

Major Pieces of Legislation Pertaining to Environmental Management in Sri Lanka and its Effectiveness

R.K.L.P. Caldera *

Introduction

In the context of the environment, the term natural resources management refers to natural and physical resources, rather than to management of money, human skills or expertise. Natural and physical resources include rivers, lakes, coastal and geothermal areas; land including soils, forests and farmland; the air minerals and the constructed environment. Human existence depends on these resources. Natural resources management is the planning process and this planning refers to how we are going to use existing natural resource, distribute, or preserve natural and physical resources. Products of modern society come from the application of technology to existing resources. The impacts of this process on the biosphere depend on the quality of the management applied to affect this combination. Importance of the resource management is depending on several factors. Such as population pressure on resource base, wasteful resources exploitation and rapid depletion of resource base with high environmental pollution.

In Sri Lanka, natural resource management involves matters as divers as:

1. Keeping the air clean and noise levels acceptable, particularly in our towns and cities.
2. Planning for parks and safe attractive neighbourhoods.
3. Ensuring our water is clean and its use regulated so that other people, plants and wildlife also dependent on the water, do not suffer.

4. Marking sure coastal developments, such as marinas, wharves, reclamations, pipelines and housing, are carried out in such a way that the natural character of our coastline is preserved where possible.
5. Minimizing the effects of mining on the surrounding environments.
6. Adopting land use practices that preserve soil cover and avoid erosion of our farmlands.

Administrative setup and background

Sri Lanka's government functions under a Parliament, a strong Executive Presidency and a presidential appointed cabinet. Government institutions exercise policy planning, management, regulatory, research and educational functions through Cabinet Ministers.

Sri Lanka is one of the few developing countries, which had shown concerns about environmental protection and management for a long time. Some of the environmental related acts date back to over 12 years. As early as 1971 a senior committee was appointed by the then Prime Minister to study the impact of economical development on environment. However, concentrated activity for environmental protection and management started in 1980s particularly after the Stockholm Conference on Global Environmental Protection.

Major pieces of legislation and the effectiveness

The National Environmental Act (NEA) establishing the Central Environmental Authority (CEA) and setting down basic government

environmental policy was enacted in 1980. The CEA was established by the 1980 NEA to protect, manage and enhance the environment, and a 1988 NEA amendment further vested CEA with the necessary legal authority. CEA has been carrying out these responsibilities with very limited resources. CEA has special powers to monitor, assess and advice the government on the critical environmental issues. CEA has recently delegated some of its local regulatory functions to Divisional Secretaries of the country. But accelerated economical development, including rapid industrialization is imposing increasing demands on the agency in the role as Ministry of Environmental and Parliamentary Affairs (MEAP) technical, regulatory and implementing arm. A major weakness in the current environmental enforcement apparatus is the failure of CEA to enlist the service of regular enforcement agencies like the Police Department.

In 1988 the government produced a National Conservation Strategy (NCS), prepared by several experts drawn from different sectors. The strategy set the course for integrating environmental concerns into the development process. In 1988 the government enacted an amendment to the NEA which brought about far-reaching changes to institutions and policy. The CEA was given regulatory and enforcement powers, the legislative scheme for Environmental Protection Licensing (EPL) and Environmental Impact Assessment (EIA) were established. Aim of the EPL is regulating polluting industries, and it helped to establish Pollution Mitigation Regulations (PMR) in

* Consultant Economist, Resource Management Consultants Inc., Nugegoda.

1990 and a statutory requirement for EIAs (1993). EPLs are issued to polluting industries and constitute the principle current regulatory mechanism for pollution control. The CEA has also classified industries into three categories: Low, Medium, and High polluting. This takes into consideration the manufacturing process and raw materials used in each industry as well as its pollution characteristics. Until recently, all industries - whether they were classified as low, medium or high polluting - were required to obtain an EPL. In view of the thousands of industries scattered around the country and the regulatory burden placed on limited CEA staff, EPL issuance to all industries had become very difficult. Since January 1994, the responsibility for issuing EPLs to low polluting industries has been delegated by the CEA to local authorities. The NEA is currently being revised to further improve the enforceability of the EPL scheme. CEA's other activities have included an inventory of imported chemicals, a review of existing legislative measures affecting the environment.

In 1993, strong EIA regulations were passed requiring all major projects to carry out a thorough assessment of their potential environmental impacts and to take steps to mitigate them. Significant advances are also evident in the expanding pollution regulation capacity of the CEA and in both outreach programmes and legal pressure for high polluting industries.

EIA has gained wide recognition as a useful tool for promoting environmentally sound and sustainable development. In Sri Lanka, the EIA process was first introduced through the legislation of the Coast Conservation Act (CCA) No. 57 of 1981.

This was confined to only a 300-meter strip of land along the coastal zone of the island. Subsequently an EIA system for the whole country was administratively introduced in

January 1984, by a decision of the Cabinet of Ministers. It was made applicable to all major development activities including public and private sector projects.

The statutory provision was made by an amendment to the NEA (Act No.56 of 1988). As required by these amendment projects that should undergo the EIA process and the procedure and methods to be adopted were gazetted on 24th June 1993 and are contained in Gazette Extraordinary No 772/22. The process is managed and monitored by the CEA and implemented through 18 State Agencies. A unique feature of the EIA process is that it is an open process allowing for public participation in decision making.

Her Excellency the President issued a Gazette notification Extraordinary 966/11 of 12th March 1997 under the emergency law. These Gazette grants blanket exemption to all power and energy generation activities and projects from the environmental standards and assessments, zoning and urban planning and the abatement of public nuisance. Because of these too wide, arbitrary capricious and draconian emergency regulation no EIA will be required for Kalpitiya Coal Power Project. Therefore no public commenting period will be allowed and no public participation needed at all. Even though they prepare a feasibility study it is not an open document.

Therefore no dialogue had taken place with the affected people and this lack of public relations is the main reason for the above incident. The same lacking was experienced in earlier cases like Upper Kothmale Hydro Power Project, Diesel Power Plant at Ethul Kotte etc.

The CEA has recently developed an Industrial Pollution Management Strategy (IPMS). This strategy begins with source management and control, which is seen as a key to minimizing the quantity of waste requiring treatment. The application of waste minimization in Sri Lanka industry should improve

profits and productivity, thereby enabling a large number of industries to be in a position to better afford treatment of those wastes which cannot be recycled or otherwise omitted. CEA has also developed pollution discharge standards and criteria regulating industrial behaviour. These include liquid effluent standards as well as emissions standards for gaseous pollutants.

Since 1988 the government has made a special effort to build and strengthen the capacity of the CEA as a regulatory and monitoring environmental agency. With a view to providing better public access to the services, some functions of the CEA has been devolved to local authorities, Pradeshiya Sabas and Divisional Secretaries with effect from 01st April 1994 and Divisional Environmental Steering Committees (DESC) have been established in the divisions. In 1990 the Ministry of Environment and Parliamentary Affairs (MEPA) through Natural Resources, Energy and Science Authority (NARESA) produced an important report concerning the environment on 'Trends in Natural Resources'. The report identified critical environmental problems and recommended solutions. Soon thereafter the government prepared the National Report on Environment and Development for United Nations Conference on Environmental Action Plan (NEAP) identifying short term and long term actions required in different sectors for protecting and enhancing the environment.

In 1991 regulations were enacted by MEPA bringing into operation the Environment Protection Licence (EPL) scheme. Since 01st June, 1991 the discharge, emission or deposit of waste into the environment without an EPL was made an offense. In June of 1992 the then Prime Minister headed a delegation to Rio de Janeiro for the UNCED and made a firm commitment of the government to environmental protection.

The Government has in many policy statements and action plans committed itself to a policy of sustainable development. In its latest up-date of NEAP (Phase I) the Government has identified as US \$ 80 million investment package of which US\$ 36 million dollars is already committed by the World Bank (WB) for projects which will enhance environmental quality. In addition Agenda 21 - a Plan of Action for the 21st Century prepared at UNCED has been taken seriously by the Government and action is being taken to prepare a national Agenda 21 to supplement NEAP.

Additional funding has been raised through NAREPP (USAID) and NORAD for the training of government officers, capacity building, support for NGOs and environmental education. These projects have thus far assisted the Government to strengthen the capacity of MEPA in the fields of environmental law, biodiversity and environmental economics. They have also helped the government to train a vast number of government officers about the EIA process. In 1993 MEPA enacted the EIA regulations, which identifies a large number of development projects which must have EIAs done prior to being implemented. The process is transparent and is in the forefront of participatory democracy. CEA assists five Project Approving Agencies (PAAA) in processing EIA reports within several Ministries and line agencies and seven in an advisory capacity for most environmental projects. CEA's Legal Unit, through severely understaffed, has initiated legal action against errant polluters.

The Government through MEPA has encouraged public participation in environment and development decision making. MEPA has taken a special interest to encourage participation and the involvement of NGO and community organizations in environmental projects and decisions

making. MEPA has involved NGO representations in several inter-governmental committees and opened the way to their participation through the EIA process. MEPA has made a special effort since 1992 to implement treaty obligations undertaken by Sri Lanka under the bio-diversity conservation, basal convention on the Trans-boundary Movement of Hazardous waste, the Framework Convention on Climate Change and the Montreal Protocol on Ozone Depleting Substances. In each of these cases MEPA has established an inter agency/inter ministerial coordinating committee. Specific steps including regulations and scientific research has been undertaken through these committees.

MEPA has made a special effort to integrate environmental concerns in the areas of public and private finance and economic decision making. The current programme to integrate environmental accounting into national planning and the preparation of environmental balance sheets has been initiated through the National Planning Department (NPD) and a Consultant Economist's service have been retained for this purpose. MEPA plans to establish a National Task Force (NTF) to draw up parameters for green/environmental auditing in the private sector.

Through the initiatives of the Environmental Sub-Committee of the Industrialization Commission, incentives for industry to enable them to comply with Pollution Control Regulations (PCR) has been taken up for action and is in the process of being implemented. The Cabinet has approved the establishment of a National Environmental Fund (NEF) with a Rs 10 million initial capital for the purpose of assisting industries and regulatory agencies to comply with and enforce environmental regulations. Under its 'Clean air 2000 Programme' MEPA has obtained through the CEA 65 smoke meters and distributed them to the police and other agencies. Officers have been trained and smoke levels will be enforced. In addition steps have been taken to establish

permanent air monitoring station, throughout the island and air quality standards are in the process of being drafted.

Water pollution standards for inland/marine water has been set by the CEA for several sectors. Water pollution is controlled through the EPL scheme. Additionally, Sri Lanka has allowed the International Irrigation Management Institute (IIMI) to establish its headquarters in Sri Lanka with a view to encouraging good water management techniques.

MEPA has made a special effort to initiate land-use planning at national, provincial and local levels. MEPA has initiated the establishment of a network of metropolitan environmental parks and nature reserves for recreation and environmental education purposes. The first of these would be established in Rumassala, Kotte and Moragalla. In addition major support is being given through MEPA for protection for environmentally sensitive areas including Knuckles, Sinharaja, Horton Plains and Kelani River Basin.

MEPA has established a National Task Force to undertake a complete and comprehensive reform of environmental law. The work of this Task Force completed by October 1994. MEPA has taken the initiative to establish a National Environmental Mediation and Arbitration Panel for informal quick cost effective and non-confrontational resolution of environmental disputes.

Several far-reaching amendments have been enacted to the Forest Ordinance and to the Flora Ordinance strengthening the existing regime for the protection of forests and wild flora and fauna. Additionally, a major revision of the Forestry Sector Master Plan (FSMP) is underway and involves new classifications of forests, integration of bio-diversity, strengthening of the Forest Department and community participation.

Laws applicable to the conservation of forests and bio-diversity have been deficient and difficult to enforce.

They place responsibility on too many agencies, assign unrealistic and difficult to enforce. They place responsibility on too many agencies, assign unrealistic responsibilities to government agencies, and often impose inappropriate sanctions. For example, existing laws have not been enforced strictly against illegal logging, poaching, and agricultural encroachment in forests and other protected areas.

The Coast Conservation Act was enacted in 1981 for the protection of the most environmentally vulnerable resources of the island. The Coast Conservation Department (CCD) was established and a Coastal Zone Management Plan (CZMP) has been drafted and made effective. MEPA along with MIEM has been addressing the continuing need for solid waste disposal, and urban and environmental pollution in and around the city of Colombo especially in the Ratmalana and Ekala areas. A special effort is being made to establish a sanitary landfill to solve the pressing garbage problem of the Colombo metropolitan area.

Fauna and Flora Protection Ordinance

The Fauna and Flora Protection Ordinance was first enacted in Sri Lanka in 1937, towards the British colonial rule in Sri Lanka. Since its enactments the status has been altered and expanded by changes brought in through six subsequent amendments. However, it is significant to note that the last amendments to the Ordinance were enacted back in 1970. Under this Ordinance, five categories of protected areas were established, viz: Strict Nature Reserves, National Parks, Nature Reserves, Jungle Corridors and Intermediate Zones.

Amendments of the Flora and Fauna Protection Ordinance (FFPO): Sec-

tion 37 of the amendments of FFPO of 1992 highlighted the prohibition of import of mammals, birds, reptiles, amphibians, fishes and invertebrates without permits. This section shall have effect as if it formed part of the Customs Ordinance and the provisions of that ordinance shall apply accordingly. The CEA has also gazetted all the forest and wildlife reserves as environmentally critical areas and to be governed by both FFPO and the Forest Ordinance (FO), under the emergency regulations.

Contd. from Page 22

Worries about the recurrence of crisis situations, such as the Austrian phenomenon, would increase with increasing numbers of member states. The danger of any such weakening of the EU would be a matter of concern for the developing world, because it would reduce the capacity of the EU to intervene in alleviation of problems, entailing globalisation, in the developing world.

There is already a significant overlap between the European Union and the European membership of NATO, which will increase further, with the admission of new members. However, the European contribution to NATO military operations, when compared with that of USA, is not commensurate with the economic status of the European membership of NATO.

Thus in spite of the economic prosperity enjoyed by EU, its negotiating power in global fora such as the WTO remain weak as compared with USA.

Role for EU

At the beginning of this paper, I mentioned hopes regarding the role EU would play vis a vis globalisation. My task has in fact become quite simple, because my hopes simply happen to coincide with some of the views expressed at two recently concluded world

fora i.e. World Economic Forum held in Davos, Switzerland which concluded on 01st February 2000 and the UNCTAD X held in Bangkok, Thailand which concluded on 19th February 2000. The views, which I think are most critical, are summarised below:

- To energise discussions on multilateral trade liberalisation.
- To equip the international institutional infrastructure to deal effectively with the new complex problems and challenges of globalisation
- To establish a well-functioning international financial system and a fair, equitable and predictable multilateral trading system.
- To ensure a balanced implementation of Uruguay Round agreements.
- To provide opportunities for developing countries to participate more effectively in the decision making process in all international institutions. At the same time, to make this process more transparent and ensure that decisions reflect not only the interests of big business and big governments, but also those of small business and small governments, with a greater involvement of Non - Governmental Organisations.
- To establish a financial stability forum as a step towards a new financial architecture.
- To resolve issues relating to the implementation of World Trade organisation (WTO) agreements.

Excerpts of a paper presented at The International Conference "Europe and South Asia: Plural Identities, Multiple Perspectives" organised by Delegation of the European Commission in Sri Lanka and Centre for European Studies, University of Kelaniya on 23rd - 25th February 2000, Colombo.