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'Coordination Mechanisms for Environmental Impact Assessment in Pakistan'

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1. BACKGROUND

Environmental impact assessment (EIA) is a decision aiding tool that has a purpose to 'ensure that decision makers consider the ensuing environmental impacts when deciding whether to proceed with a project'. EIA is the primary mean of managing the approval of new development projects in Pakistan. It allows systematic examination of proposals, following clear procedures, which provide for interest of relevant government departments and other stakeholders to be clearly considered.

The 'Section 12' of the Pakistan Environmental Protection Act (PEPA-1997) directs that an Initial Environmental Examination (IEE) or where any project is likely to cause adverse environmental effect, stating; *'No proponent of a project shall commence construction or operation unless he has filed with the Government Agency designated by Federal Environmental Protection Agency or Provincial Environmental Protection Agencies, as the case may be, or, where the project is likely to cause an adverse environmental effects an environmental impact assessment, and has obtained from the Government Agency approval in respect thereof'*.

Like many countries, environmental law enforcement and implementing agencies in Pakistan are not well connected and integrated, due to their wide diversity, overlapping mandates, competing agendas, various levels of independence from political interference and a general institutional lack of clarity.

Recognizing the importance of institutional coordination in environmental assessment, the Guidelines for Preparation and Review of Environmental Reports¹ also emphasize that *'Inter-agency coordination is crucial for effective environmental assessments, because environmental issues, in their complexity and variety are often inter-sectoral and regional'*.

This paper has been prepared adopting a consultative process, with an objective to 'review the existing coordination mechanisms between the institutions involved in project formulation to approval and conduction EIA/grant of approval and identify gaps/shortcomings which are impeding the EIA process implementation in Pakistan'. It puts-forth recommendations for improving the coordination between federal and provincial departments for improved coordination for effective implementation of EIA system in Pakistan.

2. INTRODUCTION

In Pakistan, identification, formulation, appraisal, approval, implementation, monitoring and evaluation of development projects (both in public and private sector) is carried out by various line ministries and departments at federal, as well as, and provincial levels. The success of EIA system in Pakistan relies on the effectiveness and cooperation of many complimentary institutions such as the Federal Ministry of Climate Change, Government of Pakistan (GoP), Pakistan Environmental Protection Agency, Planning and Development Division and the Provincial Environmental Protection Departments, Provincial Environmental Protection Agencies and the Provincial Planning and Development Departments.

Weak coordination amongst relevant institutions is considered as one of the key issues in the effective implementation of the EIA system in the country. During 2010, an amendment has been made to the Constitution of Pakistan (referred to as '18th Constitutional Amendment'), the bill was passed by the Senate

¹ Guidelines for Preparation and Review of Environmental Reports. Government of Pakistan. 1997
www.environment.gov.pk/eia_pdf/D_rev_enReprt.pdf

of Pakistan on April 15, 2010 and became an act of parliament when the President of Pakistan signed it on April 19, 2010. After the devolution, various powers of the Pak-EPA have been delegated to the provincial governments. These include the administrative control of the provincial Environmental Protection Agencies, which now serve in isolation with the Pak-EPA. This devolution has created lacunas for inter-agency coordination for EIA, particularly those related to projects/schemes having trans-provincial impacts.

During the processing for grant of approval, there are often formal (e.g. screening, scoping, review of draft and final EIA reports) and informal (e.g. need, alternatives analysis, baseline analysis, impact analysis, impact interpretation) decisions in the EIA process, which need to be well coordinated. Hence, there is a need for improved coordination between EPAs and Planning and Development Departments (P&DDs), especially in the case of public sector projects and the decisions taken on EIAs/IEEs. Improved coordination at provincial level between provincial and district governments is also very essential.

3. EXISTING INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL ASSESSMENT IN PAKISTAN

Under the PEPA-1997, primary responsibility for EIA process in the country is entrusted to EPAs at the federal, provincial and state i.e., Azad Jammu and Kashmir (AJK levels). The four provincial agencies, i.e., Punjab-EPA, Sindh-EPA, Khyber-Pakhtunkhwa-EPA, Balochistan-EPA were created during different years from year-1987 onwards. Similarly, AJK-EPA was created in year-1996 and Gilgit-Baltistan-EPA in year-2007. Initially, Pak-EPA had delegated powers to the provincial EPAs for implementing the requirements of EIA and other provisions. However, post-18th Constitutional Amendment, Pak-EPA's role has been reduced from national level, while the provincial EPAs are now working under the respective provincial environmental departments.

In the current scenario, each province has initiated development of its own environmental framework/provincial act and thus new supporting legislation for EIA and other environmental matters will be set in place. Every provincial EPA has separate directorate of EIA which is responsible to process the EIA of both private and public sector development projects.

Before debating on the institutional coordination mechanisms for environmental assessment, it is important to elaborate the institutional setup for project formulation to approval processes and the details of the role of each in project formulation to approval in Pakistan. An account of which is presented in sections below:

3.1. Institutional Setup for Project Formulation to Approval

Institutional setup for Public Sector Projects

The responsibility of formulation and approval of the projects at federal level vests with the following institutions;

i. Planning Commission of Pakistan

In October, 1958 the initially constituted National Planning Board was re-designated as the Planning Commission of Pakistan. The related functions of the Planning Commission besides others, include; *'In consultation with the federal and provincial governments and other appropriate agencies, to stimulate and where necessary, to initiate the preparation of development programmes and projects; to examine and advise on all such programmes and projects with a view to deciding whether these conform to national objectives and, in general, whether these contemplate the most efficient use of national resources and to watch and evaluate the progress of implementation of the development programmes.'*

ii. Federal Ministries/Divisions

The Federal Ministries are responsible for the preparation of programmes and projects in their respective fields of interest including autonomous organizations under their control. The programmes prepared by the federal ministries are submitted to Planning Commission, which coordinates all development programmes in the Country.

iii. Provincial Planning & Development Departments

The Planning and Development Department is the principal planning organization at the provincial level. It is headed by the Chairman, Planning and Development Board in Punjab Province and Additional Chief Secretaries (Development) in the rest of the three provinces and Azad Jammu and Kashmir and is assisted by professional staff of economists and specialists in various knowledge fields. It coordinates the programmes

prepared by the provincial departments concerned with development and prepares the overall provincial Five Year Plan and Annual Plans.

Institutional setup for Private Sector Projects

For projects in the private sector, the concerned provincial EPA has the authority to grant environmental approval or issues the No Objection Certificate (NOC), if neither IEE nor EIA is applicable.

4. MAPPING OF EXISTING INSTITUTIONAL COORDINATION MECHANISMS

Based on the stakeholder feedback and review of the environmental assessment process, a review of the existing coordination mechanism of environmental assessment has been made.

4.1 Legal Mechanisms

After the 18th Constitutional Amendment, the provinces are mandated to enact their own environmental legislation. Almost all of the provinces (including AJK and GB) have started process of formulating of their legislation. Meanwhile, the federal legislation i.e., PEPA has been adopted by all the provinces, till the provincial legislation is enacted.

4.2. Institutional Mechanisms

i. Vertical Coordination between layers of government

The coordination amongst layers of government (federal to provincial) is non-existent. For provincial projects exceeding budgetary requirements of over Rs. 500 million are sent to ECNEC for approval. In this case, no mechanism currently exists to institutionally coordinate for environmental assessments between provincial project proponents and federal government (in this case is the approving authority).

After the devolution, mandate of the Pak-EPA has been reduced only to federal jurisdiction, which has further hampered the coordinating role of Pak-EPA and provincial EPAs. Till now, no formal mechanism has been devised to coordinate between provincial EPAs in such cases.

ii. Inter-agency Coordination

The inter-agency coordination i.e. for federal projects, the coordination between Planning Commission, Pak-EPA and the project proponents and for provincial projects, the coordination between concerned EPA, provincial P&DDs and project proponents exists, but is not very effective. The established Environment Sections at Planning Commission and also at all the provincial P&DDs are playing very crucial role in improving such coordination. For public sector projects, all of the schemes/projects are sent for vetting to the P&DDs through their Environment Sections for vetting prior to approval. For private sector projects, lack of understandings of the policy procedures and rules/regulations regarding environmental assessment by private proponents hamper the effective coordination.

iii. Coordination between project proponents and approval forums

Coordination between the project proponents where public or private projects is relatively good. However in some cases, where the projects from public or private sector the capacity to undertake environmental assessment hampers effective coordination. For regulatory purposes, the representative (Secretary Environment Department or the Director General of EPA) has been made a permanent member of the project approval forums i.e. CDWP and DDWP at federal level and PDWP at provincial level. This ensures reasonably effective coordination regarding environmental assessments.

iv. Coordination regarding overlapping mandates

Prior to devolution of environment, the Pak-EPA used to delegate powers to provincial EPAs regarding projects which have trans-boundary impacts. In such cases, through the Pak-EPA the provincial EPAs used to choose which agency should become the Responsible Authority for such projects. The pre-devolution existing mechanism in case of trans-provincial projects has been elaborated in Annex-III. In scenario, where non-consensus among the provincial EPAs was not reached, the Pak-EPA used to become the responsible authority. However, after the devolution, non-mechanism now exists to regulate powers among provincial EPA in such cases.

4.3. Technical Mechanisms

i. Limitation of skills and capacities

It is obvious that capacities pertaining to undertaking of environmental assessment (particularly for private sector projects) are very limited. Though between the project proponents/developers and responsible authorities (federal and provincial) exists, but are not up to standard. Thus many of the environmental assessment, both IEE and EIA are not up to desired standards.

ii. Post-project evaluation

As per interview conducted with stakeholders, the post project evaluation as mandatory for public sector projects (formulation of PC-IV) and also for private sector projects. However, as per feedback obtain, this has never been reportedly done. Hence, the proposed mitigation measures under the environmental assessment have never been evaluated for compliance and also for quality. Almost no coordination exists between the proponents/agencies and the responsible authority for this purpose.

4.4. Financial Mechanisms

The applicable Schedule of Fees for vetting of environmental assessment, including holding of the public consultations is no sufficient to meet the operational costs of the responsible authority. The applicable fees for these are Rs. 30,000 for EIA and Rs. 15,000 for IEE. In case of projects in public sector, no finances are available during feasibility stage, when environmental assessment has to be undertaken. This severely hampers the quality of such assessments.

5. CONCLUSIONS AND RECOMMENDATIONS

Maintaining effective communication, coordination and cooperation between key agencies responsible for the successful implementation of IEE/EIA process is critical. The mapping of coordination mechanisms in Chapter 4, elaborates that the existing coordination mechanism (legal, institutional, technical and financial) for environmental assessment in Pakistan is weak, which is one of the key issues in the effective implementation of the environmental assessment process both at national and provincial levels is the lack of coordination among the relevant organizations i.e. EPAs and P&DDs.

Coordination between other sectors on which the proposed project may have an impact is also crucial for an effective EIA system, as environmental impacts of development projects are interrelated with other development sectors and may affect the policies and programmes of other government departments or agencies. The relationship between the environmental assessment process and project authorization (by both the EPAs and P&DDs) and the related implementation also needs clarification. The existing procedures regarding environmental approvals also need to be streamlined, in order to make these assessments more effective.

Based on the mapping of coordination mechanisms for environmental assessment the following recommendations are put-forth for their improvement;

i. Enactment of Provincial Legal Framework

Since, all the provinces and state governments (AJK) have initiated the process of enactment of their own environmental law, these mechanisms would tend to improve and the issues that arose post-18th Constitutional Amendment would be significantly addressed. However, the coordination amongst provinces should be made an integral part of the legal mechanism as 'trade-off' amongst province would remain an issue. This should involve both deepening and broadening environment surveillance arrangements to guide provincial laws over the project approval cycle and in the longer terms.

ii. Promoting Multi-stakeholder Participation

An enabling environment to enhance multi-stakeholder participation in environmental assessment process needs to be created. Removing ambiguities in process and providing clear and sufficient guidance of the process would help improve coordination, particularly in case of private sector projects. The process of public consultation, as mandatory in Pakistan, but needs further strengthens, with enhanced participation from civil society stakeholders and communities in particular.

iii. Enhancement of Institutional Capacities

Lack of institutional capacities and awareness at federal and provincial levels is a significant obstacle in effective coordination among the institutions. The available expertise's within EPAs to review EIAs are limited and needs strengthen. Also the expertise in other relevant departments including the P&DDs is weak regarding vetting of projects against the environmental criteria.

iv. Expert/Institutional Networking

Creation of a well-organized inter-agency/inter-departmental and inter-provincial networks of professionals and institutions can further strengthen the coordination for environmental assessment at national and provincial levels. In many cases, inter-sect oral coordination is greatly facilitated at the local level by working together, while conducting such assessment. A network (probably an expert's committee) comprising of personnel from various agencies, operating according to clearly defined roles and responsibilities, could be promoted to avoid this situation and would guarantee that the coordination system would last beyond the conducted assessment for a specific project/programme.

v. Inter-Provincial Coordination

To strengthen inter-provincial coordination for over-lapping mandates (in case of project having trans-provincial impacts) and promote vertical coordination (federal to federal and provincial to provincial) for environmental assessment can be improved through operationalization or strengthening of such coordination institution/bodies. 'Experts/review Committees' are; operational in all the provinces, which can be further broadened to further facilitate coordination amongst stakeholders.

vi. Information Sharing

Sharing of information between project proponents/experts and responsible authority/approving forums is essential for improved coordination and reduced un-certainty of appropriate environmental assessment in case of project by private sector proponents. Improvements in information flow systems can be obtained somewhat through strengthening of virtual enabling frameworks and other tools and also through improved governance and exchange of technical information. Almost all respondents felt the need of maintaining an easily accessible environmental data bank at centralized place. Volumes of environmental data on air, noise, water and soil quality, flora and fauna status have been generated all over the country. Most of these data is available in electronic form.

vii. Standardization and Accreditation

Environmental consultants are considered an interface between the various statutory authorities, general public and project developers. However, the need for empanelment and/or accreditation of environment consultants involved in conducting the environmental assessment is strongly being felt. Introduction of accreditation system of such consultancies in Pakistan would enhance adequacy and appropriateness of the standards on which the assessment has been done and ensure meeting of internationally accepted standards in such assessments.

viii. Removing Financial Barriers

Conducting, reviewing and approving of environmental assessments/approval require high-class professional expertise and considerable time. Also, effectively conducting the public hearings (as mandatory) requires financial resources. However, the present schedule of fees for environmental assessments i.e. Rs. 30,000 for EIA and Rs. 15,000 of IEE is not at all sufficient to cater for requirements of the process. Also, during feasibility stage (in case of public sector projects) no finances are available to conduct these assessments as mandatory.

Removing barriers to make finances available during feasibility of project could further strengthen the environment assessment. Also, the current schedule of fees for environmental assessments needs to be revised realistically.

ix. Improving Governance

Improving governance and institutional structures would be direly needed to promote effective coordination to improve vigilance and coordination for environmental assessments. For this, re-structuring and further strengthening of provincial EPAs and Environment Sections within P&DDs is required.