

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
OL IND 13/2020

31 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on extreme poverty and human rights and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 37/8, 44/15, 32/8, 42/20, 44/13 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the draft **notification "Environment Impact Assessment Notification, 2020", issued by the Ministry of Environment, Forests and Climate Change**, which, if adopted, will supersede the Environment Impact Assessment notification dated 14 September 2006 and its subsequent amendments. In this regard, we express our concern regarding some provisions and their impact on the effectiveness and transparency of the environmental regulatory framework in India, which is essential to avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of all relevant rights, including the rights to life, health, food, water and, sanitation, housing, culture and a safe, clean, healthy and sustainable environment.

The draft notification includes under Clauses 14 (2) and 26 an exemption of several large industries and projects from public consultation – as part of the environment impact assessment process – such as chemical manufacturing and petroleum products; building, construction and area development; inland waterways and expansion or widening of national highways. These exemptions are unwarranted given the substantial environmental and human rights negative impacts that can arise from projects in these areas. This is of great concern, as shown by the [recent](#) gas toxic leak in Andhra Pradesh at a chemical plant on 12 May, that caused the death of 12 people and illness of over 1,000.

According to Clause 5 (7), the draft notification does not require the publication of information or the holding of public consultation for projects labeled by the Central Government as 'involving strategic considerations'. Regretably, the draft notification does not provide clarification regarding the criteria for categorizing projects 'strategic' by

the Central Government and could therefore be open to excessively broad interpretation, reducing the ability of the public to raise concerns about potential impact on humans and the environment.

Another substantial concern relates to the proposal to allow post-facto clearance of projects that have been commenced without obtaining the required environmental clearances or environmental permissions (Clauses 22 and 23). This practice contradicts basic principles related to the environmental rule of law. As the Supreme Court of India recently noted, “Given the social and environmental impacts of an industrial activity, environment compliance must not be seen as an obstacle to development but as a measure towards achieving sustainable development and inter-generational equity” (Alembic Pharmaceuticals Ltd v. Rohit Prajapati and Others, Supreme Court of India, Civil Appeal No. 1526 of 2016, Decision dated 01 April 2020, p. 36). In light of the purpose of environmental impact assessment, the Court concluded that “environment law cannot countenance the notion of an ex post-facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development (p. 23).

Furthermore, under Clause 20 (4), the draft notification extends projects’ compliance reporting timeframe from six months to one year, including in critical sectors such as mining. The draft notification also reduces the period for the public to comment from 30 days to 20 days under the clearance process and requires that the public hearing process be completed in 40 days, compared to 45 days under the current notification. Often project proposals that incur environmental impact are of a complex nature, requiring in-depth analysis and consultation among various sectors of society, who could be affected. These proposed changes would make it more difficult for the public including those who may be directly impacted to exercise their rights to effective, equal and meaningful participation in environmental decision-making processes.

As articulated in the Framework Principles on Human Rights and the Environment published in 2018, “The assessment procedure itself must comply with human rights obligations, including by providing public information about the assessment and making the assessment and the final decision publicly available (framework principle 7), facilitating public participation by those who may be affected by the proposed action (framework principle 9), and providing for effective legal remedies (framework principle 10).”

Current best practices in environmental impact assessment include an evaluation of actual and potential impacts on human rights, and require proponents to take steps to avoid any potentially adverse effects on human rights resulting from their proposed projects or activities. As noted in the Framework Principles on Human Rights and the Environment, “the assessment of environmental impacts should also examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights” (Principle 8).

Article 25(a) of the The International Covenant on Civil and Political Rights, which India has ratified, guarantees the right of everyone to take part in the conduct of

public affairs of their country, including participation in decision-making related to the environment. The Covenant also recognizes, in its article 19(2), the right of all persons to seek, receive and impart information, which includes information on environmental matters. Furthermore, the Committee on Economic, Social and Cultural Rights in its General Comment no. 15 (2002) stated that, before any action that interferes with individual's right to water is carried out by the State party, or by any other third party, the relevant authorities must provide an opportunity for "genuine consultation with those affected".

Additionally, access to information and public participation safeguards are reflected in the Declaration of the UN Conference on the Human Environment (Stockholm, 1972), the Rio Declaration on Environment and Development (Rio de Janeiro, 1992), the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change. These international instruments include requirements for environmental impact assessments to be carried out prior to the approval or implementation of any projects or activities that could cause substantial adverse effects.

We would like to highlight that ensuring that environmental decisions take into account the views of those who are affected by them increases public support, promotes sustainable development and helps to protect the enjoyment of rights that depend on a safe, clean, healthy and sustainable environment. Assessments of the environmental and human rights impacts of proposed projects and policies must include a careful examination of the impacts on those in most vulnerable situation, such as persons living in poverty, members of indigenous peoples and other local communities, older persons, persons with disabilities, ethnic, racial or other minorities, women, migrants, displaced persons and those living in rural or remote areas.

Moreover, under international human rights standards on the right to participate in environmental matters, effective public participation must be open to all members of the public who may be affected and must occur early in the decision-making process. In addition, all relevant information about assessments, proposals and the decision-making process must be made available to the affected public in an objective, understandable, timely and effective manner. In monitoring and reporting on environmental issues, detailed information should be provided on the threats to, and status of, those in most vulnerable situation.

We would like to note that the United Nations Declaration on the Rights of Indigenous Peoples further affirms the right to the conservation and protection of indigenous peoples' environment and of the productive capacity of their lands, territories or resources (Article 29). It also confirms the right to free and informed consent prior the approval of any project affecting their lands (Article 32.2), which is particularly important for to indigenous peoples living in forests and relying on fragile ecosystems for their subsistence. Regarding the draft and adoption process of the Environment Impact Assessment notification 2020, the Declaration requests that States consult and cooperate in good faith with the indigenous peoples concerned through their own

representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (Article 19).

Furthermore, under the United Nations Guiding Principles on Business and Human Rights (the UN Guiding Principles), the State has a duty to protect against actual and potential negative impact caused by business operations on human rights and the environment. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (Guiding principle 1). In this context, we would like to remind your Excellency's Government about its formal commitment to effectively and coherently implement the UN Guiding Principles through the release, in December 2018, of a zero draft of the national action plan on business and human rights in which the Government articulates its action to fulfil its commitment under the "Protect, Respect and Remedy" Pillars framework of the UN Guiding Principles.

We would also like to remind that, under the UN Guiding Principles, businesses have an independent responsibility to identify, prevent, mitigate and account for how they address their impacts on human rights and the environment, including through effective human rights due diligence and environmental impact assessment processes, in order to "identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships". Essential elements of human rights and environmental impact assessment processes include the "meaningful consultation with potentially affected groups and other relevant stakeholders", the integration of the findings from their impact assessments across relevant internal functions and processes, and taking appropriate action (see Guiding Principles 17--19).

Lastly, we would like to recall the National Guidelines on Responsible Business Conduct, issued by the Government in March 2019, which are in line with the UN Guiding Principles. Principle 6 of the Guidelines provides that all businesses "should respect and make efforts to protect and restore the environment". This principle "emphasizes that environmental issues are interconnected at the local, regional and global levels, which makes it imperative for businesses to address issues like pollution, biodiversity conservation, sustainable use of natural resources and climate change (mitigation, adaptation and resilience) in a just, comprehensive and systematic manner."

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

- Please provide any additional information and/or any comment(s) you may have on the issues raised?
- How do the provisions of the draft notification correspond with India's obligations under international law?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Anita Ramasastry
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Michael Fakhri
Special Rapporteur on the right to food

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Léo Heller
Special Rapporteur on the human rights to safe drinking water and sanitation