

MARCH 2023

ENHANCING PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING:

A Toolkit for Indian Communities
and Civil Society Organisations



Authors: Meenakshi Kapoor and Krithika A. Dinesh

TABLE OF CONTENTS

Foreword	4
Public Participation in Environmental Law-making	5
Public Participation in Project Decisions	9
Public Participation in Planning/Governance	15

ABBREVIATIONS

CTE: Consent to Establish

CTO: Consent to Operate

CRZ: Coastal Regulation Zone

DC: District Collector

DLC: District Level Committee

EAC: Expert Appraisal Committee

EC: Environmental Clearance

EIA: Environmental Impact Assessment

EPA: Environment (Protection) Act

FC: Forest Clearance

FCA: Forest Conservation Act

FCR: Forest Conservation Rules

FRA: Forest Rights Act

MoEFCC: Ministry of Environment,
Forests & Climate Change

PC: Public Consultation

PESA: Panchayat Extension to Scheduled
Areas

PH: Public Hearing

PLCP: Pre-legislative Consultation Policy

RFCTLARR: Right to Fair Compensation,
Transparency in Land Acquisition, Rehabili-
tation & Resettlement

R&R: Rehabilitation & Resettlement

SCZMA: State Coastal Zone Management
Authority

SEAC: State Expert Appraisal Committee

SEIAA: State Environmental Impact As-
sessment Authority

SPCB: State Pollution Control Board

FOREWORD

India's environmental regulations are undergoing rapid change. Almost all of these changes have a bearing on people's lives, livelihoods, health and wellbeing. Decisions related to these regulations affect a large number of people across the country. Environmental decisions often are trade-offs between competing demands of environmental conservation, public good, development needs and commercial interests. The very nature of environmental decisions makes it pertinent that they be taken with active public participation.

However, in the last few years, multiple decisions concerning the protection, management and use of natural resources have been taken without public involvement. (For details, see section IV of accompanying report). Even when opportunities for public review of important policy decisions have been provided, such opportunities have been excessively reliant on internet and mobile phone access, despite the fact that the percentage of Indian internet users is only just over 40%.¹ Disparities exist in access to internet and digital infrastructure based on gender, caste, class, and geographical location.

As a consequence of these and other access barriers, many civil society organisations and communities have found it difficult to be heard and have their concerns addressed in recent environmental decisions. Decisions, in turn, have met with more protests. Projects that have moved forward run the risk of being unsustainable and lacking social legitimacy.

This toolkit aims to present the existing possibilities for public participation in environmental decision-making in an easy-to-use format. The possibilities and citizen rights of participation are discussed as part of processes related to lawmaking, project decisions, planning and governance. Finally, the toolkit discusses strategies for invoking accountability from authorities when opportunities for public participation are curtailed.

¹ITU (n.d.) An overview of the state of digital development around the world based on ITU data Available at https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_IND.pdf

PUBLIC PARTICIPATION IN ENVIRONMENTAL LAW-MAKING

In India, transparency and accountability in lawmaking prior to legislative examination is upheld by the **Pre-legislative Consultation Policy**.

During legislative scrutiny, **parliamentary standing committees** provide the possibility of public consultation on bills. Some committees that may get referred bills with environmental implications are:

- Science and Technology, Environment, Forests and Climate Change
- Transport, Tourism and Culture
- Agriculture
- Energy
- Petroleum and Natural Gas
- Urban Development
- Water Resources
- Rural Development
- Coal and Steel
- Social Justice & Empowerment



“Evolve from a representative democracy to a participatory, deliberative democracy”

~ The National Advisory Council, 2012

Certain Review Committees Have Carried Out Closed-Door Exercises.

The Shailesh Nayak Committee reviewed Coastal Regulation Zone (CRZ) Notification, 2011 without involving the public. The CRZ Notification governs development on the Indian coastline. The committee was constituted to examine the concerns of state governments and other issues concerning implementation of the CRZ Notification. The Committee did not take into account public opinion despite receiving public submissions. This was in stark contrast to the eighteen-month long process of drafting the earlier version of the CRZ Notification in 2010, for which public consultations took place all along the coast.

*Amongst environmental laws, the Environment (Protection) Rules under the Environment (Protection) Act (EPA), 1986 prescribe that any notification issued under the Act must be provided in its draft form for public review. The **prior-mandated notice period is 60 days**. Proposed changes should be published on the concerned ministry's website and in the official gazette.*

In recent years, the Ministry of Environment, Forests & Climate Change has used the pretext of 'public interest' to bypass the prior-mandated notice period. Instead of issuing draft amendments, the Ministry has published final amendments to notifications notified under the EPA.

Office Orders, Circulars or Memoranda have also been used to circumvent the mandate of prior notice for introducing changes in appraisal procedure of activities with environmental impacts.

PRE-LEGISLATIVE CONSULTATION POLICY

What is the Pre-legislative Consultation Policy (PLCP)?

The Pre-legislative Consultation Policy establishes a process for government departments and ministries to consult people before finalising a law.

What is the aim of the Policy?

The Policy aims to ensure transparency, inclusiveness and accountability in environmental policy-making in India.

Who issued it, and when?

The Ministry of Law & Justice Legislative Department, in 2014.

Is it binding?

No, the PLCP is not a binding law. It is only a policy, but departments and ministries are expected to follow it.

How does PLCP enhance public participation?

PLCP prescribes that a draft law should be made available for public review prior to parliamentary scrutiny.

Other than draft legislation, what should be available in the public domain?

In addition to the text of the draft law itself, its justification, essential elements, broad financial implications, and impact assessment should be made available. Draft legislation should be accompanied by an explanatory note with the key legal provisions in simple language.

Where should this information be made available?

This information should be provided on the official gazette, on the website of the concerned ministry and department; and in print and electronic media.

According to PLCP, information on what kinds of impacts should be provided?

Impacts on environment, fundamental rights, lives and livelihoods of affected people should be provided within draft legislation

Is there a minimum notice period?

Yes, thirty days.

Does the PLCP say anything about affected people?

If a law affects a specific group of people, such impacts should be documented and disclosed through print or electronic media or in any other way necessary to reach the affected communities.

Is consultation required?

The PLCP suggests that consultations with all stakeholders should be held. However, it leaves to the discretion of the concerned department or ministry the degree and mode of participation/consultation.

What happens to public feedback?

The concerned department or ministry should include a summary of feedback received with responses.

TIPS FOR ENHANCING PUBLIC PARTICIPATION IN ENVIRONMENTAL LAW-MAKING

- Check concerned ministry websites and the electronic gazette (www.egazette.nic.in) for the latest amendments/changes in environmental laws and new legislation.
- See if a notice period provided for public scrutiny abides with the PLCP. If no notice period or less than 30 days is provided, seek the minimum 30-day notice period as recommended in the PLCP.
- Most environmental laws have broad implications, and hence require translations. Ask for translation in regional languages if not provided. It is crucial to ensure that these translations then reach those who will be impacted by these changes. Tap into existing local networks of organisations, collectives and community leaders and organisers for this.
- If a bill or proposed legislation has been referred to a review committee or parliamentary standing committee, request that the committee's report be made public.
- These requests can be raised through social media platforms, or writing to the concerned ministry, department or committee.
- Applications under the Right to Information Act can be filed to obtain copies of committee reports, information about the legislative drafting process, and public feedback on a law.
- Raise awareness about proposed legislative or policy changes through social media, community meetings, and campaigns.

What Has Worked?

In 2021, the MoEFCC published a consultation paper on proposed amendments to the Indian Forest Conservation Act, 1980, and granted a 15-day period for the public to view the paper. Social media and other outlets noted that the MoEFCC had not followed the minimum notice period of 30 days as mandated in the PLCP.

Giving into public pressure, the Ministry extended the public notice period to 30 days, and made available translations of the consultation paper in regional languages.

Although these were positive changes, it bears noting that 30 days is the minimum notice period prescribed under PLCP. Amendments and laws bearing far-reaching implications and impacting millions could benefit from a longer notice period.

PUBLIC PARTICIPATION IN PROJECT DECISIONS

In project decisions, public participation can take place before or after start of construction of a project, and during its operation. There are clearly defined limits to public participation before and after project construction. Public participation during a project's operation is limited to complaints.

TIPS FOR ENHANCING PUBLIC PARTICIPATION IN PROJECT DECISIONS

Since most projects with environmental and social impacts are expected to obtain an environmental clearance, try to be familiar with the environmental clearance procedure. There is scope for engagement at each stage of appraisal, as you can write to the appraisal committees with concerns about the project's impacts on the environment, public health and livelihoods of people living near project areas.

FOUR STAGES OF ENVIRONMENTAL APPRAISAL (OBTAINING AN EC)

Screening	To decide if the project falls into A, B1 or B2 category*
Scoping	To issue a Terms of Reference for preparing an EIA report To seek inputs on a draft EIA report including:
Public Consultation	-inviting responses in writing -holding a public hearing
Appraisal	To evaluate project's impacts on the basis of a final EIA report and decide if a project should be allowed in an area or not and if approved, what environmental safeguards it should follow.

*A Category projects are appraised at the Centre by the Expert Appraisal Committee (EAC) and MoEFCC grants ECs to them; B Category projects are appraised at the State level by the State Expert Appraisal Committee (SEAC) and the State Environmental Impact Assessment Authority (SEIAA) grants ECs to them; B2 projects have fewer appraisal requirements as compared to B1. They do not need to conduct public consultations.

CHECKLIST

We provide a checklist on how to identify projects that require environmental clearance, how to locate them within the appraisal procedure, and the possibilities for public engagement.



1. CHECK WHETHER THE PROJECT FALLS WITHIN THE LIST OF PROJECTS IN THE EIA NOTIFICATION, 2006.

You can find this list in the Schedule of the EIA Notification, 2006. You will also be able to determine whether the project falls under Category A, B1 or B2 (and find out if a project appraisal is due at the Centre or state level, and if it includes public consultation and hearing).

Important: Double check with amendments as many project categories have been revised over the years. There is no single EIA Notification file that is updated with amendments on the Ministry's website. You can find an updated file maintained [here](#).



2. ACCESS INFORMATION.

Various forms, meetings minutes, public hearings, Terms of References, and clearance letters provide important information such as project impacts, project track record and prior violations, and arguments put forth by proponents in favour of the project, its capacity and its chosen location. A project's status in the environmental appraisal procedure and associated information can be found at www.parivesh.nic.in.

Important: Depending on the stage of the project, information is available in different places.

STAGE	TYPE OF INFORMATION	SOURCE
Terms of Reference	<ul style="list-style-type: none"> Form I (application seeking Terms of Reference) EAC/SEAC meeting minutes Terms of Reference 	<ul style="list-style-type: none"> Website of MoEFCC and concerned SEIAA
Public Hearing	<ul style="list-style-type: none"> Summary of draft EIA report in English and official language of the state/local language Copy of the application Notice of public hearing 	<ul style="list-style-type: none"> Offices of the District Magistrate, Zila Parishad or Municipal Corporation or Panchayats Union, District Industries Office, Concerned Regional Office of the MoEFCC; Website of MoEFCC/SEIAA; SPCB One major national daily and one regional vernacular daily/official state language (beating of drums, announcement on TV/ radio where newspapers don't reach)

Appraisal	<ul style="list-style-type: none"> • EAC/SEAC meeting minutes • Additional questions asked and responses • Proceedings of the public hearing 	<ul style="list-style-type: none"> • Website of MoEFCC and concerned SEIAA
After EC	<ul style="list-style-type: none"> • EC letter • Monitoring and compliance reports 	<ul style="list-style-type: none"> • Website of MoEFCC and concerned SEIAA



3. INTERVENE.

If the requirement of minimum notice period (30 days) and due visibility is not met, a letter can be written to the concerned SPCB requesting cancellation and rescheduling the public hearing with adequate notice period and visibility.

If the public hearing is not conducted in a genuine manner or the EIA report missed important impacts and/or concerns, a complaint can be written to the EAC/SEAC highlighting irregularities.

What Has Worked?

In the case of an expansion of an oil refinery by Nayara Energy Limited, the Gujarat Pollution Control Board published a notice for public consultation on March 26, 2020, during the COVID-19 national lockdown. The public hearing was scheduled to take place on May 1, 2020. While the requirements of minimum notice period and due publicity were followed, the public hearing was scheduled during a pandemic in which the public's movement was highly restricted. Affected communities wrote to the Gujarat Pollution Control Board requesting to defer the public hearing until such time when normal movement and health safety could be restored. Following the letter, the pollution control board cancelled the public hearing until further notice. Prior to this, the Expert Appraisal Committee (EAC) noted that the project had obtained only written responses and not conducted a public hearing. This issue too was raised by the communities in a letter to the EAC. Consequently, the EAC refused the expansion to Nayara Energy and returned the proposal.²

- Similar information on the status of forest and CRZ clearances can be obtained from MOEFCC's website. Complaints can also be written and sent by post or over email in the event of irregularities.

Although no separate process for obtaining Gram Sabha's (village assembly) consent is maintained on the website, meeting minutes for the Coastal Zone Management Authorities and forest clearance committees, timelines of projects with queries raised by different government offices and proponent's replies may provide information on communities' involvement, Gram Sabha's consent and objections raised (if any).

² Patel, Ker and Nayak (2020). "Public hearings during Covid-19, the Gujarat way". NewsClick. India. Available at: <https://www.newsclick.in/public-hearings-COVID-19-gujarat-way>

- Applications under the Right to Information Act can be filed to obtain copies of any of the above-mentioned documents/information, if not available in the public domain.
- Complaints tilt grievance redressal systems towards participatory decision-making. They can be raised before and after a project is granted clearance or permission. They are conventionally viewed as avenues for the public to seek redress; however, authorities may also be interested in collaborating with communities to collect evidence of violations and their impacts, and even as monitoring partners.

Important: Reach out to the departments/authorities whose mandate (and interest) overlap with community concerns. Some examples include:

- *Ground water authority in the event of subsoil leaching of pollutants*
 - *Tribal Affairs Ministry when Gram Sabha consent is ignored*
 - *District collector in the event of pollution as a case of 'public nuisance'*
 - *Fisheries department in the event of effluent discharge into the sea*
- Complaints can be raised during 'Open Days' organised by various local government offices for anybody to bring their concerns and grievances to concerned officers.

What Has Worked?

In the case of windmill development in the Kutch district of Gujarat, communities sought removal of electric poles erected on the village common pond and grazing land. They wrote to the district collector and followed up with a complaint in October 2022 during an 'Open Day' at the District Magistrate's office. Within three weeks, the District Collector had passed an order to remove the poles from the common village pond, and grazing land.

IMPORTANT WEBLINKS

Go to 'Track your proposal' in the Parivesh website and select 'Environmental Clearance', 'Forest Clearance', or 'CRZ':

<http://environmentclearance.nic.in/searchproposal.aspx>

To see whether a particular project is going to be discussed in an EAC upcoming meeting:

- EAC Meeting Schedule & Agenda:
http://environmentclearance.nic.in/report/meeting_schedule.aspx
- SEAC Meeting Schedule & Agenda:
<https://parivesh.nic.in/SeiaaSeacState.aspx?id=SEAC>

To check what was discussed in past EAC meetings:

- EAC Meeting Minutes:
http://environmentclearance.nic.in/report_uploaded_minutes.aspx
- SEAC Meeting Minutes:
<https://parivesh.nic.in/SeiaaSeacState.aspx?id=SEAC>

The Forest Clearance State Portal has similar meeting minutes and project status and timeline for forest clearance process across states:

<http://forestsclearance.nic.in/stateportal.aspx>

There is no single EIA Notification file that is updated with amendments on the Ministry's website. You can find an updated file:

<https://www.icnl.org/post/report/indias-environmental-impact-assessment-notification-2006-with-changes-post-2012-and-expert-commentary>

Possibilities of public participation in decisions on projects from key sectors**

	COAL	OIL & GAS	RENEWABLE	HYDROPOWER	INFRASTRUCTURE
BEFORE START OF CONSTRUCTION OF A PROJECT					
EIA 2006, if EC is required	PC on draft EIA report*	No PC for exploration PC on draft EIA report	No EC required No PC required	EC required for >25MW projects PC required for >25 MW projects	PC on draft EIA report*
FRA 2006, if on forest land	Gram Sabha's consent	Gram Sabha's consent	Gram Sabha's consent	Gram Sabha's consent	Gram Sabha's consent
PESA 1996, if in schedule area	Gram Sabha's consent	Gram Sabha's consent	Gram Sabha's consent	Gram Sabha's consent	Gram Sabha's consent
CRZ 2019, if in coastal area	May involve DLC	Exploration exempt May involve DLC	May involve DLC	May involve DLC	May involve DLC
RFCTLARR 2013, if private land acquisition for private party	70%-80% landowners' consent PH on social impacts, R&R	70%-80% landowners' consent PH on social impacts & R&R	70%-80% landowners' consent PH on social impacts & R&R	70%-80% landowners' consent PH on social impacts & R&R	70%-80% landowners' consent PH on social impacts & R&R
AFTER START OF CONSTRUCTION OF A PROJECT					
Expansion	PC at draft EIA stage* No PH for up to 50% expansion without additional land	PC at draft EIA stage* No PH for up to 50% expansion without additional land	No EC required No PC required	No EC required No PC required	PC at draft EIA stage* No PH for up to 50% expansion without additional land
DURING OPERATION OF A PROJECT					
Violation of EC conditions or EIA Notification, 2006	Complaint to Regional office MoEFCC for Category A project Complaint to SEIAA for Category B project	Complaint to Regional office MoEFCC for non-compliance of the EC if Category A project or to SEIAA if Category B		Complaint to Regional office MoEFCC for non-compliance of the EC if Category A project or to SEIAA if Category B	Complaint to Regional office MoEFCC for non-compliance of the EC if Category A project or to SEIAA if Category B
Violation of CTE or CTO or pollution laws	Complaint to SPCB	Complaint to SPCB		Complaint to SPCB	Complaint to SPCB
Violation of FC clearance conditions or FCA, 1980 or FCR, 2002	Complaint to monitoring cell under Forest Conservation division	Complaint to monitoring cell under Forest Conservation division	Complaint to monitoring cell under Forest Conservation division	Complaint to monitoring cell under Forest Conservation division	Complaint to monitoring cell under Forest Conservation division
Violation of CRZ clearance conditions or CRZ Notification, 2019	Complaint to SCZMA or DLC	Complaint to SCZMA or DLC	Complaint to SCZMA or DLC	Complaint to SCZMA or DLC	Complaint to SCZMA or DLC

*Check the Schedule of the EIA Notification to identify if the given project size, type, or location require an EC

CTE: Consent to Establish, CTO: Consent to Operate, CRZ: Coastal Regulation Zone; DC: District Collector; DLC: District Level Committee; EC: Environmental Clearance; EIA: Environmental Impact Assessment; FC: Forest Clearance, FCA: Forest Conservation Act, FCR: Forest Conservation Rules, FRA: Forest Rights Act; MoEFCC: Ministry of Environment, Forests & Climate Change; PC: Public Consultation; PESA: Panchayat Extension in Schedule Areas, PH: Public Hearing, RFCTLARR: Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation & Resettlement; R&R: Rehabilitation & Resettlement, SCZMA: State Coastal Zone Management Authority, SEIAA: State Environmental Impact Assessment Authority, SPCB: State Pollution Control Board,

**The table is based on the current regulations. However, EIA Notification, 2006 is often amended. Also, there are proposals to amend laws such as the Forest Conservation Act. Such proposals are likely to further curtail the scope for public participation. See full report for proposed changes.

PUBLIC PARTICIPATION IN PLANNING/GOVERNANCE

The table below provides certain cases where planning has shown some signs of participation. However, these participatory exercises are at their nascent stage. In several of these cases, participatory exercises were compromised. There is a long way to go to achieve active and meaningful citizen participation.

EXERCISE	KEY FEATURES
Coastal Zone Management Plan	<ul style="list-style-type: none"> ● The plan guides regulation of activities for the first 500 meters of the coastline. ● The plan demarcates zones based on current land use and future needs of the people inhabiting these areas. ● The draft plans are shared with the locals through public hearings for obtaining their views on proposed demarcations and regulations.
District Level Committee	<ul style="list-style-type: none"> ● The committees are mandated to have at least three representatives from traditional coastal communities. ● The committees can assist the state authorities in all aspects of coastal governance.
Critically Vulnerable Coastal Areas	<ul style="list-style-type: none"> ● According to the CRZ Notification, these ecologically fragile areas should be notified in consultation with locals. ● The CRZ Notification prescribes that communities should be involved in the management of these areas.
Development/ Master Plan	<ul style="list-style-type: none"> ● These spatial planning exercises are slowly being opened up for public opinion.
Biodiversity Management Committees	<ul style="list-style-type: none"> ● Biodiversity Management Committees have people's representation. ● They are responsible for creating the People's Biodiversity Registers as repositories of people's knowledge.
District Mineral Fund/Local Area Development Fund	<ul style="list-style-type: none"> ● These funds are supposed to utilise a percentage of the project cost/royalties to develop these areas. ● Funds are to be utilised on development activities decided in consultation with local and affected communities and individuals.
Relocation in critical wildlife habitats	<ul style="list-style-type: none"> ● Any relocation of forest rights holders for wildlife conservation must be done after obtaining the free, informed consent of Gram Sabhas.

TIPS FOR ENHANCING PUBLIC PARTICIPATION IN PLANNING AND GOVERNANCE

- Regional land use planning has consequences for communities and the environment. However, people's participation in planning processes is an emerging field. Civil society actions and community demands in the past contributed significantly to opening up this space. Nevertheless, there is significant room for growth and continuing to demand public participation opportunities from the government.
- Applications can be filed under the Right to Information Act to obtain project plans and maps.
- Bringing in people from diverse groups will not only enrich such plans but establish more legitimacy to requests for better public engagement.
- Often government authorities have limited resources. Collaborating and assisting them in facilitating better community participation could be helpful. For example, the Main Bhi Dilli Campaign assisted the Delhi Development Authority in setting up more desks for obtaining offline feedback on the draft master plan.
- Requesting copies of feedback received from the public on such plans and participatory exercises invokes accountability from responsible authorities.

What has worked?

The Main Bhi Dilli Campaign, launched in 2018, worked towards co-creation of the Delhi Master Plan-41. The campaign included a group of organisations, researchers, planners, architects, academicians and activists “to advocate for an inclusive, community-based approach towards Delhi’s master plan (2021-2041)”.³ The plan was drafted by the Delhi Development Authority and the National Institute of Urban Affairs. The campaign focused on core urban issues including the often-neglected socio-spatial aspects of Delhi that impact those living at the margins of the city.

Through community mapping exercises, surveys, and special toolkits, the Campaign created awareness and tried to accommodate the concerns of Delhi’s residents in the planning process. It expanded the ‘single window’ opportunity officially provided by the Delhi Development Authority to submit objections and suggestions on the plan to several online meetings and offline desks. It also managed to obtain an extension on the duration for public suggestions from the initial 45 days to 75 days.

³ Chauhan, S (2021). “Making city planning democratic: Reflections from ‘Main Bhi Dilli’ campaign”. Ideas for India. Available at <https://www.ideasforindia.in/topics/urbanisation/making-city-planning-democratic-reflections-from-main-bhi-dilli-campaign.html>

ICNL

1126 16th Street NW, Suite 400
Washington, DC 20036 USA

 www.icnl.org

 facebook.com/ICNLAlliance  twitter.com/ICNLAlliance