

THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS IN SRI LANKA

By Dekshika Charmini Kodituwakku*

Environmental Foundation Limited, 146/34, Havelock Road, Colombo 05, Sri Lanka

Environmental Impact Assessment (EIA) is one of the instruments for achieving sustainable development since it aids in decision-making and formulating development action (1). EIA legislation in Sri Lanka allows for public participation, analysis of alternative proposals, and the use of a prescribed list to identify projects that should be reviewed. Over the years the public has reviewed about 200 projects through the EIA process under the National Environmental Act (2). What follows is a brief review of the legal basis of EIA in Sri Lanka and of shortcomings in its process.

Environmental legislation in Sri Lanka

Sri Lanka has a population of 19 million and a population density of 280 per sq km. The high population density has created increasing pressure and demand on natural resources. Land is its most vital and heavily threatened natural resources. 25% of the population lives in urban or semi urban areas while 40% of the people are engaged in activities directly dependent on the environmental resource base (3).

With the acceleration of development activities from 1970, the protection and management of the environment became a major concern. As a result of the Stockholm conference on environment and development in 1972, the government's position regarding the environment was transformed (4). Consequently, when a new constitution was enacted in 1978, environmental conservation was enshrined in articles 18 ('It is the duty of every person in Sri Lanka to protect nature and conserve its riches') and 27(14) ('the state shall protect preserve and improve the environment for the benefit of the community') (5).

In 1980, the National Environmental Act (NEA) was enacted to serve as the main legislation for environmental protection (6), since being amended by Act No 47 of 1980, Act No 56 of 1988 and Act No 53 of 2000. In 1983, the Cabinet Of Ministers considered including in it provision for environmental assessment of development projects, which was subsequently done (7). Other legislation, such as the Coast Conservation Act (CCA) (8), amended Fauna and Flora Protection Ordinance (9), North Western Provincial Council Environmental Statute No 12 of 1990 (10) and the National Heritage and Wilderness Act (11) further strengthened the regulations on the EIA process.

EIA in Coastal Areas

The legal requirement for an EIA was first provided in the CCA, restricted to the coastal zone. In relation to the Act the Director Coast Conservation has the discretion to identify which projects should follow the EIA process. The CCA does not specify the criteria on which such discretion would be exercised. The first set of EIAs was prepared under this law. One of the earliest EIAs prepared under this act was for the Trincomalee Power Plant, which was open for public review in 1988 (12).

EIA in the Fauna and Flora Ordinance

The 1993 amendment to the Fauna and Flora (Protection) Ordinance addresses the issue of EIA. Under this enactment, prior written approval from the Director of Wildlife is necessary for any development activity within one mile (1.6 km) of the boundary of any National reserve (13) and

mandates that such projects should undergo the EIA process in terms of the National Environmental Act.

EIA under the National Environmental Act

Part IV C of the National Environmental Act includes provision for the EIA process (14). This applies only to "Prescribed Projects" which have been specified by the Minister in charge of environment and is implemented through designated Project Approving Agencies (PAAs) as prescribed by the Minister (15). Depending on the significance of the anticipated impacts, there are two types of reports submitted for approval, i.e. the Initial Environmental Examination (IEE) and the Environmental Impact Assessment (EIA).

The evaluation of environmental impact is delegated to various government bodies, of which the Minister has now specified 18, depending on the nature of the project (16). The EIA process is initiated by the Project Proponent (PP) and the determination of the PAA appropriate to it is on the basis of having the largest jurisdiction over the project area, having jurisdiction over diverse unique ecosystems, within whose jurisdiction the environmental impacts are likely to be the greatest, and being the statutory authority to licence or otherwise approve the prescribed project. The PP cannot perform the functions of the PAA (17).

EIA in the Provincial Administration

Provincial environmental protection and management was introduced by the 13th amendment to the constitution in November 1987, in Sri Lanka. So far, only the North Western Provincial Council (NWPC) has enacted legislation on environmental protection. The National Environmental Act remains suspended and inoperative within the North Western Province with effect from 10th January 1991.

Operating Procedure

The EIA process is ideally made up of several steps that can be divided into two stages i.e. EIA preparation and EIA evaluation. Submission of preliminary information, environmental scoping and EIA preparation falls into the first stage, which is essentially a technical exercise.

In Sri Lanka the project approving agencies operate, for the purpose of management, at three levels; i.e. EIA Cell, EIA Oversight Committee and EIA Inter-agency Co-ordination Committee. The EIA cell has legal responsibility for all the decisions of the PAA in respect of the EIA process; this included the evaluation of the compliance monitoring reports in liaison with the Project Proponent and the public (18). The EIA Oversight Committee is comprised of the technical sub-committee and co-operating Agencies, its duties being to advise the chairman on the EIA process. The EIA Inter-agency Co-ordination Committee includes representation from all PAA, NGOs being invited as well; the function of this committee is to review the status of the implementation of the EIA process, to advise and guide the PAAs and to recommend approaches for integrating EIAs into the national policy and frameworks (19).

Selection of Prescribed Project

Upon receiving the preliminary information from the PP a scoping is conducted by the PAA to determine the environmental impact. The PAA invites the participation of those affected, queries the PP for clarification, and then decides whether an EIA is required; if the proposed activity is less damaging an IEE report is requested. It will then set the terms of reference for either IEE or EIA, as required. Such reports are called in respect of "prescribed projects" included in a schedule published by the Ministry of Environment, in the Government Gazette (20). One group of projects includes 31 different types with specified magnitudes. The second group of prescribed

projects, irrespective of magnitude, falling within a declared environmentally sensitive area, are required to undergo EIA. There are nine evaluation criteria identified under the environmentally sensitive area listing.

The project proponent (PP), who finances the project, may be a state or private agency. Once the terms of reference are drafted and given to the PP, a team of consultants are engaged to prepare the EIA report if there is no expertise available. These reports are made available in two national languages and the PAA checks adequacy before permitting public review. The PAA is obliged to announce the availability of such report for scrutiny through notices appearing in three national newspapers in the three languages. The public is allowed to submit queries and observation within 30 days, after which the PAA and CEA review the EIA report. The PAA, in concurrence with the CEA, decides whether a project may be approved.

Shortcomings and Constraints

The Central Environmental Authority (CEA), which is the key agency responsible for implementing the formal EIA process, has obtained its expertise over a period of nine years. However, other PAA have difficulty in meeting their EIA responsibilities due to lack of expertise and experience, so the CEA has to provide all the PAA with EIA guidance. So far the skills and the resources available with the universities, the government and the private sector have not been properly mobilised to overcome this weakness and there have been only been ad hoc remedial measures.

Loopholes in List of Prescribed Projects

While the prescribed list is essential to enforce the law, the use of a list of prescribed project scales has led to loopholes by which the PPs avoid EIAs. Some developers by-pass the EIA process by constructing just below the stipulated limit specified in these lists. In certain cases developers reclaim land in wetland areas, which is below the 4 hectares threshold, and later extend their project beyond this limit. Examples of such encroachment are seen vividly in the retention and detentions areas of the Diyawanna Oya wetland in Kotte.

Consideration of Unreasonable Alternatives

In an EIA evaluation serious consideration should be given to policy, location, design and process alternatives. The National Environmental Act mandates that alternatives should be considered, with reasons for rejection being given. However, in some instances, the best alternatives are deliberately disregarded without proper evaluation. In the Upper Kotmale dam and hydropower proposal (UKHP), the Ceylon Electricity Board (CEB) forwarded an EIA in 1994 to inundate a part of Talawakelle town and to resettle 432 families, with a 22.7 km long tunnelling operation as the selected alternative. Other design alternatives, such as a smaller, run of the river reservoir that would reduce the power capacity from 150 to 120MW, were not considered.

Conflicting Interest for the PAA

While, according to the regulations, the PP cannot undertake the function of the PAA, this was tested in two EIA cases; i.e. the Colombo Katunayake Expressway (CKE) project and the UKHP. The Ministry of Highways evaluated the CKE project that was proposed by the Road Development Authority, an agency under its own purview. In the other instance where conflict of interest arose, the Secretary to Ministry of Power and Energy presided over the decision on the UKHP, which was proposed by the CEB, which is under his Ministry; however, the CEA chairman did not concur with the decision.

Misrepresentation of facts

An example of misrepresentation of facts is seen with the UKHP, which initially entered the government planning process in 1980. The EIA report prepared in 1994 was referred to the CEA for its approval, which was never granted. In the submission made by the CEB at the appeal hearing, statements were made claiming that a thorough study was done on the Yoxford option, which is contrary to what is common knowledge (21).

Problems with environmental data

Commonly, the environmental data required to prepare an EIA is not available or is inaccessible. This has led to the fabrication of data. Sometimes the pretext of inadequacy of data is used by the PP to avoid the EIA process. Ideally the PAA should develop a database of environmental data and identify and obtain missing data. Such a practice would also contribute to the post-monitoring of projects.

Professional ethics for EIA consultants

The EIA process relies heavily on the judgments of the EIA consultants. The consultants work within a limited time frame and therefore may consider few impacts seriously. A PPA intent on obtaining a favourable report is able to stack the EIA team with particular types of specialist who are predisposed in favour of the project (22). Under such circumstances the report would be biased.

Over the years while reviewing EIA or IEE it has been observed some of the consultants who are engaged to prepare these reports do not have hands-on experience of EIA and hence their reports are of poor quality. Since there is a competitive bidding procedure to identify the best consulting party, state sector developers opt to consider the cheapest bidding without paying attention to the quality of the bidder.

In the Lionvert oil refinery and power generation project, the site selected was in the buffer zone of Muthurajawela marsh, which had been designated for recreational activities under the master plan passed by the cabinet. However the EIA consultant completely overlooked this key issue, resulting in two consecutive EIA reports being prepared for the same project.

Shortcoming in Provision for Public Participation

Public participation is a significant strength to the EIA process. Given the difficulties in communication, the period allowed for public commenting of 30 days is insufficient, particularly for complex projects. In certain instances during 30 days commenting period copies of the EIA are not available with the local government offices. In many cases the ordinary public immediately affected does not come to know of the project until it is implemented.

The training of personnel, the guidelines and the discussion on EIA are usually in English (understood only by a small minority in Sri Lanka) and in many cases the EIA report is composed of technical jargon, incomprehensible to laypeople. As a result the public may not be informed of the issues or able to evaluate the EIA adequately.

An essential part of effective public participation is the feedback about decisions and actions taken, and how the public views affected those decisions. In the absence of feedback people are likely to question the use to which their input was put.

Recently, with the surge of economic activity accompanying open market policies, the business community has levelled considerable criticism against the existing environmental legislation (23). Most of them see it as a bottleneck that delays projects that are urgently needed to create employment in the country. In response the government has tried to simplify the legislation and

procedures. One such attempt was the amendment to the NEA by Act No 53 of 2000 whereby the public right to comment on IEE has been withdrawn.

Access to IEE/ EIA reports

Usually the EIA reports are made available with the PAA, CEA and the relevant divisional secretariats and local authorities. At the provincial and local level facilities for copying are rather limited. In many cases the public may not take notice of the notice that appears in the newspapers since there is little information transfer at the local level.

Absence of environmental impact auditing

Environmental Impact Auditing involves comparing the impacts predicted in an EIA with those that actually occur after implementation. It is recognised that in the EIAs so far prepared there has been little risk assessment actually done.

Inadequate post EIA monitoring

EIA are approved on the basis of proposed mitigatory steps and monitoring. Post-EIA monitoring has been poorly implemented so far (e.g. Kukule Ganga Hydropower project, CKE, off-shore sand mining for the Colombo-Katunayake Highway). Most of the environmental cells of the PAA do not have full-time staff, space, or allocations of funds and equipment.

EIA violators are not apprehended

Land based mechanised sand and clay mining continues unabated in the Maha Oya, a river bordering the North-Western and Western-province, despite being a prescribed activity for EIA. The Geological and Mines Survey Bureau has granted licences to certain individuals due to political pressure. In the North Western Province these activities are illegal but so far the EIA legislation has not been employed to apprehend such individuals.

Inadequate Punitive Costs

It is evident that the many of the PPs, after receiving approval subject to certain conditions, tend to violate them. An exploration licence granted for metal quarrying in Balangoda might be cited as such an experience, where a citizen's suit to enforce part IV C of the NEA was required and where the environmental pollution licensing provisions needed to be re-evaluated. Higher punitive damages should be enforced in such instances.

Priorities for the future

In Sri Lanka the EIA process is often just a paper one. The main problems are associated with enforcement. The EIA process is often seen as an obstacle of development and is a process often hurried over. In some of these projects politics and bureaucracy play an undue influence on the grant of approval.

The public who will be the most affected are very rarely consulted, because public participation is seen as a cause for delay. The recent enactments under the NEA by taking away the right to public comment on IEE and the Energy Supply Act, suspending the National Environmental Act and provisions within the criminal procedure and the penal code relating to public nuisance, are serious violations of public rights. Experience shows that lack of public participation at critical points will only lead to excessive confrontation later on, and a long litigation process.

The most important priority is to change everyone's attitude towards EIA. It should not be seen as a process which delays development, but as one promoting sustainable development. Post-monitoring mechanisms should be enforced through public participation. The constant complaint is that there are not enough people getting involved, whether in the preliminary stages or in the post EIA approval stage. While this situation is understandable, it should not be used as an excuse to bypass the country's laws.

Despite the several institutional and legal constraints, it is generally accepted that the EIA process offers the Sri Lankan Government an invaluable management tool for integrating environmental and economic developmental goals, offering the best opportunity for the citizens to participate in major economic development decisions, which affect them and influence their livelihood. It is necessary in future that the EIA process be seen as an instrument for achieving sustainable development and be given the respect it deserves.

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Dekshika Charmini Kodituwaku, MSc, is an Environmental Scientist and Head of the Science Division, Environmental Foundation Ltd, Colombo, Sri Lanka.

*Address correspondence to D.C. Kodituwaku, Environmental Foundation Ltd, 146/34, Havelock Road, Colombo 05, Sri Lanka. E-Mail: efl@sitnet.lk

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