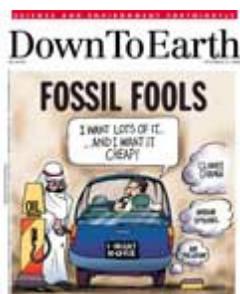


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SCIENCE AND ENVIRONMENT FORTNIGHTLY



# Down To Earth

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**ANALYSIS**

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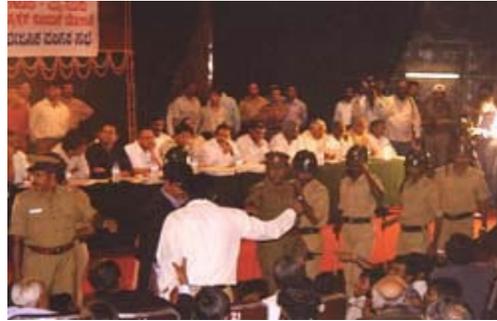
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## LOUDER PLEASE!

The BMIC hearing in progress. July 5, 2000





all picture are environmental support group

The ministry of environment and forests made environmental public hearings mandatory prior to approving a project. The common people thought justice had at long last come their way. Here was a chance to voice their grievances after examining details about the project. On the face of it, seemed an

ideal method of ensuring environmental accountability and governance. But, in the absence of proper guidelines, it is being cast aside as a toothless piece of legislation. MRIDULA CHETTRI finds out what public hearings mean in Karnataka, one of the states where such forums have gained import

**Bangalore.** A poor person's Silicon Valley. It's 11 am on July 5, 2000. The scene is Yavanika Auditorium. The occasion is what has come to be known as a public hearing. Outside the hall, protesters demand that farmers and members of the "public" be allowed to attend the "hearing". The police finally let in "other members of the public". Then, environmental groups demand that the deputy commissioner (DC), Mohammed Sanaulla, honour his promise of revealing the "documents".

The DC, who chaired the hearing, maintains that the hearing is only to record complaints. Not to answer questions. He continues calling upon members of the audience to submit their views. The activists, however, sit in a dharna in front of the podium. They are insistent. They want the "information". The scene is just right for the police's entry. First, they attend to H S Doreswamy, senior citizen and eminent Gandhian, who questions the logic of the hearing when no information is available. Next, it is the turn of Siremane Nagaraj of Karnataka Vimochana Ranga, a grassroots organisation; 30 others are taken in, too. Leo Saldanha, coordinator of Environment Support Group, is next up. Before he can come to grips with the situation, he gets thrown down the stairs. While the women activists are let off, others are taken to the police station.

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Their crime: they want to "know". They believe that a public hearing is pointless unless the information about the issue of discussion is made public. Otherwise, there is only hearing, and that, too, restricted to cacophony. And that is just it. Noise. Confusion. Pandemonium. And to think that this was to be the answer to the ineffectiveness of the legal system and to improve environmental decision-making.

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The city of Mysore is 135 km away from Bangalore. There are two highways connecting the cities. And a rail link, too. But that wasn't enough, at least not for the Karnataka state government and Nandi Infrastructure Corridor Enterprise Limited (NICE). They came up with a proposal worth Rs 2,000 crore, the Bangalore Mysore Infrastructure Corridor (BMIC) - a 111 km long highway with a 9.1 km link road to central Bangalore. So what's wrong with this?



"It is more than an expressway. Five townships along the stretch have also been

proposed to negate the cost of the economically-unviable and ecologically-unsound project," says Yerdoor Ranjan Rao of Nagarika Sewa Trust (NST), a non-governmental organisation (NGO). The "counter-magnet" townships include corporate, commercial, industrial, heritage centres, golf courses and resorts, among other things, to generate revenue from the 100,000-odd residents envisaged per town. At stake is over 8,171 hectares (ha) of land, of which 5,298 ha is rainfed agricultural land, and the livelihood of 200,000 farmers in 144 villages. "This is nothing but a real estate venture masquerading as a public highway project," says K V Narendra of the Centre for Science and Technology, Bangalore.

The project proponents have justified their proposal to ease the traffic in the present highways (state highways 17 and 86). They contend that the highways cannot be expanded to accommodate the projected increase in traffic. But environmentalists point out that the present highways are already being upgraded. Furthermore, an efficient rail link exists between the cities.

Conceived in the 1980s, BMIC took shape in the 1990s. As part of the required procedure, the first set of public hearings was scheduled for March 9, 13 and 15, 2000 at Bangalore, Mandya □ through which the expressway passes □ and Mysore. But the required information as per the law was yet to be made public.

"At the first hearing in Bangalore, we demanded the information. Instead, they showcased a multimedia presentation, which let alone farmers, we too could not understand," says Saldanha. The people demanded details of 12 reports, including the environment impact assessment (EIA), the economic feasibility and the relief and rehabilitation (R&R) reports, specifically in Kannada. In the Bangalore hearing, DC Mohammed Sanaulla asked the Karnataka State Pollution Control Board (KSPCB) to furnish all the information pertaining to the project as was done in earlier two cases (Hindustan Petroleum Corporation Limited-HPCL pipeline and the Kaichige Hole dam). The hearings were then postponed to June 30, July 3 and 5.

However, three months later, the information still eluded the activists. KSPCB officials refused to furnish them. "These are private, not public documents," says Shiv Kumar Kheny, director of NICE.

Hence, when the second series of hearing was held it was reduced to a slanging match between pro and anti-BMIC groups □ one shouting for more information and the other for no more. The hearing at Mandya was no different. So was the one in Mysore and Bangalore. But, despite the commotion, the DC proceeded with his hearings and termed it "peaceful". On the basis of this hearing NICE has already got the consent for the project from KSPCB. It is now patiently awaiting environmental clearance from the ministry of environment and forests (MEF), obviously oblivious to the sounds of fury that rage all over the three districts of Bangalore, Mysore and Mandya.

So, what is a public hearing? And what is the plebeian's role: to speak and not be heard, or be heard but not be heeded?

## **The written code**

*Based on public hearings, environmental clearances are given to*

### *companies concerned*

The first United Nations Conference on Human Environment in Stockholm, Sweden, in 1972 led to a spate of comprehensive legislative measures for protecting the environment. India being one of the signatories to the Stockholm declaration enacted several laws and also amended the Constitution in 1976. Two important changes were made, which made the state and the citizenry responsible for protection and improvement of the environment. In the 1970s-80s, five major acts were enacted by the Indian Parliament, which included the Environment Protection Act (1986). This was to be the umbrella legislation designed to protect the environment as a whole.

But environmental concerns in development were expressed for the first time in the Fourth Five Year Plan (1969-70 to 1973-74) in the section on "long term perspectives", where the need to introduce environmental aspects into development planning was recognised. The Fifth Plan and the Seventh Plan took some concrete action to incorporate these concerns while assessing the economic and technical feasibility of a project, but there was still no legal requirement for EIAs on major projects. EIAs for large-scale projects were made compulsory only in 1984. But implementation took a long while.

Ten years later, in January 1994, MEF issued the Environmental Impact Assessment Notification, which made EIA clearances mandatory for "expansion or modernisation of any activity (if pollution load is to exceed the existing one) or a new project listed in Schedule I of this notification". Schedule

**All persons, including environmental groups and others located at the project site likely to be affected, can participate in the hearing. They can also make suggestions**

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I listed 29 industries, including mining, construction of highways and chemical fertilisers.

The notification includes a provision for public hearings to be held before a project is given environmental clearances. The notification was further amended in April 1997.

**THE PROCESS OF HEARING:** Under the notification, the company seeking environmental clearance has to submit to the concerned state pollution control board (SPCB), among other things, an executive summary containing the salient features of the project both in English as well as local language and details of effluent discharge.

The SPCB will then fix the time, date and venue and showcase a 30-day notice for environmental public hearing. This should be published in at least two newspapers widely circulated in the region around the project, one of which should be in the vernacular language of the locality concerned.

The notification states, "All persons, including bona fide residents, environmental groups and others located at the project site/sites of displacement/sites likely to be affected can participate in the public hearing. They can also make oral/written suggestions to SPCB." "Person" means anyone

who is likely to be affected by the grant of environmental clearance; any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance; any association of persons whether incorporated or not likely to be affected by the project and/or functioning in the field of environment; any local authority whose limit is within the neighbourhood, wherein the project is to be located.

**The composition of the public hearing panel, as laid down in the notification, should consist of:**

- representative of SPCB;
- district collector or his nominee;
- state government representative dealing with the subject;
- representative of the state environment department;
- not more than three representatives of the local bodies such as municipalities or *panchayats*; and
- Not more than three senior citizens of the area nominated by the district collector.

The public, meanwhile, is provided access to the executive summary of the project at the district collector's office; district industry centre; in the office of the chief executive officers of *zila parishad* or commissioner of the municipal corporation/ local body as the case may be; head office of the concerned SPCB or its regional office; or in the environment department of the state government dealing with the subject of environment. Based on the public hearing, the SPCB gives a No Objection Certificate (NOC) for air and water to the company concerned.

**GETTING CLEARANCE:** As per the January 1994 notification on Environmental Impact Assessment of Development Projects, the application made by the company concerned for environmental clearance should be accompanied by a project report which should, among other things, include an EIA report or environmental management plan, details of the public hearing and NOC from the pollution control board.

In the case of site specific projects □ such as mining, pithead thermal power stations, and hydropower □ project authorities have to intimate the location of the project site to MEF while initiating any investigation and surveys. The MEF then takes a decision regarding suitability of the proposed site within a maximum period of 30 days.

The reports submitted by the company concerned is evaluated and assessed by the Impact Assessment Agency (IAA) and if deemed necessary it consults a committee of experts, constituted by IAA or any authorised body under the Central government.

The IAA then prepares a set of recommendations based on the assessment of documents and data furnished by the project authorities supplemented by data collected during visits of sites of factories, if undertaken, and details of public hearing. Regarding submission of EIAS, the notification says that "as a comprehensive EIA report will normally take at least one year for its preparation, project proponents may furnish Rapid EIA report to IAA based on one season data (other than monsoon), for examination of the project.

Comprehensive EIA report may be submitted later, if so asked for by the IAA."

According to the law, the assessment is to be completed within 90 days of receipt of the required documents from

**Regarding submission of EIAs, the notification says that "as a comprehensive EIA report will normally take at least a year for its preparation, project proponents may furnish Rapid EIA"**

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the project promoters and completion of the public hearing. The decision is conveyed within 30 days thereafter. Till the environmental clearance is received, no construction work, preliminary or other relating to setting up of the project or site clearance is to be undertaken. However, if no comments from received from the IAA within the time limit, "the project would be deemed to have been approved as proposed by project authorities" (see diagram: *The route to environmental clearances*).

### The route to environmental clearances

Under the Environmental Impact Assessment Notification, 1994, amended in 1997, the company seeking environmental clearance submits to the concerned state pollution control board (SPCB) an executive summary (es) of the project



The SPCB gives a 30-day notice for environmental public hearing with details of the time, date and venue. The notice is published in two widely-circulated newspapers, one in the local language. During this time, the public is provided access to the es.



On the notified day, a public hearing is held, on the basis of which SPCB gives a No Objection Certificate.



The company concerned applies to the Union ministry of environment and forests for clearance; provides EIA or environmental management plan, details of the public hearing and NOC.



Reports submitted is evaluated and assessed by MEF; prepares recommendations also based on details of public hearing.



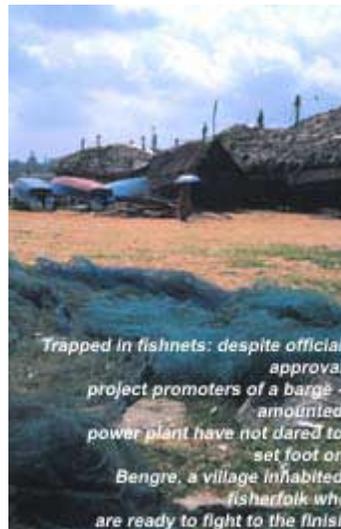
Assessment is completed within 90 days of

receipt of application and completion of the public hearing. The decision is conveyed within 30 days thereafter. If no comments are received within the time limit, the project is given "deemed" consent.

The notification ends on a note on the need for correct information. "Concealing factual data or submission of false, misleading data/reports, decisions or

recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data would also be revoked. Misleading and wrong information will cover the following: false information, false data, engineered reports, concealing of factual data and false recommendations or decisions," it states.

Is the law enough? At the first instance, the laid down procedure may seem to be a transparent, ideal and effective method that takes people into confidence vis-a-vis the grant of environmental clearance to a proposed project. However, point out experts, few experiences of such hearings have made it very apparent that the government machinery and industrialists very well know how to make this seemingly ideal method hollow and ineffective.



## Out of earshot

*Who follows the public hearing procedures? Neither the government nor the project promoters*

In the early 1990s, the Birla-led Indo-Gulf Fertilisers Limited was scouting for land near Mangalore to establish a copper smelter plant. Tokur and surrounding villages near Baikampady were proposed as a possible site, an area full of paddy fields and plantations. In 1994, the Dakshina Kannada Zilla Parisarasakta Okkoota (DKZPO) a district environment federation of people's organisations at various levels argued on the grounds of inappropriate siting and in the public hearing, a provision of which was there in the 1994 notification. On the basis of the hearing, the government decided not to clear the project. Initial euphoria, however, soon gave away to a string of disappointments.

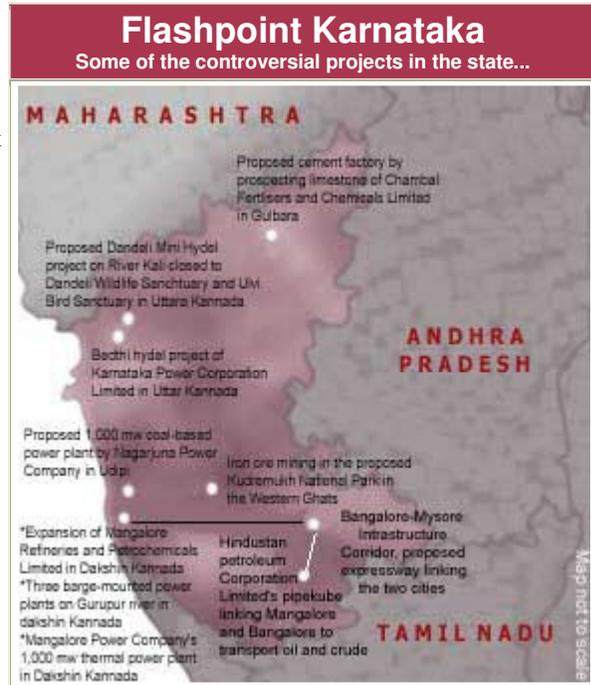
Well-connected by rail, road, water and air, Dakshin Kannada district of Karnataka is an investor's haven. But the district which is blessed with the Arabian Sea, the verdant Western Ghats and where rivers, streams and estuaries abound is also plagued with a host of controversial development projects (see table: *Flashpoint Karnataka*). But the system of public hearing has continues to be used. Whether the people are being heard is a different story altogether.

## POWER STRUGGLE:

Consider Cogentrix Incorporation, USA, which finally pulled out in December 1999 after hogging the limelight for seven years.

Cogentrix's India project, Mangalore Power Company (MPC) is the company still exists is a US \$1.3 billion joint venture with China Light and Power Company of Hong Kong. The 1,000-mw coal-fired power plant is to be located at Nandikur-Padubidri near Mangalore. Ever since the state

government signed the Memorandum of Understanding for the power project in 1992, local communities have strongly resisted the project on grounds



**In Cogentrix's case, a "private" public hearing was held in a Circuit House. This was later passed as public hearing. The state pollution control board also issued a No Objection Certificate**

that the proposed location is an environmentally-fragile estuarine zone. "Even within the government, some officials spoke against it, yet the government went ahead with the project," says M K Ramesh, head, Centre for Environmental Education, Research and Advocacy at the National Law School of India University, Bangalore.



Saldanha says in 1995, the state minister of forests was Siddanha Gowda. He called a filmstar and the chairperson of Karnataka SPCB. The three went to Mangalore, sat in the Circuit House, called for a few more people and said this is a public hearing. When the people got wind of it, they protested. The meeting was called off saying a joint hearing would be held later. "But based on the hearing, a NOC was given by KSPCB in 1996 and the MEF cleared the project, too," says Saldanha.

Cogentrix finally pulled out of the project a year ago. Interestingly, the reason for Cogentrix walking out of the project is not

public protests. According to Ranjan Rao, the Karnataka hc in early 1998 ordered a Central Bureau of Investigation (CBI) inquiry based on allegations of corruption levelled

*Thriving in decadence: shanties encircle Mangalore Refineries and Petrochemicals Limited's unit, which has hardly enjoyed a day without criticism for pollution (left); and the temporary that is here to stay: while work goes on the Tanneerbavi barge mounted power project, there are few signs of the project being on an experimental basis*



against the promoters by consumer activist Arun Agarwal. Negating wide public opinion favouring an inquiry, the state government went on appeal against the hc decision in sc, which stayed the order and reserved judgement after several hearings. But Cogentrix pulled out soon after. "Nobody had stopped their project from coming through and there was no stay order. They could have gone ahead but they preferred not to because they did not want a CBI inquiry. So it is a wrong notion that they have walked out because of protests," says Rao.

**TROUBLE IN THE PIPELINE:** Another storm is brewing not just in Dakshin Kannada but in six other districts too is over a proposed petroleum pipeline between Mangalore and Bangalore. Mangalore Refineries and Petrochemicals Limited (MRPL) was one of the first mega-industries to be set up in the region.

Hindustan Petroleum Corporation Limited (HPCL), which also holds equity in MRPL, markets its products. The controversy is over the proposal to lay a 364-km underground pipeline between Mangalore and Bangalore to transport petroleum products at the cost of Rs 800 crore. The pipeline will pass through 243 villages in 17 talukas across seven districts through the mountains of the Western Ghats and prime agricultural land. This, among many other things, has enraged farmers and environmentalists alike. Project proponents maintain that the pipeline is the least harmful mode of transportation and will also minimise the risk and burden of transporting by trucks and tankers.

So far, five public hearing have been held. In the Bangalore hearing on May 20, 1998, under pressure, the deputy commissioner asked KSPCB to make all the required documents available to the public. But, of the executive summary provided to the people, says Somnath of the NST-Belthangady, "It was full of factual errors and inadequate information. It did not even include a map indicating the route of the pipeline, only a general direction and some names of places."

DKZPO has demanded that the current route earmarked for the pipeline be changed because it passes through prime agricultural land and forests. "When the present route was drawn no one was consulted. When people asked, they

were told that it was a Central government project," says Manohar Prasad, a journalist and member of the district public hearing committee. DKZPO has also demanded a detailed consultation with the village *panchayats*, *zilla panchayats* and affected people. Thereafter, a fresh public hearing should be held. Currently, according to Somnath, the survey is still going on.

**BARGING IN:** So far, three barge-mounted power plants (BMPPS) have been proposed on the Gurupur river that drains into the Arabian sea at Mangalore. Suresh Prabhu, during his tenure as Union minister for environment and forests, cleared the first one, Tanneerbavi, on an "experimental basis". "How can you commit a blunder on an experimental basis?" questions Upendra Hosabettu, another leader of a fishing community. The mandatory public hearing was not conducted for this project, the 170-mw plant of the US-based Chicago Power Company and currently under construction. The rapid environmental impact assessment (REIA) is also erroneous. "Contrary to what has been cited, the site has productive lands with paddy fields and the nearest human settlement just half-a-kilometre away," says Yatish Baikampady, a leader of a fishing community in Dakshin Kannada. Currently, the construction of the plant is going on in full swing.

The second proposed bmpp is at Bengre. Straddled between the river Gurupur on one side and the mighty Arabian Sea on the other, Bengre is a strip of land inhabited by some of the most strong-willed people. It is also here that the Netravati river, the lifeline of Mangalore city, meets Gurupur before the

**Three barge-mounted power plants have been proposed on Gurupur river in Dakshin Kannada. The first one was cleared by the then environment minister Suresh Prabhu on an experimental basis**

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two drain into the Arabian. Perhaps, for all this reason and more it hasn't been able to stay off the limelight. It is a do-or-die battle for the 20,000-odd people who inhabit the Bengre.

Smith Cogeneration of the UK has proposed the 170-mw power plant. A public hearing was called on November 6, 1998, but postponed for November 23 "due to unavoidable circumstances". The hearing was one of the biggest ever, with more than 5,000 people attending it, says Ranjan Rao. "The REIA was erroneous but officials dismissed it as typographical mistakes," says Ranjan Rao. In spite of all this, it has got KSPCB clearance. But the company officials have not shown their face ever since. "What is stopping them from coming?" asks Shantaram, a local fisherfolk. Undoubtedly, it is the might of the fisherfolk they fear, well-organised under the Mogaveer Mahajan Sabha, an organisation of fishing communities. In Bengre, they have vowed not to let project promoters or government officials anywhere come close to their village.

The third in the series is a 195-mw plant by Euro India Canara Power Company. The public hearing for the project was held on December 1999. A large number of people turned up and voiced their apprehensions, but nothing is known further about it. The dredging to be undertaken for the project would include an estuary, which serves as a breeding ground for fishes, says Baikampady.

### More...

- Points to ponder
- Loopholes aplenty

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*With inputs from **Keya Acharya** in Bangalore.  
For full text of the notifications, visit*

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