¹

Sneha Thapliyal², Meenakshi Kapoor³, Krithika Dinesh⁴

Abstract

The draft Environmental Impact Assessment (EIA) notification of 2020 in India, currently under consideration by the Ministry of Environment, Forests & Climate Change, has been criticised widely and even challenged in the courts. One of the most contentious changes proposed is the circumvention of public consultations for expansions of projects up to 50% of their original capacity. Similar exemption from public hearing, albeit for 40% capacity expansion, has been permitted as a special case for the coal mining sector since 2017. We analysed the minutes of meetings of the Coal Mining Expert Appraisal Committee (EAC) between August 2017 and January 2021 that reviewed these requests for coal mine expansion. EAC has effectively side-lined the environmental and non-compliance related concerns and has largely relied on procedural issues to filter applications for such exemptions. We also find that the review and approval process of the EAC was influenced by pressure from external stakeholders with vested interests (including the Ministry of Coal and the project proponents). This compromises the objective criteria of assessment making the outcome a *fait accompli*. Thus, to ensure better environmental protection, exemptions under the proposed EIA Notification must be carefully reassessed and only considered with appropriate safeguards.

Keywords: public hearing; expert appraisal committee; exemptions; project expansion; Indian law; non-compliances

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² Associate Professor, Indian Institute of Management Indore, Rau-Pithampur Road, Indore – 453556 (snehat@iimdr.ac.in)

³ Environmental Policy Researcher (meenakshi.em@gmail.com)

⁴ Independent Environmental Lawyer (adkrithika@gmail.com)

1. Introduction

The setting up of any major project or its expansion in India requires clearance from the Ministry of Environment, and Forests and Climate Change¹ (MoEFCC) following an Environmental Impact Assessment (EIA) under the current EIA Notification, 2006 (MoEF 2006).² The notification contains guidelines on two primary aspects: accounting of environmental and social impacts; and public consultation including public hearings³ for affected as well as interested stakeholders. Sector specific panels are appointed by the MoEFCC to screen, scope, and appraise the projects seeking such environmental clearance (EC): the Expert Appraisal Committees (EAC) and the State Expert Appraisal Committees (SEACs) at the central and state/union territory level, respectively.⁴ These committees are expected to assess project impacts, review public hearing proceedings and public comments, and suggest environmental safeguards for projects that are granted clearance.

Between 2006 and 2020, over 50 amendments were made to the EIA Notification, 2006 (Dinesh & Kapoor 2020) followed by a zero draft of a new iteration of the EIA Notification in 2019 and a brand-new draft EIA Notification in 2020 (MoEFCC 2019a; 2020a). The 2020 draft notification proposes changes in project categories that require EC, process of environmental appraisal, possibility of ex post facto approvals, and assignment of projects to the Central or State Expert Appraisal Committees (Gupta et al. 2020). A dramatic suggested proposal is the removal of public consultation for modernisation of industrial units in all sectors within the existing premises or mine lease area with an increase in capacity of up to 50% of the production capacity for which a prior EC exists.

To anticipate what might transpire if such exemptions from public hearings are granted as per the 2020 draft, we review the outcomes of a particular exemption that has already been granted, viz., the change in policy regarding public hearings for expansion of coal mines since 2017. Requests for EC of expansion (and new) proposals of opencast and underground coal mines and coal washeries are reviewed by a specialised advisory committee: the EAC (Coal Mining Sector; henceforth EAC). This EAC granted a blanket public hearing exemption for coal mine expansions of up to 40% since 2017 as long as no additional land was required. The current process for coal mine expansion is illustrated in Figure 1.

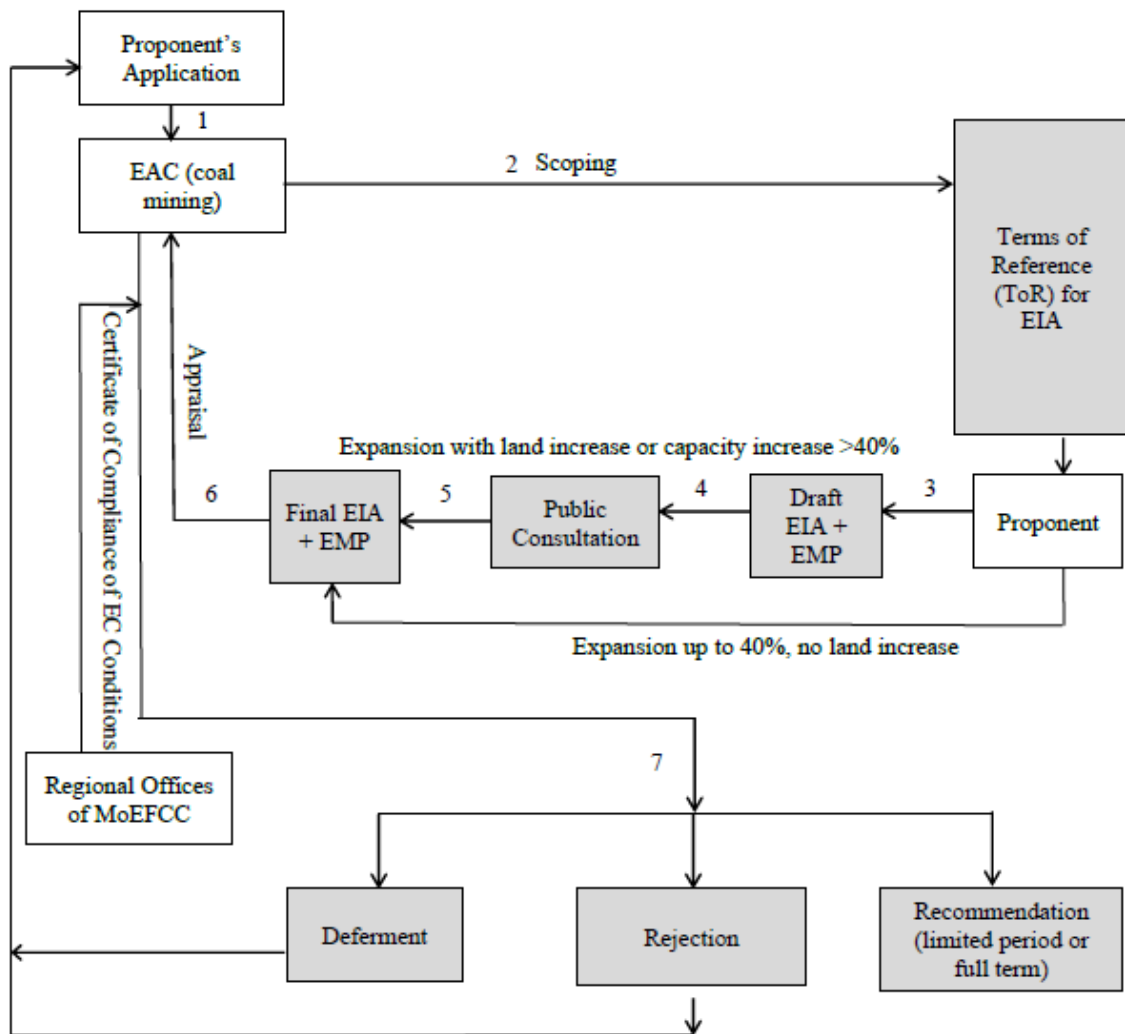


Figure 1. Clearance procedure for coal mine expansion under EIA Notification 2006 (since September 2017)

While the change made in 2017 only recommended the exemption of public hearing, the reading of minutes of meetings reveals that the proponents request directly for an EC and the EAC doesn't issue a ToR in practice.

We use the publicly available minutes of meetings of the EAC approving the expansion requests of coal mining projects between 2017 and 2021 to evaluate the process and outcome of expansion applications. The findings from this sector-specific policy experiment have crucial lessons for EIA policy. Removing public participation from the process of EIA downgrades environmental and social considerations in the decisions regarding projects.

Moreover, with coal mining sector being considered a driver, the pressure of ‘economic growth’ further compromises EAC’s independence in practice.

1.1 Context: Coal Mine Expansions

Since 2010 there has been a regulatory push to bypass public hearings for coal mine expansions (MoEF 2010). A 2010 guideline allowed the EAC to consider expansions once in five years for a project without a public hearing depending on certain conditions. In 2012, however, the MoEF issued an office memorandum (OM) which applied to coal mines seeking expansions of up to 25% (MoEF 2012). Between 2012 and 2017, six such memorandums were issued granting public hearing exemptions for coal mines to expand to higher capacities. Ultimately, in 2017, considering a proposal by the Ministry of Coal, the EAC of the MoEFCC agreed on a blanket public hearing exemption for capacity increases of up to 40% for coal mines within the existing lease area.⁵ This decision was recorded in the minutes of meeting (MoM) of 25th July 2017 (agenda point 15.5) and included several conditions. These can be classified into three broad categories. First, to address *environmental concerns*, the EAC noted that predicted air quality parameters must be within prescribed limits at the site, coal must not be transported through roads, and surface miners must be deployed to minimise emissions in projects requesting for such expansion. Second, *procedurally*, a public hearing must already have been conducted under the 2006 notification for the total mine lease area, and that all other requisite consents and permissions have already been obtained. Third, the project should demonstrate satisfactory *compliance* of the conditions specified in the existing environmental clearance.

1.2 Method and Data

We reviewed the minutes of meetings (MoMs) of the EAC from 1 August 2017 to 31 January 2021 (MoEFCC 2021). Out of the 37 meetings held in this period, 25 meetings discussed requests from 27 coal mining projects seeking expansion without public hearing using the relaxation provided in the OM issued in September 2017. We recorded project related details (state in which the project is located, capacity expansion sought, and whether it was a repeat application) as well as EAC’s recommendations for each application. EAC made one of the following recommendations: 1. rejected, 2. deferred, and 3. recommended for limited period, or for 30 years or life of the mine (whichever is less), or for extension for a limited period, or for extension for 30 years. Our primary aim is to analyse how three focal considerations – environmental concerns, past compliances and procedural concerns - influenced the EAC’s

recommendations on these requests. In the subsequent section, we expand these three categories by identifying specific technical criteria that were noted in MoMs as a reason for the committee’s decisions to hold back the full-term recommendation on applications (Figure 2).

To assess environmental performance of the mining projects, we included whether the mining site was located in a polluted area (classified as critically, severely or other polluted areas) as per the most recent Comprehensive Environmental Pollution Index (CEPI) published in 2018 (CPCB 2018). For procedural concerns, we recorded the year of the last public hearing for the mining project. We also collated past non-compliances from project monitoring reports prepared by the MoEFCC regional offices. After reviewing data from these sources, we identified contextual criteria that are not mentioned in the MoMs. These include other types of pollution apart from air pollution, impacts of pollution, and aspects that indicate the quality of last public hearing such as venue and time of the meeting, how well it was publicised, and if people’s concerns were addressed satisfactorily.

EAC’s decision-making		Environmental concerns			Compliance related	Procedural issues	
Technical Criteria	Actively considered	Air quality standards within limits	Transport not through road	Use of surface miner	Satisfactory compliance report	Past public hearing conducted under EIA, 2006	Required permissions and statutory clearances from other agencies obtained
		Pressure to ignore observations by external actors/agencies					
Contextual Criteria	Only observations	<ul style="list-style-type: none"> - Pollution due to increased infrastructure - Concerns regarding wildlife 			Violations		
	Not considered	<ul style="list-style-type: none"> - Other kinds of pollution including water - Impacts of pollution 				Quality of last public hearing	

Figure 2. Process of EAC’s decision-making: Key considerations

2. Recommendations of EAC: trends and focal considerations

The committee discussed a total of 63 requests including applications filed again after being rejected or deferred as well as applications requesting extensions of already granted expansions with exemption. These include 33 first time applications⁶ and 30 repeated applications. Applications from 14 projects were approved in the first instance and those from nine others were approved after being deferred once or more (Table 1). Only one of the 27 projects was not recommended for expansion as on 31 January 2021 making the overall approval rate for projects 96.2%. While the expansion requested ranged from 9% to 50%, 13 projects (27 applications) sought 39-40% expansion - the maximum permissible limit.

Table 1. EAC's decisions for applications submitted for exemption between August 2017 and January 2021

EAC's recommendations	Approved for limited period	Approved for full term	Permanently rejected	Total
Approved (first request)	5	9	--	14
Approved after one deferral	1	5	--	6
Approved after repeated deferrals	--	3	--	3
Approved after rejection	--	3	--	3
Rejected (first request)			1	1
Total	6	20	1	27

Review of the applications from five projects that were rejected in the first instance by the EAC indicates that procedural reasons were the primary basis for rejection. Reasons cited in the MoMs include expansion requested in excess of prescribed limit (Manikpur OCP), old public hearing and EC granted before 2006 (Dinesh and Umrer OCP respectively), pending forest land clearance (Dinesh OCP) and exemption sought after the issuance of Terms of Reference (with public hearing) for a larger capacity expansion (Dudhichua OCP). Expansion requests by these four projects were approved subsequently. Only one project had not received approval

for expansion till the last MoM reviewed for this paper - North Urimari opencast mine (Jharkhand). The application was discussed and rejected on 15.11.2019 as the project was granted approval under EIA Notification, 1994; and a revalidation of EC under EIA Notification 2006 was required. Similarly, half of the requests (7 once and 1 more than once) from eight projects that were deferred upon first application were due to compliance related reasons. Seven of these projects were approved for full term and one (Jagannath OCP, Odisha) was approved for limited period subsequently.

2.1 Environment Related Concerns

Whilst broadly speaking, most concerns pertaining pollution, compliance and social impacts of a projects fall in the category of environmental concerns, we are adhering to a conservative understanding of environment-related concerns here. This understanding is based on the factors considered by the EAC and the State Pollution Control Boards while appraising and monitoring the projects, respectively. We provide details of the concerns considered and omitted by the EAC below.

2.1.1 Pollution load

Coal mining impacts overall environmental quality in the mining region, with air pollution being one of the major concerns (Saini et al. 2016). In fact, 14 out of the 27 mining projects that applied during the period reviewed were in (critically or severely or other polluted areas) polluted regions as per CEPI 2018. Further, the EAC has repeatedly observed in the exemptions granted to the coal mines through OMs in 2012 and 2014 that increased pollution is inevitable with expansion. For exemptions granted from 2017 onwards, the EAC explicitly specified that air quality in the region may increase but it should be within permissible limits. Nonetheless, evidence to the contrary has not been sufficient for declining public hearing exemptions. For example, 25% expansion was given to Jagannath OCP in 2018 overlooking that its pollution mitigation measures were non-compliant in 2016 and 2018 because “it supplies coal to supercritical thermal power plants” (EAC 2018a). Expectedly, the 2019 monitoring report found air quality standards to exceed permissible limits at several locations (MoEFCC 2019b). Additionally, absence of monitoring equipment from sites where air quality is to be monitored has been mentioned often in the MoMs forcing EAC to take decisions with inadequate information. However, only Topa OCP’s (Jharkhand) first request was rejected markedly due

to irregular and inconsistent air quality monitoring data and was subsequently recommended upon submission of action taken report.

2.1.2 Transportation and Use of Surface Miners

Increase in pollution load, from transportation and other mining related activities, has tremendous health implications for communities in coal bearing areas. Several reports distinctly document dust pollution due to road transportation and its impacts on people residing near transportation routes (Suresh 2020; Kohli et al. 2018; CAG India 2019). There were two significant recommendations regarding air quality management owing to the dust and air pollution by coal mines in the OM of 2017 for exemption of public hearings. First, all coal must be transported using conveyor system till silos and then using rail from pithead or coal handling plant within mine lease area. Second, a technological prescription was made for the use of surface miners to minimise the use of drilling, blasting and crushing.⁷ Surface miners are machines that combine cutting, crushing and loading the ore in a single operation and eliminate drilling, blasting and cutting (Dey and Bhattacharya, 2012). However, both these stipulations were often relaxed by the EAC upon projects' requests. MoEFCC receives frequent requests from mining and thermal projects to start or continue transportation of coal via road on the grounds that the railway line construction work has been delayed due to factors 'beyond the project's control'. In fact, in October 2020, the MoEFCC gave a blanket permission for transportation of coal via road until rail or conveyor infrastructure is installed by the thermal power plant receiving the coal, regardless of the conditions specified for environmental clearance (MoEFCC, 2020b).⁸ Similarly, conditions for the use of surface miners were relaxed by the EAC for Niljai and Ramagundam OCPs. In the case of Niljai, EAC approved reduced capacity expansion than what was requested for. However, in the case of Ramagundam, it merely accepted the reason provided by the proponent that it was technically infeasible to install the surface miners.

In our sample, eleven of the 27 mining projects have been found to be non-compliant with transport-related conditions including continued use of tippers for transporting coal despite conditions stating otherwise and poor quality of roads from mine to thermal powerplants. In effect, any non-compliance of transportation or surface miner related conditions were merely followed by recommendation for future action by the EAC without any evident consequence for the projects' current expansion request. Furthermore, absence of public hearings denies people the avenue to even raise these concerns and seek mitigation.

2.1.3 Environmental parameters with limited/negligible influence

There are certain environmental parameters that are observed by the EAC but seemingly do not have an impact on the project decisions beyond deferment. For instance, alongside noting several non-compliances by Ramagundam OCP, the EAC demanded an impact study of the diversion of a natural water channel, clearance from Directorate General of Mines Safety for overburden dump, and an approved wildlife conservation plan in February 2020. This case was the only instance where wildlife concerns were recorded. Another concern which has featured only once in the reviewed MoMs is the deferment of a request from a project in a severely polluted area due to absence of a procedure for expansion of projects in such areas (Nigahi OCP). Ostensibly, the EAC considered these environmental concerns in a procedural manner and deferred expansion requests for need of certain permissions/approvals. Nonetheless, environmental concerns such as other kinds of pollution (including surface and groundwater contamination), use of groundwater in mining activities, dust pollution, impact of blasting, and damage to agricultural land have not been recorded in the MoMs.

2.2 Poor environmental compliance

Coal projects have historically performed very poorly on environmental compliance and have been frequently noted to violate environmental regulations (Mauskar Committee 2009; CAG India 2019). Although ‘violation’ and ‘non-compliance’ are both cases of non-adherence to the environmental protocols either in the form of environmental laws or environmental clearances granted under the purview of these laws, the MoEFCC makes a distinction between the two. MoEFCC defines violation cases as projects that initiate construction, operation, expansion, or modernisation without obtaining a valid EC. Non-compliance refers to conditions specified in the EC granted to a project not being met and violation refers to a project operating without a valid EC. We follow the MoEFCC nomenclature for consistency with its reports.⁹

2.2.1 Violations and Non-compliances

The ministry created a separate Expert Appraisal Committee to appraise violation cases in 2017, and if found to be permissible under the current environmental rules and regulations, grant the violating projects the permission to continue their operations with imposition of penalties.¹⁰ In one instance in the MoMs reviewed, Jagannath OCP (Odisha), public hearing

exemptions was given to it despite a ‘violation’. The project produced coal in excess of that permitted in the 2010-11 EC (MoEFCC 2019c).

In addition to air-pollution-related non-compliances already discussed, monitoring reports for the projects also record other non-compliances such as relating to overburden dump, social conditions, biodiversity, and water.¹¹ Such non-compliances were reported for 16 of the 27 projects in the monitoring reports available (Figure 3). Table 2 presents the compliance status as per the MoMs for each of the applications (including repeat applications) by the 27 projects during the period reviewed. Although past compliance is a criterion for a project to obtain an EC for expansion without public hearing, poor track record was observed to have limited impact on the project decision. Of the expansion requests from 13 projects that were not recommended in first application, non-compliance was noted as one of the reasons for 6 projects (1 rejected and 5 deferred). Expansion request from North Urimari OCP were rejected for poor compliance while requests from five other projects were deferred due to poor or partial compliances or missing latest compliance reports.

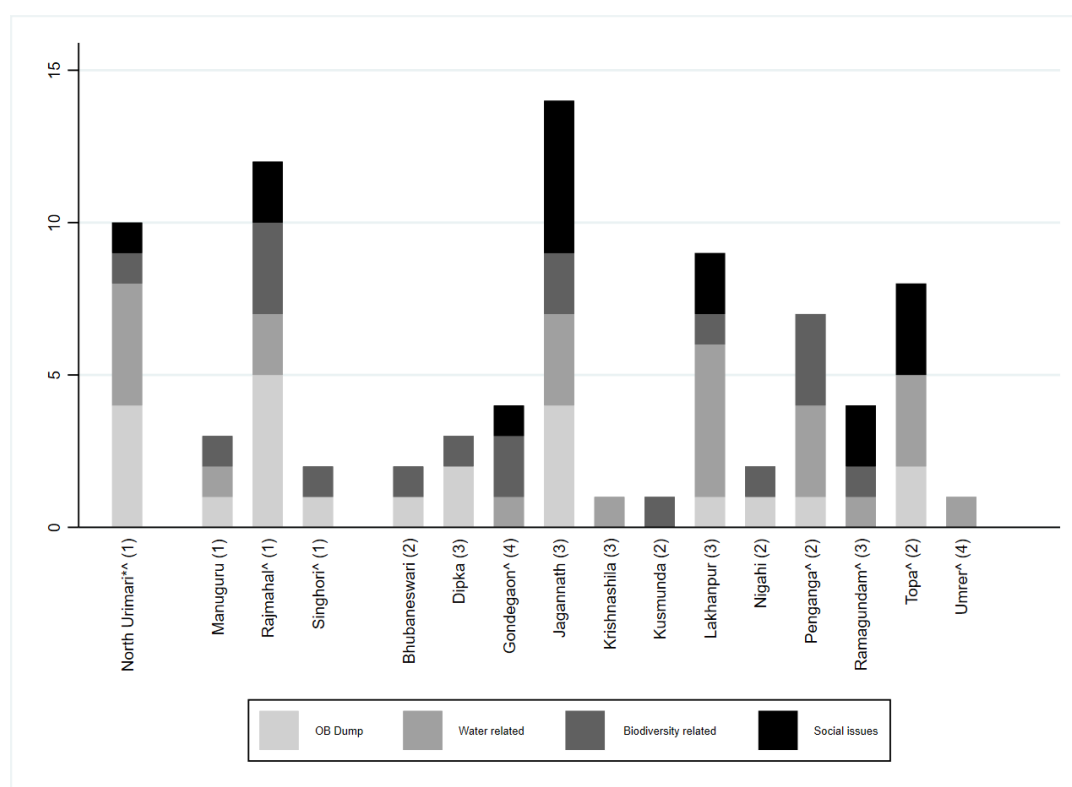


Figure 3. Issues reported in monitoring reports

(* indicates the only project that was rejected; all the other projects were recommended for approval either in first application or repeat applications; ^ indicates that the project applied

for 40% capacity expansion; the number in the parentheses indicates how many times the project applied for expansion)

Another issue is that no standardised definition exists for ‘satisfactory past compliance’ in the Indian environmental regulatory system (Kapoor 2020). Arguably, the EAC adopts a very broad definition wherein it only notes the compliance of the project based on the latest inspection report of the MoEFCC’s regional office. Further, a ‘satisfactory compliance certificate’ oftentimes means that the regional office is convinced about the genuineness of the delay in compliance as well as the assurances made by the proponent regarding compliance in the near future. Additionally, the MoMs often record partial and non-compliances in a perfunctory way without detailed assessment of the nature of non-compliance, its severity, or its impact. For instance, in January 2018, in the case of Gondegaon OCP in Maharashtra, the EAC noted “out of 40 conditions, 29 were found to be complied with and 8 were agreed to be complied with”. Here ‘agreed to be complied with’ means that the proponent hasn’t complied so far but would comply in future. The MoM record is only for 37 conditions out of 40 with no clarity on the types of condition. Thus, a considerable input to the EAC’s decision-making is based on good faith in future actions by project proponents as opposed to the history of non-compliances.

Table 2. Compliance status of applications and EAC’s recommendations

Compliance as discussed in MoMs	EAC's decision						Total
	Rejected	Deferred	Recommended (limited period)	Recommended extension (limited period)	Recommended extension (30 years)	Recommended	

Poor compliance	1	3	0	0	0	2	6
Partial compliance	0	3	5	0	0	3	11
Complete compliance	4	2	7	6	7	10	36
Compliance not discussed	2	4	1	0	2	1	10
Total	5	8	12	6	7	15	63

2.3 Procedural issues

The EAC often includes conditions in ECs requiring detailed environmental studies such as assessment of impacts on surface water (and riverine ecosystems), groundwater, soil, and agriculture and follow-up measures to safeguard the environment. Procedural issues include non-submission of such studies by project proponents. In addition, project proponents may also be required to submit statements regarding expenditure on environmental protection measures, renewal of permissions to operate, and statutory clearances for involvement of any forest land. Overall, such procedural issues were recorded in 13 projects in the monitoring reports reviewed (Figure 4). Out of these projects, the request from only one was rejected, first applications from seven projects were deferred (and approved upon repeat applications), and applications from five projects were approved in first request (including two full term recommendations).

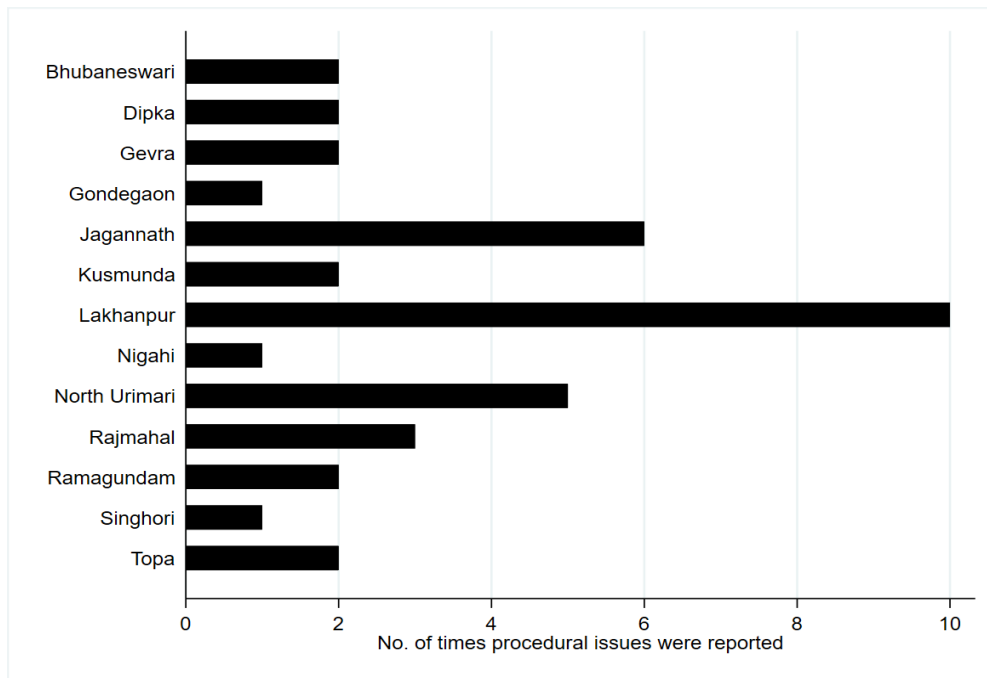


Figure 4. Procedural issues noted in mining sites in monitoring reports

2.3.1 Public hearing

Public hearing has been repeatedly exempted between 2006 and 2020 sectorally, for expansions, or on a case-by-case basis (Dinesh and Kapoor 2021; Jayaraman 2020). For instance, projects in special economic, manufacturing, or industrial zones did not require a public hearing if a public hearing had been carried out for the entire zone (Ghosh 2013). The draft EIA 2020 further expands on the list of exempted projects and has been criticised for compromising the possibility of already weakly-enforced public participation (Ghosh 2020). Such reliance on past public hearings undermines their very purpose. Figure 5 showcases the time gap between the last public hearing and the most recent expansion approval for all 27 projects under consideration from 2017 to 2021. Of the 26 projects granted expansion approval, public hearings were held ten or more years before the most recent expansion approval for 16 (~60%) projects. Given the population growth and development-induced in and out-migration in many of these places, a decade is a long time during which substantial changes in the demography of the area are possible- especially those getting affected and dependent on coal mining. Yet, EAC did not recommend a fresh public hearing for any of these projects. Instead, project proponents were asked to put up public notices of expansion inviting comments in seven of these cases. Such notices do not give the opportunity to the people to have their

concerns addressed. Besides, public consultation as mandated under the EIA process has two parts - public hearing and invitation of public comments. Hence, even with public hearing exemption, public comments should have been invited in all cases. However, our review of the MoMs does not reflect that. Public comments were ostensibly invited only in few (not all) cases where public hearings were held more than ten years ago. Further, the quality of public hearings is rarely reviewed by the EAC despite complaints. In several cases (such as Kulda coal mine in Odisha and Kasmunda coal mine in Chhattisgarh) the public hearings were allegedly conducted in a dubious manner (Dinesh & Kapoor 2021; Amnesty International 2016). In fact, the minutes of a meeting held on 27.02.2018 note that the EAC received a public representation alleging non-compliances and a poorly conducted public hearing relating to expansion of Kulda mining project (MoEFCC 2018a). Nonetheless, the EAC moved forward with its recommendation of granting project an expansion without a fresh public hearing in the same meeting.

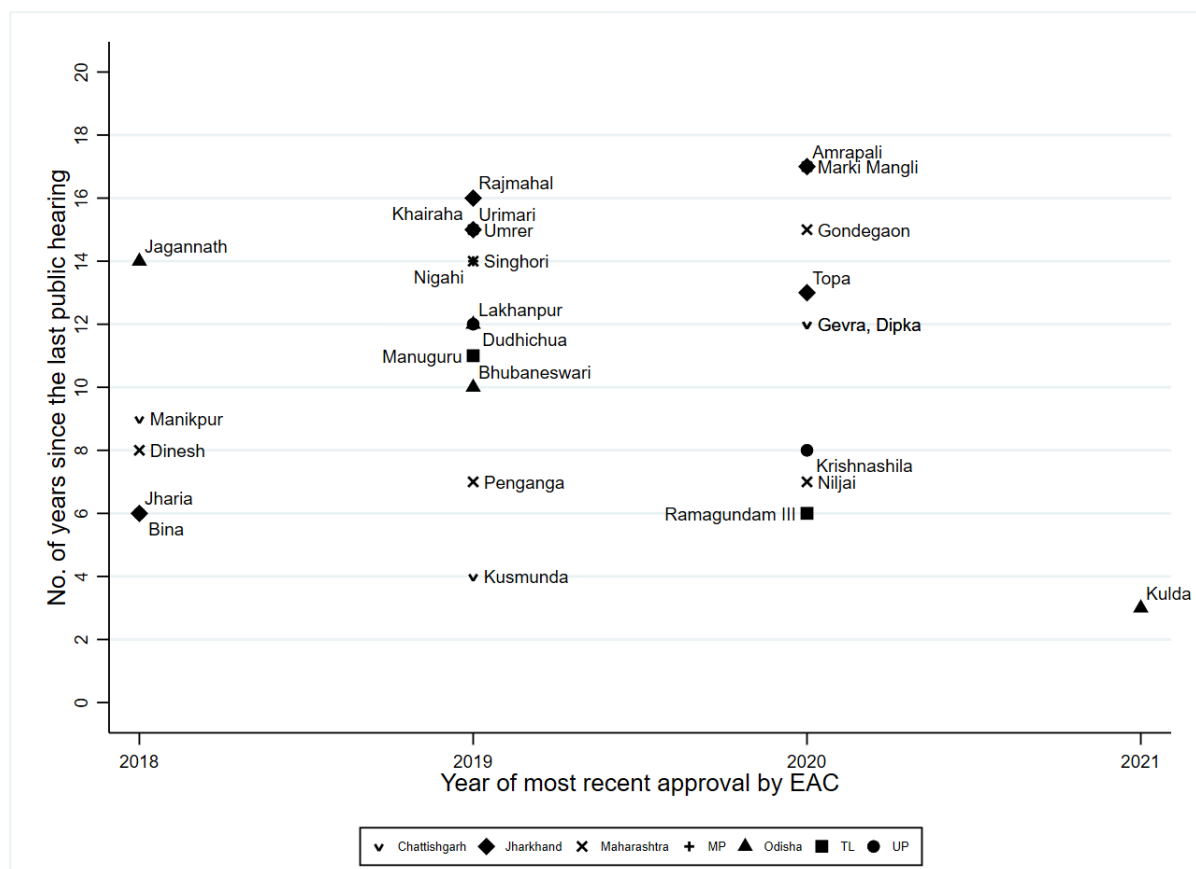


Figure 5. Overview of last public hearing of the 27 coal mining projects
(North Urimari OCP is the only project that did not finally receive approval from EAC for expansion.)

2.4 Missed points from EAC meeting agendas

Impacts of any compromise in the application reviewing process (such as overlooked non-compliances and bypassed public hearings) or of violations of environmental safeguards by projects, often appear in court cases, complaints, and testimonies in media reports by the communities living next to these coal mining projects. These impacts are well beyond the ones considered in the MoMs reviewed for this paper including additional infrastructure, pollution during construction, poor water quality, water scarcity, pollution from coal dust impacting crops and human health, and lack of employment generation for local communities (Mauskar Committee Report, 2009). The EAC acknowledged a similar concern in July 2015 - anticipating that enhanced mine capacity would result in reduced mine life and would negatively impact those dependent on coal mining for their livelihood. The site visits of the regional offices of the MoEFCC limit themselves to recording the compliance status of safeguards mentioned as conditions in the EC letters granted to projects. Compliance status of these conditions is frequently recorded as 'complied', 'partially complied', and 'non-complied'. Moreover, the regional offices often settle for agreements by the proponents for future compliance, which if unmet translate into impact and grievances. Interaction with local communities and assessment of non-compliance impacts are not usually a part of monitoring visits. However, we noted a single instance where a complaint to the MoEFCC regional office was indeed noted. During the site visit by regional office, a local complained about discharge of untreated water in agricultural fields due to ill-functioning of oil and grease traps and effluent treatment plants of the Rajmahal OCP (MoEFCC 2019d).

3. Compromised process - interference in EAC's independence

EACs, as gatekeepers of access to natural resources, are expected to be able to operate independently. However, there are two factors that may lead to regulatory capture. First is the constitution of EACs by the MoEFCC. Appendix VI of the EIA 2006 notification states the requirements for composition of EACs including eligibility criteria for members. Concerns have been raised regarding composition of the EAC including limited sector-specific expertise of members (including chairpersons), and poor quality of deliberation including limited

information reviewed and high numbers of applications discussed per meeting (Ghosh 2013; Dutta 2020). We also noted that there was no record of any formal note of dissent in any of the meetings. The only instance when the MoMs do not suggest consensus is the meeting on October 26, 2018 in the context of Kasmunda OCP¹². EAC expressed its concern regarding “the prevailing environmental conditions, projected scenario” and the compliance status of the project. The MoM further noted that “the committee in the first instance and in view of suggestions of the majority of its members, was not inclined to recommend the proposal.” However, the Member Secretary of the committee brought up the “shortage of coal in the country to meet the requirements of linked critical and super-critical thermal power plants” and highlighted that there was “a pressing demand for environmental clearance to the proposed expansion to a smaller extent and for a limited period.” The application was deferred in that meeting due to difference of opinion among the members but was approved in the subsequent meeting in December 2018.

Second, the decision-making process of the EAC is expected to not be influenced by any external stakeholder including other government agencies. However, there is evidence of pressure exerted by MoC and project proponents in the MoMs. MoC, stating its intention to enhance coal production through ‘efforts to expedite environment & forest clearances expeditiously’ (MoC 2018), formally conveyed to the MoEFCC in April 2019 that “EC is generally granted for the life of the project or 30 years whichever is earlier as per EIA Notification, 2006.”¹³ As apparent from the spineplot of the proportion of the total applications discussed in each meeting and proportion of type of decisions (Figure 6), a greater proportion of applications discussed in the 18th meeting onwards (22.10.2019) were recommended or extended for thirty years. Twenty of the 27 applications discussed in the ten EAC meetings between June 2019 and Jan 2021 were recommended for full term (11) or extension of 30 years (9). In contrast, only five of the 36 applications discussed between August 2017 and April 2019 were recommended for full term approvals.

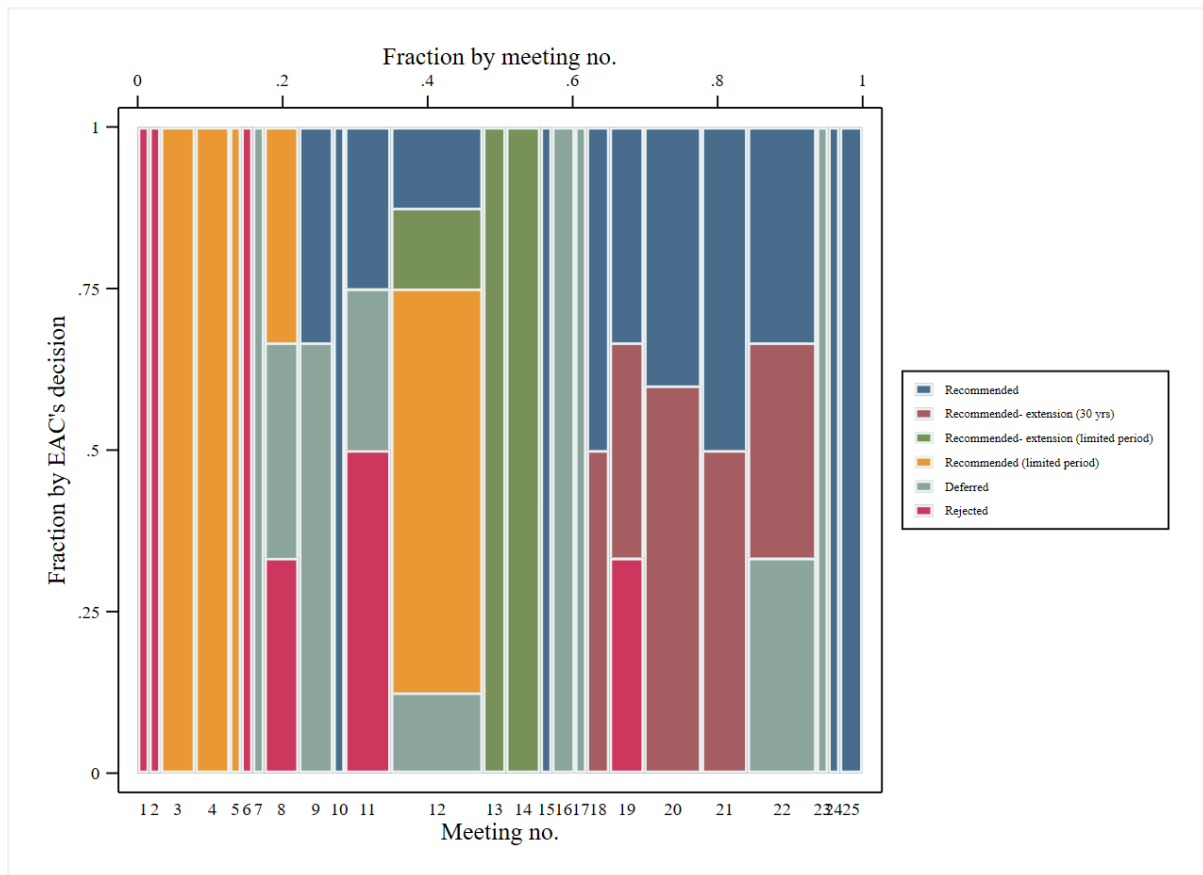


Figure 6. Spineplot of meetings and EAC's decisions

Project proponents have also made strong requests with similar arguments. For instance, despite non-compliances and violations by Jagannath OCP, the EAC noted that “in view of some of the thermal power plants dependent upon coal supply from the Jagannath OCP, the project proponent has strongly requested to consider their present proposal for grant of EC” in July 2018 (EAC 2018b). The decision-making process of EAC is likely to be influenced by such repeated highlighting of the supposed trade-off between economic growth (via electricity generation through TPPs) and environmental concerns. Nonetheless, the EAC has demonstrated some degree of resistance despite these pressures. In addition to the low full term approval rate of applications, EAC has not granted the full 40% capacity expansion upon request to eight projects.

4. Conclusion

Globally, discourse regarding Environmental Impact Assessment (EIA) is moving towards improving the operationalisation of public involvement in project approvals such that it contributes to better informed and democratic decision-making (Sadler 1996; Cashmore et al.

2004; O'Faircheallaigh 2010; Glucker et al. 2013; Morrisson-Saunders 2018). However, in India, the new draft EIA policy proposes to remove public hearing requirements for several sectors. Stemming from poorly framed 'economic growth versus environment' debates, such policy pushes are typically driven by a call for expeditious approvals of new projects or their expansions by regulatory agencies. The proposal in the draft 2020 EIA notification to exempt public hearings for expansions up to 50% in all sectors epitomises this push.

In this study, we investigated expansions in coal mining in India since August 2017, where expansions of up to 40% were considered without public hearing following an office memorandum. We reviewed the minutes of the meetings of the project reviewing committee, being the Expert Appraisal Committee (Coal Mining) appointed by the Indian Ministry of Environment, and Forests and Climate Change. Across three broad categories - environmental, procedural and compliance related - we find limited attention and weightage given to non-compliances and environment-related concerns had limited impact in the approval of expansion projects. In contrast, procedural concerns dominate deferment and rejection of requests. There is also evidence of external pressures from the MoC as well as project proponents. Ultimately, the outcome of expansion requests is a *fait accompli* – expansion requests by projects are almost always approved albeit sometimes after repeated requests. Our findings are consistent with those reported in recent studies in other developing nations as well. Project proponents are keen to influence the review and approval process accompanied by lack of concern for the environment or willingness to ensure compliance (Khan and Chaudhry 2021) and EIA agencies have been found to be ineffective in filtering project applications with 'dubious justification, significant impacts, and little social utility' under political pressure (Enríquez-de-Salamanca 2021). There must be safeguards to deter any undue compromises owing to pressures from stakeholders with vested interests. Our findings are strongly discouraging of these exemptions being continued in coal mining sector or being extended to other sectors as are proposed in the draft EIA regulation 2020. Any changes to the EIA policy must focus on the primary motivations i.e., protection of environment and communities as a goal and monitoring of compliances as a process.

Notes

¹ In 2014, the name of the Ministry of Environment and Forests was changed to the Ministry of Environment, Forests & Climate Change.

² First promulgated in 1994, EIA notification of India was revamped in 2006 including decentralising clearance power to state governments (CSE. n.d.).

³ Public hearing provisions were added to the original 1994 notifications by enacting two public hearing notifications in 1997 making it mandatory for all projects (Public hearing notification, S.O. 381(E) and 319(E)).

⁴ As per Environmental Impact Assessment Notification, 2006 (<http://www.environmentwb.gov.in/pdf/EIA%20Notification,%202006.pdf>), projects or activities requiring prior environmental clearance are divided into two categories (category A and B; listed in the schedule) “based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources”. Category A projects are reviewed at the central level by the Expert Appraisal Committee while category B projects are reviewed at the state/union territory level by the respective State Expert Appraisal Committee. We focus only on coal mining projects reviewed by the sector specific EAC.

⁵ This was subsequently notified by the MoEFCC on 7th September 2017 (No. J-11013/6/2010-1A.II).

⁶ Four projects requested for expansion more than once. Out of these, Kusmunda OCP (Chhattisgarh) applied four times in total between 2018 and 2019 [seeking](#) different capacity expansions.

⁷ <http://coal.nic.in/sustainable-development-cell/air-quality-management>

⁸ Coal mines eventually have to move away from road transportation for coal if it has been laid down as a condition in their EC (or modified EC).

⁹ When a project applies for an expansion of its existing activities the regional office of the MoEFCC conducts an inspection of the project site. It checks the compliance of conditions of the existing environmental clearance and reports the findings to the project proponent and the concerned EAC. Status of compliance is recorded as ‘complied with’, ‘partially complied with’ and ‘not complied’ along with details. Following this, project proponent has to provide an Action Taken Report (ATR) on the non-compliances. The Regional Office of the MoEFCC then goes through the ATR and, if satisfied, certifies that the compliance is ‘satisfactory’. The point here to note is that a ‘satisfactory’ or ‘in compliance’ certificate does not mean there is full compliance, it only means that there is a plan in place for full compliance or an acceptable reason (to the Regional office) for delay in compliance. On ground, ‘partial compliance’ is observed in almost all cases.

¹⁰ In July 2021, MoEFCC issued a Standard Operating Procedure for dealing with violation cases. It has been stayed by the Madras High Court. (<https://www.bloomberquint.com/law-and-policy/madras-high-court-temporarily-closes-backdoor-entry-for-environment-law-violators>)

¹¹ Overburden dump is formed out of the excavated material from coal mines and is usually of large quantities. Environmental clearance letters state several conditions for these dumps including permitted height of the slope, construction of drains around the dump, and ensuring separation of coal and the dump to prevent coal fires. Social conditions include safeguards related to rehabilitation and resettlement of those displaced due to the coal mine as well as conditions on worker safety. Biodiversity related conditions include plantation of trees, and separation of topsoil. Water related conditions include when parameters of water quality such as BOD are higher, installation of treatment plants, rainwater harvesting and low groundwater level in nearby areas.

¹² Originally the proposal was for increase in capacity from 18.75 MTPA to 62.5 MTPA with an increase in the mine area. Public hearing for the same was conducted in February 2015. In February 2016, the MoEFCC granted an EC to Kusmunda OCP for production of 26 MTPA with an increase in area. According to Amnesty, due to police intimidation, locals didn’t raise their concerns at the public hearing. We have considered it as part of our study as the future requests for expansion are without an increase in mine area and based on a public hearing conducted in dubious manner.

¹³ <https://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/13122019LGLW6GBPAprovedMOM51stMinutesofEAC.pdf>

References

Amnesty International India (2016): *When land is lost, do we eat coal?* Coal mining and violation of Adivasi rights in India. Bangalore, India

Cashmore, Matthew, Richard Gwilliam, Richard Morgan, Dick Cobb and Alan Bond (2004): “The interminable issue of effectiveness: substantive purposes, outcomes and research challenges in the advancement of environmental impact assessment theory,” *Impact Assessment and Project Appraisal*, Vol 22, No 4, pp 295-310

CPCB (2018) Central Pollution Control Board’s Report Submitted to National Green Tribunal; pg 24-26.

https://greentribunal.gov.in/sites/default/files/all_documents/Final%20Report%20in%20OA%20No1038%20of%202018%20The%20Asian%20Age.pdf

Centre for Science & Environment (n.d.): *Understanding EIA*. New Delhi: Centre for Science & Environment. <https://www.cseindia.org/understanding-eia-383>

Comptroller Auditor General of India (2019): *Assessment of environmental impact due to mining activities*. Audit Report 12 of 2019. New Delhi, India: CAG India. https://cag.gov.in/en/sites/default/files/audit_report_files/Report_No_12_of_2019_Assessment_of_Environmental_Impact_due_to_Mining_Activities_and_its_Mitigation_in_Coal_India_Limited_and_its_Subsiaries.pdf

Dey, Kaushik and Jayanta Bhattacharya (2012): “Operation of Surface Miner: Retrospect of a Decade Journey in India,” *Procedia Engineering*, Vol 46, pp 97-104.

Dinesh, A K and M Kapoor (2020): “As forums for public scrutiny of environmental decisions shrink, public interest is dealt a blow,” Scroll.In, 22 June, <https://scroll.in/article/965276/as-forums-for-public-scrutiny-of-environmental-decisions-shrink-public-interest-is-dealt-a-blow>

Dinesh, A K and M Kapoor (2021): “Digging up the dirt on Kulda coal mine expansion,” CarbonCopy, 16 February, <https://carboncopy.info/digging-up-the-dirt-on-kulda-coal-mines-expansion/> .

Down To Earth Staff (2005): “The Clearance Process,” Down To Earth, 15 September, <https://www.downtoearth.org.in/coverage/the-clearance-process-10075>

Dutta, Ritwick (2020): “The Real Worry About Environment Ministry’s Expert Committee Meeting More Often,” The Wire, 29 November, <https://science.thewire.in/environment/moefcc-expert-appraisal-committee-unqualified-non-officials-conflicts-of-interest-environmental-governance/>

Enríquez-de-Salamanca, Álvaro (2021): “Project justification and EIA: Anything goes?,” *Environmental Impact Assessment Review*, Vol 87.

Expert Appraisal Committee (2017): “*Meeting Minutes*. 27.11.2017,” Ministry of Environment, Forests & Climate Change, New Delhi. <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/0512201797P6P4P3MOMfinal.pdf>

Expert Appraisal Committee (2018a): “*Meeting Minutes*. 27.02.2018,” Ministry of Environment, Forests & Climate Change, New Delhi. <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/090320186BARNOA4FinalizedMOMEACheldon27February2018furtherupdatebyADSKSon.pdf>

Expert Appraisal Committee (2018b): “*Meeting Minutes*. 24.07.2018,” Ministry of Environment, Forests & Climate Change, New Delhi. <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/31072018WLBHZ7BTApprovedMOM34EACcoal.pdf>

Expert Appraisal Committee (2019): “*Meeting Minutes*. 05.12.2019,” Ministry of Environment, Forests & Climate Change, New Delhi. <http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/13122019LGLW6GBPAApprovedMOM51stMinutesofEAC.pdf>

Ghosh, S (2013): “*Demystifying the Environmental Clearance Process in India*,” 6 NUJS Law Review 3. New Delhi. <http://docs.manupatra.in/newsline/articles/Upload/21E2F6A6-534E-4545-AEB4-F3CA72A0B38F.pdf>

Ghosh, S (2020): “*EIA 2020: Two steps back*,” The India Forum, 4 September, <https://www.theindiaforum.in/article/eia-2020-two-steps-back>

Glucker, Anne, Peter Driessen, Arend Kolhoff, and Hens Runhaar (2013): “Public participation in environmental impact assessment: why, who and how?,” *Environmental Impact Assessment Review*, Vol 43, pp 104-111

Gupta, D, S Nayak, K Tanvani and V Viswanathan, V. (2020): “*The Draft EIA Notification 2020: Reduced Regulations and Increased Exemptions*,” Centre for Policy Research-Namati Environmental Justice Program, New Delhi. https://cprindia.org/sites/default/files/Reduced%20Regulations%20and%20Increased%20Exemptions_Part%20I_30.07.pdf

Jayaraman, N (2020): “Public Hearing Exemption for Hydrocarbon Exploration Makes a Bad Law Worse,” *The Wire*, 19 January, <https://thewire.in/environment/eia-public-hearing-exemption-hydrocarbon-exploration-drilling-environment-ministry>

Kapoor, M. (2020): “*How Govt Push for Ease of Doing Business is Compromising Environment Regulation*,” IndiaSpend, 15 January, <https://www.indiaspend.com/how-govt-push-for-ease-of-doing-business-is-compromising-environment-regulation/>

Khan, Mehreen and Muhammad Nawaz Chaudhry (2021): “Role of and challenges to environmental impact assessment proponents in Pakistan,” *Environmental Impact Assessment Review*, Vol 90, 106606, ISSN 0195-9255, <https://doi.org/10.1016/j.eiar.2021.106606>.

Kohli, K, M Kapoor, M Menon and V Vishwanathan (2018): “*Midcourse Manoeuvres-Community strategies and remedies for natural resource conflicts in India*,” CPR-Namati Environmental Justice Program, New Delhi. https://cprindia.org/sites/default/files/Final%20India%20Report%20for%20Website%20_%2021-6-2018.pdf

Mauskar Committee (2009): “Report of the Committee constituted under the Chairmanship of Shri J.M. Mauskar, Additional Secretary to examine the comments / suggestions on the Draft Amendments to EIA Notification, 2006,” Ministry of Environment & Forests, Government of India. http://moef.gov.in/wp-content/uploads/2017/09/FinalReport_EIA.pdf

Ministry of Coal (2018): Press release titled “Production of coal by CIL,” <https://archive.pib.gov.in/newsite/PrintRelease.aspx?relid=186951>

Ministry of Environment & Forests (2006): “Environmental Impact Assessment Notification, 2006,” Ministry of Environment & Forests, Government of India. <http://www.environmentwb.gov.in/pdf/EIA%20Notification,%202006.pdf>

Ministry of Environment & Forests (2010): “Guidelines for expansion of coal mining sector projects,” Ministry of Environment & Forests, Government of India. http://moef.gov.in/wp-content/uploads/2017/09/Exp_mining_sec.pdf

Ministry of Environment & Forests (2012): “Guidelines for granting environment clearance for expansion of coal mining projects involving one time production capacity expansion of up to 20% in the existing operation,” Ministry of Environment & Forests, Government of India. <http://moef.gov.in/wp-content/uploads/2017/09/ia-19122012-a.pdf>

Ministry of Environment, Forests & Climate Change (2019a): “Zero draft - States response,” Ministry of Environment, Forests & Climate Change, Government of India. https://www.cag.org.in/sites/default/files/database/zero_draft_eia_2019_states_response.pdf

Ministry of Environment, Forests & Climate Change (2019b): “Monitoring report for Jagannath Opencast Mine,” Retrieved from Ministry of Environment, Forests and Climate Change, Government of India. http://environmentclearance.nic.in/writereaddata/Monitoring/LVH2470Q_101-1063%20MR.pdf

Ministry of Environment, Forests & Climate Change (2019c): “Application form for prior environmental clearance: Jagannath Opencast Mine,” Retrieved from Ministry of Environment, Forests and Climate Change, Government of India. http://environmentclearance.nic.in/auth/ECGeneral_Report.aspx?pid=14261

Ministry of Environment, Forests & Climate Change (2019d): “Descriptive report on status of compliance to conditions of environmental clearance - Rajmahal OCP,” Retrieved from Ministry of Environment, Forests and Climate Change, Government of India. http://environmentclearance.nic.in/writereaddata/Monitoring/BG49BEF3_103-73%20to%20upload.pdf

Ministry of Environment, Forests & Climate Change (2020a): “Draft EIA 2020,” Retrieved from Ministry of Environment, Forests and Climate Change, Government of India. http://parivesh.nic.in/writereaddata/Draft_EIA_2020.pdf

Ministry of Environment, Forests & Climate Change (2020b): “Clarification regarding coal transportation by thermal power plants in line with ministry’s gazette notification vide 1561(E),” Retrieved from Ministry of Environment, Forests and Climate Change, Government

of India. <http://moef.gov.in/wp-content/uploads/2018/03/OM-on-Coal-transportation-clarification.pdf>

Ministry of Environment, Forests & Climate Change (2020c): “Order reconstituting the EAC for thermal power and coal mining projects,” Retrieved from Ministry of Environment, Forests and Climate Change, Government of India. http://environmentclearance.nic.in/writereaddata/EACS/EAC_Reconstitution_Order_forCoal_Mining_Projects.pdf

Ministry of Environment, Forests & Climate Change (2021): Online Submission & Monitoring of Environmental & CRZ Clearances, <http://environmentclearance.nic.in/>

Morgan, Richard (2012): “Environmental impact assessment: the state of the art,” *Impact Assessment and Project Appraisal*, Vol 30, No 1, pp 5-14, DOI: [10.1080/14615517.2012.661557](https://doi.org/10.1080/14615517.2012.661557)

Morrison-Saunders A. (2018) *Advanced Introduction to Environmental Impact Assessment*. Cheltenham: Edward Elgar.

O’Faircheallaigh, Ciaran (2010): “Public participation and environmental impact assessment: Purposes, implications, and lessons for public policy making,” *Environmental Impact Assessment Review*, Vol 30, No 1, pp 19-27

Pettigrew, A (1985): *The Awakening Giant. Continuity and Change in ICI*. Oxford: Blackwell.

Sadler, B (1996): “Environmental Assessment in a Changing World: evaluating practice to improve performance,” Canadian Environmental Assessment Agency and International Association for Impact Assessment, Ministry of Supply Services, Ottawa, final report of the International Study of the Effectiveness of Environmental Assessment).

Saini, Varinder, Ravi Gupta and Manoj Arora (2016): “Environmental impact studies in coalfields in India: A case study from Jharia coal-field,” *Renewable and Sustainable Energy Reviews*, Vol 53, pp 1222-1239.

Suresh, V (2020) *The rich Hasdeo Arand on the road to become a ravaged Korba*. Mongabay, India. <https://india.mongabay.com/2020/08/photos-the-rich-hasdeo-arand-on-the-road-to-become-a-ravaged-korba/>

Symons, V (1991): “A review of information systems evaluation: Content, context and process,” *European Journal of Information Systems*, Vol 1, No 3, pp 205–212.

The Hindu Staff Reporter (28.01.2021): “*HC questions Centre on order to translate draft EIA in 22 languages*,” The Hindu, New Delhi. <https://www.thehindu.com/news/cities/Delhi/draft-eia-in-22-languages-hc-questions-centre-on-order/article33679996.ece>

Walt, G and L Gilson (1994): “Reforming the health sector in developing countries: the central role of policy analysis,” *Health Policy Plan*, Vol 9, No 4, pp 353-70.