

SRI LANKA

Introduction

Sri Lanka is an island of 65,610 km² situated in the Indian Ocean off the south-eastern coast of India. It has a population of about 17.5 million people and it is estimated that this will increase to over 20 million by the end of the century. Sri Lanka is primarily an agricultural country with the majority of the people living in villages. However, the agrarian economy can no longer sustain the growing population and successive governments have, over the last 20 years, focused the country's economic development in the direction of industrialisation.

Sri Lanka is a country rich in natural resources and biological diversity. It has more endemic species per unit than any other country in Asia. Over 3,000 species of plants can be found in the island of which about 24 per cent are endemic. The island is home to approximately 430 species of birds of which about 130 are migrants and the others residents. The resident species include 20 endemic varieties. The island is also home to 84 species of mammals (including ten endemic species) and these include elephant, leopard, four species of deer, several species of monkey, several varieties of mongoose, sloth bear and wild boar. The 133 species of reptiles include the python, and two varieties of crocodile. Several of the snakes and lizards are also endemic. Thirty-two species of frogs and toads and a wide variety of freshwater fish can be found in the waterways.

This heritage of natural resources has been under grave threat for a long period of time. On the one hand a growing population burdened with poverty and landlessness encroaches on state land, often in ecologically-sensitive areas. On the other hand, government schemes to open up new lands for agricultural settlements, which are often ill conceived and badly planned, has resulted in equally-adverse impacts on the environment. Massive hydro-power projects and a concerted drive towards industrialisation has contributed to the environmental damage. Destruction of the country's forests is one of the most pressing problems today. At the beginning of the century, about 75 per cent of the land area was clothed in dense forest cover. This dwindled to around 50 per cent in 1945 and now stands at less than 20 per cent. The destruction of forests has had a direct impact on the fauna and flora and many species face the threat of extinction due to loss of their natural habitat. The disappearance of the Sri Lankan elephant in its wild state is a very real possibility today.

The current trend towards industrialisation has brought with it the attendant problems of pollution of land, air and water, which in certain areas poses a threat to human health. A further consequence of this trend in economic development is the need to find new sources of energy by which to sustain the industries which are being set up. Hydro power as a source of energy is no longer a viable option and other forms of thermal energy including coal power have now been placed on the agenda.

Policy Issues

The National Environmental Action Plan

In 1982, the President of Sri Lanka appointed a Task Force to prepare a National Conservation Strategy (NCS) for Sri Lanka. The Task Force submitted its report in 1988. The NCS formed the basis of the National Environmental Action Plan (NEAP) which was formulated in 1991. This document sets out the main environmental issues facing Sri Lanka and provides, within a time frame, strategies for environmental protection and conservation. At the present time funding from the World Bank is being sought to implement a component of NEAP relating to land and also in regard to strengthening the Central Environmental Authority (CEA), the Ministry of Environment and the Ministry of Policy Planning.

The Coastal Zone Management Plan

Section 12 of the Coast Conservation Act makes it mandatory for the Directory of Coast Conservation to submit this document. The statute also makes provision for it to be made available for public inspection and comments and for revision every four years. In 1991 the first such plan was gazetted. The second plan has been drafted and will soon be available for public comment. It deals generally with mitigating and preventing coastal erosion, habitat management and the regulation of development activities in the coastal zone.

The Forestry Master Plan

The Forestry Master Plan (FMP) is a 20-year plan which focuses on managing the forests for timber extraction as well as forest conservation. It was drawn up by a Finnish company with funding from the government of Finland and published in 1986. The first plan was criticised as being too heavily oriented towards timber extraction and was thereafter amended in 1987. The first five-year segment of the plan, known as the Forestry Sector Development Project, was funded by the World Bank and is now complete. In 1995, by a more transparent and participatory process, the second FMP and the National Forest Policy was developed. This deals with national forest estates and their management including the establishment of Strict Conservation Forests. It also deals with the liberalisation of the timber trade, the privatisation of the state owned Timber Corporation, and the development of timber plantations.

Legislation

Article 28 of the Constitution, in the chapter on “Directive Principles of State Policy and Fundamental Duties”, states that “it is the duty of every person in Sri Lanka to ... protect nature and conserve its riches”. Article 29 states that “[t]he provisions of this Chapter do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal.” The Article is therefore not justiciable in a court of law. However, it has been cited by public-interest environmental lawyers to claim standing to file law suits in the courts and the argument that they are carrying out their duty under the constitution has generally been accepted.

The National Environmental Act

The National Environmental Act, the first comprehensive statute relating to environmental protection and management, was passed in 1980. At the time it was enacted, there were almost 50 different laws in the country with provisions concerning the environment. These had accumulated over a period of over 100 years and several had been passed during the period of British colonial rule. Many of these statutes are redundant or irrelevant and, since they were enacted for different purposes, at different times and are administered by different agencies, they do not contain cohesive provisions regarding environmental protection and management.

In the early 1970s the question of environmental management began to receive serious attention by the government. A study of the country’s environmental problems conducted by a joint UNDP/UN/ESCAP (Economic and Social Commission for Asia and the Pacific) mission in 1973 concluded that the lack of a central agency which could coordinate all matters relating to the environment, was a serious deficiency. In 1980, following a seminar on environmental protection and management sponsored by the government, the National Environmental Act (NEA) was passed, the provisions of which were based on its recommendations. It established the Central Environmental Authority as the agency authorised to coordinate environmental policy-making and management in Sri Lanka, thus finally creating this much-needed institution. It also created an Environmental Council consisting of senior officers of all the Ministries as well as representatives of NGOs working in the field of the environment and persons with adequate expertise and experience in the field of environmental protection and management.

The original Act did not contain provisions regarding an environmental impact assessment procedure. This was introduced by an amendment passed in 1988. The procedure includes provisions regarding public access to impact assessments and a 30-day period for public comments on such assessments as well as public hearings.

The Act also contains provisions regarding environmental management, environment protection and environmental quality. The provisions on environmental protection and quality include provisions for the control of air, water and noise pollution. A significant omission in the statute is a provision permitting citizens' suits. When the amendments relating to the EIA procedure were being formulated in 1988 several public-interest NGOs and interested persons lobbied for such a section but were unsuccessful.

The Forest Ordinance

This statute was first passed in 1907 when Sri Lanka was still under British colonial rule. It has been amended several times thereafter, the last such amendment being in 1979. The primary purpose of the Act was to vest the ownership and control of the forest land of the country in the state. This was in direct contrast to the traditional practices of the people who considered forests to be the common property of communities and villages. According to Chapter II of the law entitled "Of Reserved Forests", land which has been taken back by the state, or declared to be the property of the state or which has been acquired by the state for public purposes under various other laws, may be declared to be reserved forests. The subsequent sections limit public access to such forests and specify the acts which are prohibited in them. Chapter III of the Ordinance states that the Minister may declare any forest to be a village forest for the benefit of any village community and may also vary or cancel such order. He may also make regulations for the management of such forests and prescribe the conditions under which the community may use them. A few forests were declared to be village forests many years ago but they no longer exist in reality. Other sections relate to the protection of forests and forest produce and the control of timber and forest produce in transit.

Marine Pollution Prevention Act

This Act was passed in 1981 and its preamble describes it as "an act for the prevention, reduction and control of pollution in Sri Lanka waters; to give effect to international conventions for the prevention of pollution of the sea and for matters connected with or incidental thereto". The Act establishes a Marine Pollution Prevention Authority which is responsible for implementing its provisions. It also creates both criminal and civil liability for any act which results in the pollution of Sri Lankan waters. Part IV relates to preventive measures against pollution. Part VII, which is entitled "Implementation of International Conventions", states that the Minister shall have the power to take such steps as may be necessary to give effect to the provisions of any international convention on marine pollution which the government of Sri Lanka may ratify, accept, accede or approve.

Coast Conservation Act

This law was first enacted in 1981 and amended in 1988. By section 2 it vests the administration, control, custody and management of the coastal zone in the state. Section 3 creates the post of Director of Coast Conservation who is responsible for the implementation of the provisions of the Act. The Act also establishes the Coast Conservation Advisory Council composed of senior officials in charge of public bodies whose activities may have an impact on the coastal zone. Their functions are to advise the Minister on all development activities proposed to be commenced in the coastal zone, to review the Coastal Zone Management Plan, to review environmental impact assessments relating to development activities in the coastal zone, and to advise the Minister or Director on other matters relating to the coastal zone. Part II of the Act, entitled "Coastal Zone Management", required the Director to make a comprehensive survey of the coastal zone and submit to the Council the Coastal Zone Management Plan on the basis of the results of this survey. The plan shall include the guidelines to be used in determining the suitability of particular developments in the coastal zone. This plan has to be submitted to the Minister who will make it available for public inspection, after which it will be submitted to the Cabinet of Ministers for approval. The plan has to be revised every four years. The Act also provides for environmental impact assessments of all development projects within the coastal zone. This section pre-dates the corresponding one in the National Environment Act and is the first such provision in a Sri Lankan statute. The statute was amended in 1988. A significant feature of the amending Act was the total ban on coral mining which is one of the main causes of coastal erosion in Sri Lanka.

National Heritage Wilderness Areas Act

This Act was passed in 1988 and is intended to make provision for the declaration of national heritage wilderness areas and for the protection of such areas. Section 2 of the Act states that such areas will be designated "for the purpose of preserving in their natural state, unique eco-systems, genetic resources; or physical and biological formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; for enhancing the natural beauty of the wilderness of Sri Lanka and for promoting the scientific study and enjoyment thereof by the public". At present only a section of the Sinharaja forest, one of Sri Lanka's most famous virgin rainforests, has been declared a national heritage wilderness area under the Act.

Fauna and Flora Protection Ordinance

This statute was enacted in 1937 and is one of the earliest laws relating to environmental protection. It has been amended several times over the years, most recently in

1993. It makes provision for the relevant Minister to declare any specified area of state land to be a National Reserve and to further declare that any specified part of such National Reserve shall be a Strict Natural Reserve, National Park, Nature Reserve, Jungle Corridor or Intermediate Zone. The subsequent provisions of the statute control and restrict the entry by any person into such areas and specify the acts which are prohibited in them. Succeeding provisions pertain to the protection of specific fauna and flora whether within or outside sanctuaries.

The amending Act of 1993 resulted in some significant changes in the statute. The categories of National Reserves was expanded by deleting Intermediate Zones and substituting three new categories, i.e., Refuges, Marine Reserves and Buffer Zones, in its place.

An environmental impact assessment procedure was also included in the statute. Section 13 of the amending Act provides that no person or organisation whether private or governmental shall carry out any development activity within one mile of the boundary of any National Reserve without obtaining the prior written approval of the Director of Wildlife Conservation. Every application for such approval shall be accompanied by an impact assessment in terms of the National Environmental Act and the Director shall have regard to such assessment when deciding whether or not to grant such approval.

The other significant amendment to the original Act is in regard to the list of protected animals. The original Act contained a list of protected wildlife, and any animal not included in the list was unprotected. The amendment on the other hand contains a negative list, i.e., it specifies the animals which are not protected with the implication that any animal not included is considered protected.

Regulations

In the past few years several regulations have been made under the National Environment Act to give effect to its provisions. Some of these regulations are listed below.

National Environmental (Protection and Quality) Regulations No. 1 of 1990

According to these Regulations no person shall, on or after the relevant date, discharge, deposit or emit waste into the environment which will cause pollution or cause noise pollution except under the authority of a licence issued by the CEA and in accordance with the standards and criteria specified in the Schedules to the Regulations. The Regulations also lay down the procedure for the issuing of such licences.

National Environmental (Procedure for Approval of Projects) Regulations No. 1 of 1993

Although the environmental impact assessment procedure was introduced into the law in 1988, it could not be enforced for several years until the necessary Regulations were enacted. In 1993 these Regulations were finally enacted and set out the procedure for the implementation of the environmental impact assessment procedure.

National Environmental (Ambient Air Quality) Regulations of 1994

These Regulations lay down the ambient air quality standards in relation to specified classes of air pollutants.

National Environmental (Appellate Procedure) Regulations of 1994

These Regulations apply to appeals against the refusal to grant, the refusal to renew, the suspension or the cancellation of an environmental protection licence under the National Environment Act.

National Environmental (Noise Control) Regulations No. 1 of 1996

These regulations were made under the provisions in the NEA relating to the control of noise pollution. The regulations demarcate land into low noise, medium noise, high noise and silent zones on the basis of certain definitions and specify the maximum noise levels permissible in such zones.

Hazardous Waste Regulations

The National Environmental (Protection and Quality) Regulations No. 1 of 1990 were amended in 1996 to include provisions relating to the management and disposal of hazardous waste. These regulations provide that no person shall collect, transport, store, recover, recycle or dispose of waste or establish any site or facility for the disposal of any waste except under the authority of a license issued by the CEA in accordance with the standards and criteria specified by the authority. On receipt of such applications, the authority is required to carry out a "risk assessment" and may issue a licence to the applicant if it is satisfied that the waste will be disposed of safely and will not pose a significant risk to human health and the environment.

Enforcement Measures

Although comprehensive laws and regulations regarding environmental protection have been operative for several years, they have been largely ineffective due to lack of enforcement. The CEA is under-staffed and lacks the resources to carry out its mandate under the Act. It has in fact delegated some of its enforcement powers relating to pollution control to local authorities.

In the last two years the police have become active in enforcing environmental laws particularly with regard to pollution control. The Inspector-General of Police issued a circular in 1994 stating that as the CEA has a limited capacity to enforce the provisions of the NEA the cooperation of the police has been solicited to do so. He therefore requested the police to take action to prosecute offences under the NEA, specifically pollution of the environment and implementation of projects without necessary approval. Mining in rivers and streams, rock-quarrying and gas service stations in residential areas without a licence have been identified as activities appropriate for police action.

In April 1995 the Inspector-General of Police issued another circular stating that public complaints regarding environmental offences must be taken seriously by police officers, and where necessary given priority and for offenders to be prosecuted. An environmental law unit has been established at Police Headquarters under the Crimes and Operations Branch and this unit is required to monitor the implementation of this circular. This circular directed police officers to take actions against those causing public nuisances. It is not yet possible to assess the extent to which these directives have been implemented by the police.

Public-Interest Litigation

Public-interest environmental litigation has gathered momentum in Sri Lanka in the past ten years. Such litigation has been initiated mainly by environmental public-interest groups, notably the Environmental Foundation Ltd (EFL). EFL operates a legal-aid clinic and files lawsuits on behalf of the general public. The majority of these suits are public-nuisance actions.

EFL has also initiated writ actions in the Court of Appeal to compel state agencies to carry out their statutory functions with regard to environmental protection. It established its standing to file such actions on the basis that it

is a non-profit, public interest, environmental law and advocacy organisation ... and is genuinely concerned with the implementation and enforcement of the law relating to nature, its conservation and the environment in general and is further genuinely involved in perform-

ing the fundamental duty cast on every person under Article 28(f) of the Constitution of Sri Lanka to protect nature and conserve its riches.

This position has generally been accepted by the Courts of Sri Lanka. Some significant public-interest actions are described below.

The Kandalama Hotel Case

One of Sri Lanka's leading companies involved in the tourist trade proposed to build a hotel on state land situated in the catchment area of the ancient Kandalama reservoir. The area also has historical and religious significance. There was widespread public opposition to this project. An environmental impact assessment was carried out on this hotel but was deemed to be wholly inadequate and biased. At the time the EIA regulations had not come into force and the company could not be compelled to comply with these laws.

In an attempt to stop the construction of the hotel which had already begun, EFL filed an action in the Court of Appeal on the grounds that the Crown Lands Regulations of 1948, being Regulations under the State Lands Ordinance, sets out the procedure to be adopted in the leasing of state land. The Regulations stipulate that the officer concerned shall cause a notification of every proposal to lease state land to be published in the *Gazette* and such notification shall specify, *inter alia*, a date on or before which he will receive objections from the public to the proposal. No such notification had been published in this case. This contention was upheld in the Court of Appeal which stayed the grant of the lease until the procedure had been complied with. However, the Land Commissioner, having complied with the order of the court and with the procedure, granted the lease in spite of a significant number of objections which he received.

The Nawimana Quarry Case

This case related to a quarrying operation in the south of Sri Lanka which was threatening the health of people in nearby villages as well as causing extensive damage to their houses and property. Although a public-nuisance action was appropriate to address this situation, EFL decided to file a fundamental rights action in the Supreme Court. Although the right to life is not one of the fundamental rights specifically guaranteed by the Sri Lankan Constitution, EFL argued that this right too is present by implication on reading the entire chapter. EFL further argued that the right to life includes the right to a clean and healthy environment and this right is being violated by the quarry operation. EFL further claimed standing to represent the affected villagers in the action.

No ruling was made on any of these issues because the court chose instead to order the parties to come to a settlement on the method and conditions by which the

quarry could continue operations without adverse impacts on the villagers. This was in itself a precedent as the Supreme Court had never issued such an order before.

Public Campaigns

In addition to litigation, environmental groups have also resorted to public campaigns to voice their opposition to projects which they believe would have adverse impacts on the environment. Some of these campaigns are described below.

Trincomalee Coal Power Plant

This project was initiated in 1987 by the Ceylon Electricity Board which has a government-sponsored monopoly on power generation. The CEB concluded that the country's hydro-electric generation projects were insufficient to meet the growing demand for electricity and proposed to build a 900 MW power plant in Trincomalee on the eastern coast of Sri Lanka which would be fired by coal. An environmental impact assessment was conducted under the provisions of the Coast Conservation Act and the approval of the Director of Coast Conservation was required to carry out the project.

The process of implementation was an open and transparent one with the full participation of the public. The EIA was open for public review for a 30-day period and public comments were received which set out in detail the shortcomings and adverse environmental impacts of the project. There was widespread public opposition to the plant and for perhaps the first time in the history of the Sri Lankan conservation movement, nine different NGOs united to form a coalition to oppose the project. Representatives of these NGOs formed a Campaign Committee which produced a 43-page commentary on the EIA which was submitted to the Director of Coast Conservation. In response to an NGO mailing campaign hundreds of postcards were sent by members of the public to the Director urging him to refuse the permit, which he eventually did.

Colombo–Katunayake Expressway

This was a 30-km highway which would connect the capital city of Colombo to Sri Lanka's only international airport in Katunayake. The project was to be funded by the government of Japan. In 1991 an environmental impact assessment was carried out on the project. Building of the highway would have resulted in the destruction of over 100 buildings as well as coconut plantations, paddy fields and home gardens. The highway was also expected to have adverse impacts on the Muthurajawela wetlands.

There was a great deal of public protests over the project both from environmentalists and those who would have been personally affected by the project. It was alleged that the EIA failed to consider alternatives to the route of the road as well as to alternative methods of mass transportation including railway. The project was challenged in court by groups of affected people but the action was dismissed. Environmental organisations in Sri Lanka working together with groups in Japan persuaded the government of Japan to withdraw funding for the project which was abandoned thereafter.

Upper Kotmale Hydro-Power Project

This proposal to build a hydro power plant that would generate 150 MW of electricity was first introduced in 1994. Implementation of the project would result in the disappearance of three of Sri Lanka's most famous and scenic waterfalls. The flow of four other waterfalls would also be reduced by 50 per cent. In addition, half of a nearby town would be submerged and over 400 families displaced. The proposal was rejected due to public protests. The protests were based on the fact that a less-destructive option had not been considered. In 1996 the proposal was raised again and a new EIA has been commissioned. Environmentalists have now renewed their campaign to prevent implementation of the project in its original form.

CAMENA GUNERATNE
Regional Editor