

Dr. Manmohan Singh
Prime Minister of India
New Delhi,
India-110 011.

15 October 2012

Reg.: Proposal to establish a National Investment Board at the apex of the clearance mechanism for large infrastructure projects in India

Respected Sir,

As you are aware, the Department of Economic Affairs has proposed a National Investment Board (NIB) to expeditiously hear appeals from corporations whose proposed projects (satisfying a stipulated threshold investment amount) have been delayed due to the lack of requisite clearances under applicable national and local laws. While details of the structure, powers, and functions of the proposed NIB have not yet been made available to the people of India, we are given to understand that the NIB will be an empowered standing committee of the Cabinet that will be chaired by the Prime Minister and will include, amongst others, the Finance Minister and the Law Minister. We further understand that it is proposed that the NIB's decision with regard to the legal clearance of a particular project will prevail over, and exclude, any and all conflicting objections to the project irrespective of whether such conflicting decisions emanate from central or state ministries or from statutorily independent national, state or local authorities that are currently vested with clearance-granting responsibilities under the relevant laws.

We write to you to communicate our most serious opposition to this undemocratic, anti-federal, counter-intuitive and extremely dangerous proposal, and urge you to immediately reject the setting up of National Investment Board as it militates against the national interest, compromises good governance, and imperils our cherished constitutional legacy.

As you are undoubtedly aware, all proposed developmental activity in India is subject to the rule of law including national security laws, safety laws, environmental and land-use laws, labour and social security laws, information disclosure laws, financial and banking laws, etc. The Parliament of India and the State Legislatures, in accord with the legislative competencies stipulated by the Seventh Schedule of the Constitution of India, have gradually evolved a complex regulatory system that vests clearly identified central/state ministries and autonomous national/state/local regulatory bodies with the responsibility of granting legal clearances to proposed developmental projects. These laws and the resulting legal system have evolved as a result of more than six decades of continuous and deliberative dialogue

between the legislatures, the superior courts, the national and state-level governments, the media, and active citizens of India. Regular budgetary allocations, capacity-building education and training programmes, efficiency and quality standards, information dissemination campaigns, and the benefit of experiences from within the country and abroad, have all contributed towards the effort of ensuring that the correct decision-takers have the requisite time, knowledge, information, ability and will to adequately and appropriately consider all relevant factors before promoting or preventing any proposed developmental activity.

While the system is far from perfect, it certainly does represent our distilled history of decision-making and democracy in the shade of our unique constitutional order; a history that has consciously articulated our collective desire for increased public participation in decisions affecting all, for a greater spirit of cooperative and functional federalism, for reasoned action that resists the seduction of one-size-fits-all approaches in favour of fair, dynamic and prudent contextual appreciations, and for a humane sensitivity to the well-being and improvement of the voiceless, the oppressed, and the natural environment.

The proposed NIB, by arrogating to itself the final and most authoritative voice on all aspects pertaining to a particular class of high-value and high-risk investment projects, unreasonably and imprudently abandon the gains we have made thus far and imperils the very logic underlying our current institutional and legal regimes and our concomitant constitutional obligation to improve the same keeping in mind the interests of all, and not just a few.

Our concerns regarding the proposed NIB are perhaps the most strident when it comes to safeguarding human rights and the ecological security of the country. As you are aware, the Environment Impact Assessment Notification– 2006, issued under the Environment Protection Act, 1986, requires that projects that potentially cause pollution, displacement, destruction of natural resources, etc., be they in the nature of expansion or as greenfield ventures, must go through a series of clearance steps informed by scientifically determined standards, public hearings and technical opinion of a variety of statutory agencies, both at the State and Central levels, as applicable.

The existing legal regime requires project developers to comply with various national legislations such as the Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act, 2006, the Biological Diversity Act, 2002, the Environment Protection Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981, the Forest (Conservation) Act, 1980, the Water (Prevention and Control of Pollution) Act, 1974, the Wildlife (Protection) Act, 1972, and a range of international treaties, as applicable. In addition a variety of legal norms that are part of the rubric of Indian law, such as the Polluter Pays Principle, the Doctrine of Public Trust, the Precautionary Principle, Inter-generational Equity, the Principle of Prior and Informed Consent, etc., are to be adhered to when advancing any developmental project. Failure to comply with the procedures or conditions relating to the environmental clearance regimes is a

criminal offense punishable under the Environment Protection Act, 1986 and related environmental and criminal procedure laws. The proposed NIB will significantly weaken, even negate, the role of the Ministry of Environment and Forests and other national and local statutory agencies in reviewing the environmental and social impacts of a variety of high impact and highly polluting projects.

A prudent, robust and rational approach towards environmental protection will recognize that careful and comprehensive review of environmental impact assessments (as a component of the environmental clearance process) will inevitably and rightly require a decent amount of time.

In a country where there is frequent failure in enforcement of environmental regulations, and where there is an inadequate administrative and regulatory infrastructure to independently review compliance with law, the proposal to establish NIB is certain to open the floodgates to environmental destruction and to the destabilisation of thousands of project affected communities across India. Corporate fraud, including a backtracking on promises made at the time of seeking clearance, has been disturbingly common even amongst the leading companies in India. The proposed NIB will further exacerbate this situation.

Sir, we do appreciate the idea of efficiency in governance, and undoubtedly, the present regime of clearances in India does suffer from several inefficiencies. The solution to this, however, is simply not in abandoning the existing constitutionally mandated clearance regime when it comes to high-risk (and high investment, and perhaps politically important) projects, but rather in augmenting capabilities of our governance processes to overcome the myriad structural, personnel-based, political and investor induced bottlenecks that impede the system.

We do hope you will take due note of our concerns, and will initiate immediate and appropriate action to stop the proposal to establish the unconstitutional NIB from moving forward in the forthcoming Cabinet meeting.

Yours truly,