

YAN OYA DAM CONSTRUCTION

SAFEGUARDING PEOPLE AND THE ENVIRONMENT

**SUGGESTIONS FOR URGENT POLICY CHANGES
TO PROVIDE SOCIAL AND ENVIRONMENTAL SAFEGUARDS
TO MINIMISE DEVELOPMENT IMPACTS IN SRI LANKA**

CENTRE FOR ENVIRONMENTAL JUSTICE

September 2018



CEJ advocates for a better world for the future generation. We campaign on today's most urgent environmental issues. We sharpen the debate on environmental good governance, promotes ecologically sustainable development and safeguards nature and people from environmentally and socially irresponsible activities and human rights violations. We also promote community participation in decision making on natural resources, and promotes environmental justice and equity through legal and other means.

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Compiled by

Hemantha Withanage

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FOREWORD

World had estimated 8.7 million species which more than 70 percent already extinct due to natural reasons and mostly due to the human activities. Safeguarding the environment and other species is paramount to the survival of human species on earth. Therefore balancing environment and development is a key responsibility of every person and especially in every development activity.

The Sri Lanka National Constitutions Directive Principles of State Policy 27(14) state "The State shall protect, preserve and improve the environment for the benefit of the community" and 28 (f) state "it is the duty of every person in Sri Lanka to protect nature and conserve its riches". However the environmental conservation in Sri Lanka is not satisfactory due to many reasons including politics.

Sri Lanka's 25 year old Environmental Impact Assessment (EIA) law has been misused, misappropriated by the various people and the contribution of this process for conservation is not satisfactory. Yet this is the only law that brings public opinion on development decisions.

Most other countries and institutions have adapted this law to new situations and broadened its application by bringing safeguard policies which are much more applicable to protect the natural environment and peoples social and environment rights.

We are already too late to move towards better environmental laws and policies in Sri Lanka. The amendments to the National Environmental Act has been delayed by the regimes for more than 2 decades. The current laws provide too little conservation compared to the threats. Similarly social safeguards in development actions are very weak in Sri Lanka.

This publication brings some of these new approaches and the messages to the national leaders and policy makers on the need of such broader social and environmental safeguard protection for our own survival in Sri Lanka.

The publication also brings the "Gap analysis for improving the Environmental Impact Assessment (EIA) process in Sri Lanka" which is the result of the National Conference Jointly organised by the UNDP, CEJ, IUCN and IEPSL in August 2018.

Sri Lanka's EIA process provide too little safeguards and it's too late to make better. Unless we act fast, our environment is in great danger due to unplanned development.

Hemantha Withanage

Executive Director
Centre for Environmental Justice

30 September, 2018

1.EIA PROCESS IN SRI LANKA

Introduction

Environment and development are at crossroads around the world. World has reached 7.7 billion people by 2018. The most recent report by the scientists suggest that the species extinction on the earth is 1000 times faster due to human activities. It's not possible for humans to survive along. Further, Climate change is already become the single issue that will decide human survival on earth. The purpose of the environmental assessment is to ensure that decision makers consider the environmental impacts when deciding whether or not to proceed with a development project/activity.

"The International Association for Impact Assessment (IAIA) defines an environmental impact assessment as "the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made". EIAs are unique in that they do not require adherence to a predetermined environmental outcome, but rather they require decision makers.

Sri Lankan EIA process has been introduced in 1981 in the coastal region. The major change was the introduction of the Nationwide EIA process under the National Environmental Act in 1988 which came into effect in 1993. Since then Sri Lankan EIA process has not been amended or updated to introduce the new issues, approaches or principles in the past 25 years.

Most EIA processes introduced around the world during the era of the United Nations Conference on Environment and development. Among them The World Bank & International Finance Corporation(IFC), The Asian Development Bank , African Development Bank and European Bank for Reconstruction and Development(EBRD) adopt a policy review process with a 5 year of policy cycle. They also have evolved from the environment assessments to the environmental and social safeguards adding more tools to regulate the damage due to human interventions to the nature.

However, Sri Lankan EIA process is still far behind such approach.

EIA Legal frame work in Sri Lanka

EIA process in Sri Lanka is one of the oldest in the region. In Sri Lanka EIA was first introduced by the Coast Conservation (Amendment) Act No. 57 of 1981. This applies to projects that come within the "Coastal Zone". The "Coastal Zone" comprises of the area lying within a limit of 300 meters land ward of the mean high-water line and a limit of 2 kilometres seawards of the mean low-water line. Under the Act, identification of projects that require EIA is left to the discretion of the Director, Coast Conservation Department.

The legal framework for the EIA process in Sri Lanka other than the Coastal Zone has been laid down in the National Environmental Act (Amended) in No 56 of 1988. EIA process is implemented through designated "Project Approving Agencies (PAA)" led by the Central Environmental Authority (CEA).

North Western Province introduced its EIA process since January 1991 under the provisions of the 13th amendments of the Constitution. Under the Part IV C of the amendment act, it is mandated that all "prescribed" development projects to submit Environmental Assessment. This prescribed list include large scale development projects that are likely to have significant impacts on environment. Prescribed projects that are located in "environmental sensitive areas" are required to undergo EIA process irrespective of their magnitude.

The prescribed projects are listed in the gazette No 772/22 of 24th June 1993, 859/14 of 23rd February 1995, 1104/22 of 5th November 1999 and 1108/1 of 29th November 1999. EIA provisions are also included in the Fauna and Flora (Amended) Act No. 49 of 1993. According to this Act, any development proposed within one mile from the boundary of any National Reserve, is required to be subject to EIA, and written approval should be obtained from the Director General, Department of Wild Life Conservation prior to implementation of such projects.

EIA process

The current EIA process, involves six major steps. 1) Screening; 2) Scoping and TOR setting 3) Preparation of the EIA/IEE report 4) Review of the report 5) Approval subject to terms and conditions or rejection stating reasons 6) Environmental management and monitoring.

Scoping is an initial step organized by the PAAs to bring relevant stakeholders to identify significance of potential impacts and to help in deciding on the level of impact assessment to be carried out. This leads to deciding the need of an Environmental Impacts Assessment(EIA) vs Initial environmental Examination(IEE). Scoping also leads to the development of the agreed Terms of Reference of the assessment. CEA always play a major role in such scoping meetings. In the process of EIA evaluation, a Technical Evaluation Committee (TEC) is often established by the relevant PAA consisting of all stakeholders and external experts as deemed necessary.

The draft EIA Report once prepared by the Project Proponent, is opened for public comment for a mandatory 30 day period. This is considered to be the most democratic feature of the EIA process. An appeal process has been included where the developer can appeal to the Secretary of the Ministry in charge of the subject of Environment, against a decision made by a PAA. Currently an IEE Report is not opened to the public in this manner, but is deemed to be a public document.

Preparation of an Environmental Monitoring Plan (EMP) and the establishment of a monitoring mechanism are other important components of the process. A monitoring committee establish at the decision making level inviting all the stakeholders.

Content of an EIA

Among the major components, analysis of alternatives, social and environmental impacts, cost benefit analysis, possible positive and negative impacts, mitigation methods and environmental management plans are included.

The alternative analysis, identification of the negative impacts, mitigation and environmental management plan are very crucial part of an EIA.

EIA documents in Sri Lanka are very bulky since they contain too much information although they are not important for the decision.

Criticisms

Most projects have initiated without doing the feasibility studies in Sri Lanka. The planning agencies do not have a separate process for development identification and approvals. Instead the EIA process has been used by the Government agencies to conduct the feasibility of the projects and get the project approval.

The EIAs process and the content in Sri Lankan EIAs has not reviewed and corrected for last 2 decades. There are many new tools have been integrated into the EIAs worldwide.

Most projects in Sri Lanka are pre-decided ones by the politicians. EIA process mostly used by the agencies to green wash the projects. The political interferences in the project design makes decisions unfavourable to the environment and the environment rights of the communities. EIA has not been used to minimised the damage, reduce the project costs and improve the benefits.

Current EIA process in operation is not on the right based principles or precautionary principle rather a regulatory hurdle. The Sri Lankas EIA lack targeting the significant impacts at a greater level and the decision makers are not able to make a better decision.

The cost benefits analysis are also very weak and most of the time they do not address the external costs. The documents are very bias on the development and its very rare to see a rejection of projects as a result of the EIAs although they are very destructive to the environment.

Another major criticisms is that there is no project monitoring by the regulatory authorities once the project is approved. They lack professional staff and finances to engage in monitoring.

Sri Lanka lacks professional unbiased environmental experts to engage in EIA process. There is no capacity building for the regulatory agencies, EIA consultants and for the civil society organisation. Thus the EIA process have been highly deteriorated over the past 2 decades without much attention by the political leadership and the policy makers in Sri Lanka.

2. SELECTED CASE STUDIES- FAILED ENVIRONMENTAL AND SOCIAL SAFEGUARDS IN SRI LANKA

UMA OYA IRRIGATION PROJECT

UMA OYA project has brought a disaster to many people living along the Tunnel from Diaraba near Welimada to Kurundugolla near Wellawaya. So far over 7000 houses have been damaged and more than 3000 drinking wells have dried up. All streams and the wetlands have been dried up. The project will also have negative impacts to people living downstream of Uma Oya and it will bring both negative and positive impacts to people live in Monaragala district. UMA OYA multipurpose project is a controversial matter since 2014 among the general public. However, environmental groups and few others was involved in the campaign against the project since 2007. They however failed to obtain the majority support due to various reasons.

The project was originally designed to harness electricity. However, It also had a potential to bring water to dry parts of the Uva province. Meanwhile Rajapaksha regime started developing Hambantota in the arid zone as a mega city in line with the National Physical plan, there was a need for diverting water. Diversion of Kalu Ganga, Nilwala ganga, Gin Ganga and Uma Oya was pushed in order to meet the water requirements of newly build Hambantota and the Mattala Airport. Uma Oya diversion got the first priority since CECB was already produced the feasibility study in 1991. If the need for this water for the irrigation purposes, renovation of the abandoned tank system in the Monaragala district would have produced such water. But the need was to bring water to the Arid zone dream city needed more water than that would provide by the tank system.

Uma Oya is not a feasible project. It doesn't have adequate water to send 145 MCM throughout the year. It will harness this amount of water only in 4 months from December to March. Meantime both Uma Oya and Kirindi Oya basin receive water during the same North- East Monsoon. During this season Lower Uva basin and Wallawaya area has adequate water. Adding water through the tunnel will result flooding in Weerawila area.

Compartmentalizing of and EIA is not allowed under the current EIA process in Sri Lanka. The EIA was produced in 2010 by a team of experts from University of Jayawerdanepura and University of Peradeniya at the request of the Ministry of Irrigation and Water management for the current design. The first sector which includes diversion dam at Puhulpola, construction of Mathotilla reservoir, 26 kilometer long tunnels and the power plant at Kurundugolla was approved on 12 April 2011 by the CEA.

A supplementary EIA was produced for building two reservoirs at Alikota Ara and Kuda oya and conversion of 4500 acres of forest to agriculture lands and providing water for 1500 existing lands was produced in 2012 and approved by the CEA. The project got the approval extended in 2014. According to the EIA process the approval is valid for 2 years only.

People have not compensated adequately other than the compensation got through the Supreme Court Case filed by the Centre for Environmental Justice on behalf of the affected communities.

The Ministry of Mahaweli Development has a conflict of interest as they are the project proponent and the regulatory agency the Central Environmental Authority also comes under the purview of the same Ministry.

COLOMBO PORT CITY

Colombo port city is a major infrastructure facility in the BELT ROAD PROJECT of China. It is considered as the third strategic point since Sri Lanka is located along the east-west shipping line. It would have been beneficial for the Sri Lanka, if we could enter into a better deal understanding our significance in this strategy. However, Sri Lanka entered into this deal as a highly indebted nation and therefore Sri Lanka does not have much leverage.

The dream annexed city called Colombo Port City will have a major administrative and benefit sharing issues. It is proposed to run under new regulations and as a financial hub which details are not yet publicly available. Both Rajapasksha regime and Maithree- Ranil regime have so far failed to become accountable to the public on this annexed city.

Despite its legal economic and social impacts, the environmental impacts have not been addressed under the prevailing laws in the country. In fact it is a highly green washed project by the respective agencies including the CCD, CEA, UDA, GSMB, and the academic community specially from the university of Moratuwa. This project was highly politicized during the Rajapaksha regime due to the China bias foreign policy in related to the historical relationship during the war period and therefore there was no space for the government agencies or academics to make an independent opinion.

On 16th December 2014 Prime Minister, Ranil Wickramasinghe, announced that “the new government, would scrap the Colombo Port City Project, because it would end up destroying the coastal belt from Negombo to Beruwala.” Therefore, he himself aware of the environmental impacts. However, he twisted the situation due to the circumstances.

The project under the previous regime planned to fill an area of 235 Ha, however become 269 under the new proposal. The total area of filling will be more than 300 hectare including the 2 canals in the project area and the total “footprint” could be approximately 485 hectares or 1200 acre of the sea.

According to the supplementary Environmental Impact Assessment, 65 million m³ of dredged sea sand will be required. It may be minimum 75 million according to experts. However, considering the 15- 20% wastage during suction dredging [which will wash away and deposited on the coral reefs in the area destroying the fishing grounds] the total sand mining requirement will be more than 90 million m³. Further to this, once the project completes it will still require sea sand to maintain the proposed beachfront and the marina, which will be amount to 300,000 m³ annually. This is not shown in the above figures including where this sand will be mined.

This location currently provides livelihood for 15,000 fishermen. The sand mining area is approximately 150 sq. km protected by three weathered sandy rocks protecting beach from Colombo to Negombo. According to the previous studies, the area has four reefs, whose species are generally of low diversity and abundance. All are significantly influenced by sediments from the Kelani River, with high turbidity as well as accumulated sediments on the reef surface. The density and diversity of colonization by corals is generally very low, typically 85% uncolonized. Only one species (damselfish) *Pomacentrus proteus* is endemic. A total of 53 fish species and 4 shrimp and crab species were identified in commercial catches landed at Modera Fish Harbour.

EIA report on the building construction produced in October 2017, states that Palagala, Vatiyagala has been recently recovered completely.” However, according to the fishermen in the area this is not true. Further, coral reefs from Colombo to Negombo area has been severely destroyed by the port city project due to sand mining.

Colombo Port City EIA process is highly flawed one. The decision to fill the area has been taken by the Coast Conservation Department though an EIA which has not studied the sand burrowing or rock material. The second EIA for the sand burrowing was concluded that there is no adequate sand in the studied location. A third EIA was produced to study the third sand burrowing site. Also a fourth EIA has been produced for the building construction.

Ideally these aspects should have been addressed in a single EIA and cumulative impacts of the project should have assess at the beginning of the project approval process.

NOROCHCHOLAI COAL POWER PLANT

Kalpitiya peninsula is a very fragile ecosystem. It's people mainly depend on agriculture with very limited freshwater resources. Unfortunately, Norochcholai Coal power plant has become a major public nuisance to the local people while become the number one environmental polluter in the Kalpitiya Peninsula, violating several environmental regulations in the country.

The discussions on the adverse effects of Norochcholei coal power plant has emerged with the community allegations on losing their livelihoods, depletion of water resources, deteriorating fish habitats, spreading fly ash and coal dust and causing health issues such as skin problems, eye irritation and Asthma. The coal power plant has been operated without following acceptable environmental standards for a very long period due to non-operative Electro Static Precipitator (ESP), Flue Gas Desulphurization unit, haphazard dumping of Coal ash, spread of fly ash through the emission stack and release of ash into the sea etc.

The Ceylon Electricity Board (CEB) as the project developer has failed to follow precautionary and preventive methods to recover environmental pollution and other negative impacts on human population.

The discussion on the Norochcholei coal power plant was begun in the late 1980's and the Environment Impact Assessment (EIA) report for the first phase was produced in 1998. It was challenged in the Court of Appeal in 1999 by the Environmental Foundation Lt., and the CEB agreed to produce a new EIA and look for new locations. In 2005, former president Mahinda Rajapaksha entered into a contract with China to build a coal power plant. However, CEB as the main project implementor failed to obtain the proper approval with a new EIA report. Although the first EIA was done in 1998, most of the dimensions and environmental impacts have been changed since 1998. In such a situation the law required the project proponent to produce a fresh EIA report.

The legality of approving process was questionable because the major part of the project lies within the jurisdiction of North Western Provincial Statute (NWPS) and the approval should be received from them. However, it was believed that NWPS was unconstitutional and therefore the EIA should be carried out under National Environment Act (NEA). Further Provincial Environmental Authority was interested on a part of the project and EIA covered only a part of the project (power plant)". The segmentation totally misguided the decision makers and the community.

CEB has failed to conduct EIA or IEE which is mandatory by the section 23 AA of the NEA. It is mandatory to obtain approval from an appropriate project agency for any project which is being undertaken in Sri Lanka. Further, section 23 BB of the NEA prescribes that project proponent needs to submit an IEE report or EIA report to such a Project Approving Agency (PAA). As an environmental organization, CEJ has pointed out these violations to the court of appeal under case of CA.AP No 1112/2006 requesting CEB to follow the mandatory statutory provisions and Central Environmental Authority should be the appropriate project approving agency. However, we failed to bring justice for this matter though the court.

Norochcholei coal power plant has been running more than over one year without an Environmental protection License (EPL) which is a regulatory tool under the provisions of the NEA. Today, the project has caused irreversible damages and destructions to both anthropogenic and natural environment, ecological balance and the interest of people. Water usage in the power plant has saline the underground water resources. Fly-ash and Mercury from coal power plant has caused serious of health issues.

Undoubtedly, the Coal power plan has made positive impacts to the national development by generating electricity. Yet, the local communities have no significant benefits while they become the frontline affected communities suffer from the environmental pollution and public nuisance caused by the CEB.

MORAGAHAKANDA IRRIGATION PROJECT

Moragahakanda is the largest development project hapenning in Sri Lanka at this moment. It has multiple projects. The Moragahakanda dam, the reservoir, Kaluganga diversion, Upper Elahera canal, diversion of Randenigala water to Kaluganga, rebuilding Laggala city, the clearing of forest in Kavudulla- Somawathiya elephant corridor, construction of road system in the area and construction of two tunnels are some major components.

The project have been funded by the Asian Development and the Government of Sri Lanka. The project involve several EIAs and approvals yet the construction companies failed to minimise the social and environmental impacts. The project lack a proper feasibility study and proper design and unexpected road constructions and other components have been added without any social and environmental clearance.

The Ministry of Mahaweli Development and Environment has a conflict of interest over this project. The Project implementing agency Mahaweli Authority and the two regulating authorities i.e. Forest Department and the Central Environmental Authority comes under the same Ministry. The Secretary to the Ministry Mahaweli Development and Environment overlook all the agencies and therefore the project governance and management is not done in a proper manner.

Thus, CEA has failed to address the environmental and social safeguards to minimise the impacts to the Knuckles conservation area and the remaining forest and elephants habitats.

3. INTERNATIONAL BEST PRACTICES

Humans throughout their life encroach the habitats of the other species both in large and small scale. They all have negative impacts to the nature. While some people have a larger ecological foot print some others have a very insignificant ecological foot print.

Infrastructure development always alter the natural environment. Basics principles of the safeguard approach is avoid , minimize and mitigate those impacts. The negative impacts of the infrastructure development are very diverse and beyond the traditional environmental assessments. Few such impacts are given below.

Alter the landscapes- The infrastructure project shall alter the natural landscapes such as oceans, beaches, mountains, forest, wetlands, rivers, lagoons, water bodies, natural resources such as mineral sands etc. Such landscapes plays a critical role maintaining the natural ecosystems and natural cycles.

Biodiversity loss- The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

Loss of Critical Habitat- A subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or that are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic, or cultural importance to local communities. (ADB, 2009)

Loss of Natural Habitat- Land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions.

Health Impacts- The projects may have involve chemicals, agrochemicals, open up polluted areas, bring up the pollutant in the soil, emit dust, use asbestos or other harmful products, spreading communicable diseases, create stagnant water which might cause spread water borne and vector borne diseases etc.

Loss of Physical Cultural Archeological Resources- Movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance. Physical cultural resources may be located in urban or rural settings and may be above or below ground or under water. Their cultural interest may be at the local, provincial, national, or international level.

Physical Displacement- Relocation, loss of residential land, or loss of shelter as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. Significant Conversion or Degradation. (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) the modification of a habitat that substantially reduces the habitat's ability to maintain viable populations of its native species.

Displacement of Persons- In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.

Impacts to the indigenous communities- A project may have interfere with the indigenous peoples territories and alter their lifestyle, culture and habitats. According to the ILO Convention No169, Indigenous people are "Descent from populations, who inhabited the country or geographical region at the time of conquest, colonisation or establishment of present state boundaries. They retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status".

Economic Displacement- Loss of land, assets, access to assets, income sources, or means of livelihoods as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.

Climate impact- The project may have negative or positive impacts to the climate change. Increase of greenhouse gases or decrease of GHG indirectly or directly can be the result of a project. Otherwise they would need climate resilient components and climate proofing.

These impacts are not adequately consider in an environmental impact assessment operate in Sri Lanka although they touch many of these issues. The new safeguard policies have considered all of the above impacts when developing their safeguard policies.

THE ADB SAFEGUARD POLICY

In this policy ADB affirms that environmental and social sustainability is a cornerstone of economic growth and poverty reduction in Asia and the Pacific. In this context, the goal of the SPS is to promote the sustainability of project outcomes by protecting the environment and people from projects' potential adverse impacts. The latest safeguard policy statement was effective since 2009.

The objectives of ADB's safeguards are to:

1. avoid adverse impacts of projects on the environment and affected people, where possible;
2. minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people when avoidance is not possible; and
3. help borrowers/clients to strengthen their safeguard systems and develop the capacity to manage environmental and social risks.

ADB assumes the responsibility for conducting due diligence and for reviewing, monitoring, and supervising projects throughout the ADB's project cycle in conformity with the principles and requirements embodied in the SPS. By adhering to its social and environmental safeguards, ADB enhances the predictability, transparency, and accountability of its actions and decision making; helps borrowers/clients manage social and environmental impacts and risks; and promotes the long-term sustainability of investments. Transforming this commitment into results on the ground depends on shared, but differentiated, efforts by ADB and its borrowers/clients.

ADB's SPS sets out the policy objectives, scope and triggers, and principles for three key safeguard areas:

- (i) environmental safeguards,
- (ii) Involuntary resettlement safeguards, and
- (iii) Indigenous Peoples safeguards.

ADB assures it will not finance projects that do not comply with its safeguard policy statement, nor will it finance projects that do not comply with the host country's social and environmental laws and regulations, including those laws implementing host country obligations under international law. In addition, ADB will not finance activities on the prohibited investment activities list.

ADB uses a classification system to reflect the significance of a project's potential environmental impacts. A project's category is determined by the category of its most environmentally sensitive component, including direct, indirect, cumulative, and induced impacts in the project's area of influence. Each proposed project is scrutinized as to its type, location, scale, and sensitivity and the magnitude of its potential environmental impacts. Projects are assigned to one of the following four categories:

Category A. A proposed project is classified as category A if it is likely to have significant adverse environmental impacts that are irreversible, diverse, or unprecedented. These impacts may affect an area larger than the sites or facilities subject to physical works. An environmental impact assessment is required.

Category B. A proposed project is classified as category B if its potential adverse environmental impacts are less adverse than those of category A projects. These impacts are site-specific, few if any of them are irreversible, and in most cases mitigation measures can be designed more readily than for category A projects. An initial environmental examination is required.

Category C. A proposed project is classified as category C if it is likely to have minimal or no adverse environmental impacts. No environmental assessment is required although environmental implications need to be reviewed.

Category FI. A proposed project is classified as category FI if it involves investment of ADB funds to or through a FI .

THE WORLD BANK ENVIRONMENTAL AND SOCIAL FRAMEWORK(ESF)

The Environmental and Social Framework (ESF) enables the World Bank and Borrowers to better manage environmental and social risks of projects and to improve development outcomes. It was launched on October 1, 2018.

The ESF offers broad and systematic coverage of environmental and social risks. It makes important advances in areas such as transparency, non-discrimination, public participation, and accountability—including expanded roles for grievance mechanisms. It brings the World Bank’s environmental and social protections into closer harmony with those of other development institutions.

ESS1: Assessment and Management of Environmental and Social Risks and Impacts sets out the Borrower’s responsibilities for assessing, managing and monitoring environmental and social risks and impacts associated with each stage of a project supported by the Bank through Investment Project Financing (IPF), in order to achieve environmental and social outcomes consistent with the Environmental and Social Standards (ESSs).

ESS2: Labor and Working Conditions recognizes the importance of employment creation and income generation in the pursuit of poverty reduction and inclusive economic growth. Borrowers can promote sound worker-management relationships and enhance the development benefits of a project by treating workers in

ESS3: Resource Efficiency and Pollution Prevention and Management recognizes that economic activity and urbanization often generate pollution to air, water, and land, and consume finite resources that may threaten people, ecosystem services and the environment at the local, regional, and global levels. This ESS sets out the requirements to address resource efficiency and pollution prevention and management throughout the project life-cycle.

ESS4: Community Health and Safety addresses the health, safety, and security risks and impacts on project-affected communities and the corresponding responsibility of Borrowers to avoid or minimize such risks and impacts, with particular attention to people who, because of their particular circumstances, may be vulnerable.

ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement - involuntary resettlement should be avoided. Where involuntary resettlement is unavoidable, it will be minimized and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) will be carefully planned and implemented.

ESS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources recognizes that protecting and conserving biodiversity and sustainably managing living natural resources are fundamental to sustainable development and it recognizes the importance of maintaining core ecological functions of habitats, including forests, and the biodiversity they support. ESS6 also addresses sustainable management of primary production and harvesting of living natural resources, and recognizes the need to consider the livelihood of project-affected parties, including Indigenous Peoples, whose access to, or use of, biodiversity or living natural resources may be affected by a project.

ESS7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities ensures that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities. ESS7 is also meant to avoid adverse impacts of projects on Indigenous Peoples/

Sub-Saharan African Historically Underserved Traditional Local Communities, or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.

ESS8: Cultural Heritage recognizes that cultural heritage provides continuity in tangible and intangible forms between the past, present and future. ESS8 sets out measures designed to protect cultural heritage throughout the project life-cycle.

ESS9: Financial Intermediaries (FIs) recognizes that strong domestic capital and financial markets and access to finance are important for economic development, growth and poverty reduction. FIs are required to monitor and manage the environmental and social risks and impacts of their portfolio and FI subprojects, and monitor portfolio risk, as appropriate to the nature of intermediated financing. The way in which the FI will manage its portfolio will take various forms, depending on a number of considerations, including the capacity of the FI and the nature and scope of the funding to be provided by the FI.

ESS10: Stakeholder Engagement and Information Disclosure recognizes the importance of open and transparent engagement between the Borrower and project stakeholders as an essential element of good international practice. Effective stakeholder engagement can improve the environmental and social sustainability of projects, enhance project acceptance, and make a significant contribution to successful project design and implementation.

THE IFC POLICY ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY AND THE PERFORMANCE STANDARDS

The Safeguard Policies provided guidelines for IFC and its clients on how to prevent and mitigate undue harm to people and their environment in the identification, preparation, and implementation of projects. The Safeguard Policies were replaced by the Policy on Social and Environmental Sustainability and the Performance Standards in April 30, 2006.

IFC Performance Standards consist of the following:

- 1: Assessment and Management of Environmental and Social Risks and Impacts
- 2: Labor and Working Conditions
- 3: Resource Efficiency and Pollution Prevention
- 4: Community Health, Safety, and Security
- 5: Land Acquisition and Involuntary Resettlement
- 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- 7: Indigenous Peoples
- 8: Cultural Heritage

In 2006, IFC adopted the Sustainability Framework, which articulates the strategic commitment to sustainable development and is an integral part of our approach to risk management. The 2006 edition of IFC's Sustainability Framework applies to investments that underwent IFC's initial credit review process from April 30, 2006 to December 31, 2011.

In 2012, the Sustainability Framework was updated. The 2012 edition of IFC's Sustainability Framework applies to all investment and advisory clients whose projects undergo IFC's initial credit review process after January 1, 2012. The Sustainability Framework consists of

The Policy on Environmental and Social Sustainability, which defines IFC's commitments to environmental and social sustainability. The Performance Standards, which define clients' responsibilities for managing their environmental and social risks. The Access to Information Policy, which articulates IFC's commitment to transparency.

As part of the review of environmental and social risks and impacts of a proposed investment, IFC uses a process of environmental and social categorization to reflect the magnitude of risks and impacts. The resulting category also specifies IFC's institutional requirements for disclosure in accordance with IFC's Access to Information Policy. These categories are:

Category A: Business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.

Category B: Business activities with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

Category C: Business activities with minimal or no adverse environmental or social risks and/or impacts.

Category FI: Business activities involving investments in FIs or through delivery mechanisms involving financial intermediation.

This categorization gives more clear understanding for the people to know the severity of the impacts.

APPROACHES FOR BETTER SAFEGUARDS

Meaningful Consultation-

A process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.

Free Prior informed consent-

FPIC is a principle protected by international human rights standards that state, 'all peoples have the right to self-determination' and – linked to the right to self-determination – 'all peoples have the right to freely pursue their economic, social and cultural development'. Backing FPIC are the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labour Organization Convention 169, which are the most powerful and comprehensive international instruments that recognize the plights of Indigenous Peoples and defend their rights.

Consent of Affected Indigenous Peoples Communities-

For the purpose of ADB policy application, this refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for the project activities. Such broad community support may exist even if some individuals or groups object to the project activities.

Better compensation packages

The effected communities along the Southern Transport Development project in Sri Lanka received the market value for their properties. This is due to the ADB resettlement policy which assure market value for the affected communities. However, this was possible due to the strong community struggle and the strategic advocacy. But there are many other cases that affected communities were not fully and properly compensated.

Grievance redress mechanisms

Due to the long term advocacy of the CSOs in safeguard policies and increase of community voices, new policies required the MDB funded projects to established grievance redress mechanisms which is accessible for the communities to bring the issues to the attention of the project implementation staff and the bank officials.

Disclosure policies

All international Financial Institutions have access to information policies for timely distribution of project

information. They disclose information about Bank operations in a clear, timely, and appropriate manner to enhance stakeholders' ability to meaningfully engage with Banks and to promote good governance.

The ADB state "The objective of the Access to Information Policy (AIP) is to promote stakeholder trust in the Asian Development Bank (ADB) and to increase the development impact of ADB activities. The policy reflects ADB's commitment to transparency, accountability, and participation of stakeholders in ADB-supported development activities in Asia and the Pacific. It also recognizes the right of people to seek, receive, and impart information about ADB's operations. (Operations Manual Issued on 28 January 2019)

Right to Information Act No 12 of 2016

Sri Lanka's Right to information (RTI) Act, No 12 of 2016 is a new law brought in Sri Lanka in line with the information disclosure. RTI Act comes into effect by bringing with it a promise of open government, citizens' active participation in governance, and accountability to the people of the country. All development related decisions such as EIA approvals, Environmental Protection Licence in Sri Lanka can be accessed through this law.

No go zones

Most countries identify development free areas to save the natural environment, protected areas for the preservation of environmental, biological, or historical value. Such "No Go Zones" are protected by law. Although Sri Lanka has declared many forest, wildlife, marine, wetland areas they are not free from development.

Strong Accountability mechanisms

In comparison to the Accountability mechanisms established in 90s, these MDBs have better accountability mechanisms.

The objective of the Accountability Mechanism Policy 2012 is to be accountable to people for ADB-assisted projects as a last resort mechanism. The policy and information are available in several local languages for easier access by project-affected people. It has two separate functions. "The problem solving function, led by the Special Project Facilitator (SPF), focuses on problem solving and finding satisfactory solutions to problems caused, or is likely to be caused, by ADB-assisted projects. The compliance review function, primarily implemented by the independent Compliance Review Panel (CRP), focuses on ADB's accountability on whether it has or has not complied with its operational policies and procedures that affect or may affect local people directly, materially, and adversely. The Accountability Mechanism has two separate offices: The Office of the Special Project Facilitator (OSPF) and the Office of the Compliance Review Panel (OCRCP), which support the CRP. The OSPF and OCRCP work jointly in conducting outreach activities aimed at making the mechanism better known and understood both within and outside ADB. They support the SPF and CRP in carrying out the separate functions of problem solving and compliance review."

The mechanism has been updated due to the advocacy by the Civil society based on the non-accessibility and the ineffectiveness of the previous mechanism. Yet this mechanism have been poorly used by the CSOs.

The World Bank Group accountability mechanism has a longer history. "The World Bank Group accountability mechanisms – the Inspection Panel, which handles complaints for public-sector projects, and the Compliance Advisor Ombudsman (CAO), which handles private-sector projects – were created to provide communities a space to raise their concerns about projects and to ensure the accountability of Bank-supported programs. With the October 2013 adoption of its new strategy, the Bank decided that "smart risk-taking will help clients to strengthen their capacity", which it interprets to mean that accountability mechanisms should "complement compliance with a focus on outcomes". However, the effectiveness of these mechanisms relies on the extent to which their recommendations and findings are considered by the management of the Bank and that actual remedies are provided to amend potential failures in the programmes." This mechanism also has mixed results.

BETTER SAFEGUARDS FOR SRI LANKA

Sri Lankan EIA process is far behind the safeguard requirements. Sri Lankan EIA process provide too little safeguards and it's too late to make better. Unless we act fast, our environment is in great danger due to unplanned development.

It does not give justice to the people and the environment. It does not help to make the best decision to increase the benefits and reduce costs. Sri Lankan EIAs consider some environmental and social impacts but not adequate to understand the total impact of the development projects. They are not based on do no harm concept. They lack many safeguard aspects in comparison to the better safeguard policies around the world.

Although Public participation is a requirement under the current EIA law there is no attempt to get the, peoples consent or engage in proactive meaningful consultations. Once the EIAs are published only few comments receive due to this reason. Most of the time people lack expert knowledge to understand the EIAs. They are too technical and very much beyond the lay persons understandings.

Unless Sri Lanka introduce proper categorization of the development projects, it is difficult to identify the severity of the impacts. Although there is an internal tool for deciding whether a project need EIA or IEE document it is not a transparent process. Further some projects that require EIAs also have been approved without EIA process.

Health Impact, Climate impact, archeological impacts, cultural impact or impacts on labour etc are very much missing in these EIAs. Traditional EIAs cannot bring such information for the decision makers. Some believe that changing the Terms of Reference can make a difference.

“Gap analysis for improving the Environmental Impact Assessment (EIA) process in Sri Lanka” given in the annex is a collaborative effort by various people and agencies including UNDP, CEJ, IUCN and IEP SL to understand the problem of the current EIA process.

The safeguards policies widely accepted by the development practioners brings much more than the traditional EIA approach. It provides a better opportunities for the developers, policy makers and the affected and interested communities to engage each other. It also provides a better access to information and tools for dispute resolution.

The best practices of the IFIs are based on public consultations and provide better safeguards when development projects are undertaken although the level of implementation vary in different situations.

Some countries follow harmonisation of these policies at the national level to provide better safeguards to the people and the environment. We propose that it is time for Sri Lanka to harmonise the policies in similar manner to overcome the crisis in the EIA process in Sri Lanka.

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ANNEX 1

GAP ANALYSIS FOR IMPROVING THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) PROCESS IN SRI LANKA

This report was produced based on the National EIA conference held on 28th August 2018 with the participation of multi-stakeholder groups organised by the United Nations Development Programme (UNDP), Centre for Environmental Justice (CEJ), International Union for Conservation of Nature (IUCN) and Institute of Environmental Professionals Sri Lanka (IEPSL).

INITIATION OF THE EIA PROCESS IN SRI LANKA

1. The EIA process was introduced to Sri Lanka as early as 1980 to make development more environmentally conscious and sustainable and decision making more democratic. Provisions for EIA in Sri Lanka were first introduced in 1980 under the Coast Conservation Act only for the coastal zone. This was then introduced to other landscapes under the National Environmental Act (NEA) No 56 of 1988. The process has been defined under Part IV C of this Amendment Act and the Government Extraordinary Gazette No 772/22 of 1993.
2. Under this process, there are two levels of assessments, based on the significance of the perceived environmental and social impacts. The first level, defined as Initial Environmental Examination (IEE), is carried out when potential environmental impacts are less significant. The second, a more comprehensive study - Environmental Impact Assessment (EIA) - is carried out when the project is likely to create more significant impacts. The EIA process as defined under the NEA, is limited only to development projects which are listed as "prescribed projects" in Gazette Extraordinary No 722/22. These prescribed projects are categorized by types, their magnitude and the sensitivity of the receiving landscape.
3. Under the NEA, Central Environmental Authority has been empowered to manage the EIA process in Sri Lanka. Eighteen Project Approving Agencies (PAAs) have been identified and EIA cells were established within them, to manage the EIA process. Later this number was increased to 23 PAAs.
4. The Central Environmental Authority (CEA) with financial and technical support of the Natural Resources Environment Policy Project (NAREPP) of USAID, commenced training EIA practitioners and the aligned regulatory and other agencies in 1992. These training and capacity building efforts continued over the years with mixed success.

STEPS IN THE CURRENT EIA PROCESS

5. The current EIA process, involves six major steps. 1) Screening; 2) Scoping and TOR setting 3) Preparation of the EIA/IEE report 4) Review of the report 5) Approval subject to terms and conditions or rejection stating reasons 6) Environmental management and monitoring.
6. Scoping is an attempt to bring relevant stakeholders to identify significance of potential impacts and to help in deciding on the level of impact assessment to be carried out. Scoping also leads to the development of the agreed Terms of Reference of the assessment.
7. In the process of EIA evaluation, a Technical Evaluation Committee (TEC) is often established by the relevant PAA consisting of all stakeholders and external experts as deemed necessary.
8. The draft EIA Report once prepared by the Project Proponent, is opened for public comment for a mandatory 30 day period. This is considered to be the most democratic feature of the EIA process. An appeal process has been included where the developer can appeal to the Secretary of the Ministry in charge of the subject of Environment, against a decision made by a PAA. Currently an IEE Report is not opened to the public in this manner, but is deemed to be a public document.
9. Preparation of an Environmental Monitoring Plan (EMP) and the establishment of a monitoring mechanism are other important components of the process.

CONCERNS OF THE EIA PROCESS

10. The first decade in the application of the EIA process was largely a learning experience for the regulatory authorities, practitioners and for the general public. The Aitken Spence Kandalama hotel, the Colombo Katunayake Expressway project, The Southern Expressway, the Upper Kothmale Hydropower project etc., are considered to have been useful experiences in the establishment of the process in its early years. Since then, although the application of the process has been successful in many ways, leading to several sound decisions being made, it has also given rise to many violations over the years leading to criticisms raised by stakeholder groups.
11. A review of the process and its application was conducted in 2009 by the World Bank, with several recommendations made for improvement, but little action has been taken to date. More recommendations were made at the conclusion of the ten day EIA training programme conducted in 2014. The CEJ has also conducted several roundtable discussions since then. As a part of this process, a national conference was held on 31st August 2018, and the following gaps have been identified.

IDENTIFIED GAPS

1) Gaps in the national process for development prioritisation and approval

- 1.1 **Absence of pre-feasibility/feasibility studies for development projects-** It was identified that several of the projects that apply for EIA approval do not have pre-feasibility/feasibility studies and that the developers often look to the EIA process for assessing feasibility. In the absence of a clear understanding of project feasibility, a sound assessment of environmental and social impacts is near impossible.
- 1.2 **Development projects are not cleared by the planning authorities-** It was identified that although developers apply for application of the EIA process, some development project particularly those of the state sector, have not been cleared by the National Planning Department, the Board of Investment of Sri Lanka or a similar planning agency. The PAAs are then in a dilemma on whether to commence the EIA process or not.
- 1.3 **EIA as a regulatory hurdle-** Most Project Proponents, including development oriented state agencies, consider the EIA process only as a regulatory hurdle to be cleared rather than a process by which a genuine attempt is made to ensure long term sustainability of a proposed project. In the existing procedure, external consultants hired by the Project Proponent, are entirely responsible for the preparation of the EIA report and to provide answers to the Technical Evaluation Committees (TEC), while the Project Proponent takes no ownership of the EIA report nor its contents.
- 1.4 **EIA approval takes the place of "Project" approval-** The overall project approval is based on the EIA approval, in the absence of any other planning approval process at present. It was pointed out that an EIA can only provide environmental clearance, and the overall project approval should base itself on many other factors beyond the facts considered in an EIA Report.
- 1.5 **Strategic Environment Assessment (SEA)-** Strategic Environment Assessment is a proven tool to avoid conflicts and pre-decide development options based on zoning as it upstream environmental assessments in the planning cycle. Although Sri Lanka has some early examples of SEA there is no formal process identified for the country as yet being only an administrative decision and not a legal requirement.

2) Gaps in the EIA process

- 2.1 **Study of alternatives/ Pre decided projects-** The analysis of alternatives is an essential component in the EIA process. But as the process stands today, it simply justifies a pre-determined and selected option rather than using the EIA process to arrive at the best alternative. This project option is usually selected by a Project Proponent long before the EIA stage. The alternatives presented in the EIA are merely done only to meet the requirements of the TOR. Some sovereign /public sector projects are mostly pre-decided by political authorities leaving no space to make any changes even if the EIA process identifies significant adverse impacts without much potential for mitigation.
- 2.2 **Punitive action for non-compliance-** The punitive action and fines for not conducting an EIA for a prescribed project is miniscule in comparison to the cost of conducting an EIA, which may encourage Project Proponents

to skip the EIA process, altogether. There are no provisions in the NEA to compel a Project Proponents to rehabilitate any environmental damage due to an unauthorized project or to compensate for damages caused.

- 2.3 Wrong interpretation of the EIA regulations and misuse of pre-determined thresholds-** It is seen that often PAAs do not evaluate the real need of an EIA/IEE, rather take the literal meaning of the EIA regulation. For example; Extraction of Timber in a land area exceeding 5 hectares is a prescribed project. But, an IEE is done for felling of 20 trees or less within 5 ha, when the regulation requires it for clear felling of trees in a land area of 5 ha.
- 2.4 Flaws in the Terms of Reference (TOR)-** Due to shortcomings in scoping, most TORs for projects do not focus on the major issues. Often the TORs issued for small and medium scale projects are as complicated as for a mega scale project. This could be one of the reasons for Project Proponents to disregard TORs. On the other hand, EIA consultants often follow the headings given in the TOR to the letter due to fear of rejection by the PAAs During the adequacy analysis most PAAs go through the headings rather than evaluating the complete report.
- 2.5 Significance of impacts-** The significance of potential impacts of a project is rarely mentioned in EIA reports. This means that minor impacts are given the same importance as impacts with a high probability of occurrence and high degree of impact, thereby distracting attention away from the major impacts with a high probability of occurrence. It is crucial to evaluate the significance of a given impact in the overall context of the project.
- 2.6 Environmental Monitoring Program (EMP) and environmental monitoring-** Operationalizing the proposed monitoring of approved projects has been identified as one of the weakest links in the EIA process. There are many contributory factors including human resource limitations, funding limitations etc. Earlier EIA's had no Environmental Management Plans. The inclusion of EMPs is now a routine feature of EIA reports and a part of the approvals granted, although implementation is still questionable.
- 2.7 Scoping-** "Scoping" is an essential step to identify the issues of major concern/s to be the focus of the EIA. Although a scoping meeting is held by the CEA, the resultant Terms of Reference does not always focus on the major issues of concern. Scoping by EIA consultants is rare if ever carried out in practice. Without a proper scoping step no assurance could be given that the EIA would be conducted in an appropriate manner.
- 2.8 Format and template of the EIA should be related to project size and impacts-** The existing process with a few refinements is acceptable for large scale megaprojects. But the process needs to be simplified for small and medium scale projects. The present IEE/EIA procedure for small and medium scale projects is far too rigorous and is the cause of major delays in project approval. More simplified processes such as the use of an Impact identification questionnaire along with details of mitigation measures should be considered for such projects. This should be determined at the scoping stage with a commonly accepted procedure.
- 2.9 Screening-** Should be started at the very beginning of the project planning. Some best practices such as ADB project planning or WB/IFC safeguard policies should be adhered to ensure that all risk mitigation measures are taken into consideration.
- 2.10 Public participation-** According to the NEA the public can participate in five stages of the EIA process; scoping, meeting with the public, public comment period, public hearing and appeals. It has been identified that public participation for certain projects are not satisfactory. On the other hand, though the public participation is a very positive development, it has had mixed success. Public participation in Western Countries is very successful as the public fully participates in the decision-making process and is not bound by self-interest. In Sri Lanka there is no genuine effort by the public to participate in the interest of the project. Public participation is only when personal interests are threatened (relocation, loss of house, land, livelihood, etc.). Often only a few NGOs make valid comments regarding an EIA and the project.
- 2.11 EIA approval is independent to the EPL-** The EIA approval being independent from Environmental Protection License (EPL) or any other permit/License, results its validity being laps after a time, making it difficult to monitor compliance or to hold the project proponent responsibility. There are also major infrastructure projects which do not require an EPL (Highways, Airports and Ports) thereby making it difficult to continuously monitor the project or hold the PP responsible for violations.

2.12 **Responsibilities of contractors** - The EIA approval consists of approval conditions. These are issued to the project proponent (in many cases a Government Agency). But in many cases PP fails to include these conditions in the contract documents thereby the contractors do not implement the project compliance to EIA approval conditions. This causes major environmental issues in large scale projects and even make environmental damage inevitable.

2.13 **Mitigation measures**- It is expected that the project proponent will implement the proposed mitigation measures and the Environmental Management Plan in the report. But, in many instances, the project proponent is unaware of the contents of the report and the cost of mitigation measures proposed.

2.14 **Project approval**- The project approval is based on the EIA. There is no other project approval process in Sri Lanka. It was found that EIA can only provide the environmental clearance, but the project approval should use many other factors beyond the facts considered in the EIA.

2.15 **Non-functional Project Approving Agencies**- The Project Approving Agency (PAA) concept is a direct adoption from the USA and has several shortcomings. Many PAAs are inactive or depend highly on the CEA while some are independent of the CEA. Often approval is granted under the NEA which reduces the responsibility of CEA for their actions. There is a conflict of interest issues with PAAs as well. For example; Ministry of Power and Energy approving power sector projects, Ministry of Industries approving industrial Projects, etc. CEA has limited resources to work on project approvals.

2.16 **Non-identification of the external costs**- The cost benefit analysis in the Sri Lankan EIAs are highly inadequate. It does not cost the external cost and does not consider the disasters and compensation etc

3. Gaps in Technical Skills and Capacities for report preparation and evaluation

3.1 **Report preparation**- A general EIA report should be: TRUTHFUL (Does not conceal unpleasant facts and proposes mitigation measures which the PP intends to implement); CONCISE and is written CLEARLY in SIMPLE language; clearly indicating the major IMPACTS, as well as any IRREVERSIBLE or UNAVOIDABLE impacts of the project; proposing FEASIBLE and COST EFFECTIVE mitigation measures; focusing on the ANALYSIS of the impacts and their QUANTIFICATION and MITIGATION rather than the project description and existing environment.

3.2 **Most of these qualities are absent or hardly addressed in the Sri Lankan context**- EIA reports are ideally supposed to be PRACTICAL, ANALYTICAL, BRIEF reports which ASSIST in decision making. But, in Sri Lanka a majority of EIA reports tend to be ACADEMIC, DESCRIPTIVE, VOLUMINOUS reports which confuse the reader (PAA and public). It doesn't assist in the decision making process due to lack of quantification on project impacts, the level of possible mitigation and an analysis of project impacts on the environment and its consequences if any. In Sri Lankan context, these are incomplete.

3.3 **Lack of data/incorrect information (project details and baseline data)** – Sri Lanka does not have a good public database. In many large scale projects, the project Proponent is unable to provide the required project details as required by the TOR, at the EIA stage. Sometime such details are only available at the detailed design stage. This may call for a two-stage approval process for large scale projects. The absence of the required baseline environmental data (ex: Ambient air Quality, water quality, noise, etc) is also a problem. But often some data unfavourable for the project are disregarded.

3.4 **Problems associated with EIA consultants**- Lack of technically qualified and experienced EIA professionals are a major drawback. An accreditation scheme is required. At present there is no process to blacklist the consultants for substandard EIA reports or for unethical behavior.

3.5 **Excessive reliance on external expertise**- In the Central Environmental Authority, EIA report evaluation process is almost entirely reliant on outside expertise. Some experts in the TEC go beyond the scope of an EIA and make unreasonable demands on project proponents which could have a negative impact on the process itself. PAA is helpless in such cases. Some EIA TEC persons/consultants also have conflict of interest.

4. Other gaps and discrepancies

- 4.1 **Lack of international best practices-** The Sri Lankan EIA procedures is 25 years old and no significant changes have been added. However, the international agencies such as ADB, WB, IFC, AIIB has progressed and brought in updates to EIA processes. For example, the recent changes included climate change impact assessments and tools to get public consensus to avoid conflicts and/or resolve grievances. Sri Lanka EIA process is far behind on updates.
- 4.2 **Provincial Environmental agencies-** The North Western Provincial Environmental Authority clear the development projects in the province. However, it lacks technical, administration and monitoring capacity to assist project developers.
- 4.3 **Issues beyond EIA process-** Erroneously, EIA process is considered as the tool to resolve all issues including non-Environmental issues – such as land allocation, public compensation, etc.
- 4.4 **Absence of policies on resource allocation and utilization of land or of water-** Many agencies are involved in managing water usage and conservation. Especially on managing Mini Hydropower plants. Often the sites selected for mini-hydropower are unsuitable for the project.

RECOMMENDATIONS-

Area to improve	Existing condition/s	Recommendations to improve
Public participation	Number of days to comment is only 30 days	Should extend the time to that of the international process (preferably 120 days). This would increase the access to EIA and thereby public comments receive within the given time period.
	The complexity in the EIA report and Technical jargon is often observed. That is, many facts are hidden using technical terms.	Make the language of the EIA simple and understandable to public. At least there should be a simplified version for public reference.
	Inadequate public comments	Improve accessibility using social media and NGOs, create an interest among people can be achieved using social media.
	People at the project vicinity are not provided the rights facts and details by the PP	Take measures to make people aware in the project vicinity on the facts and effects of the project.
The process	The public consultation is organized by the project proponent (PP). They often gather people who are in favour and present a report with positive responses towards the project. Many negative impacts are being hid making the EIA not a fair examination of facts.	The public consultation should be organized by the project approving agency (PAA)
	Complicated EIA Process	Use of Gazetted Regional Plans (Hambantota, Trincomalee, Northern Province) along with Strategic Environmental Assessment (SEA) will result in a major simplification of the EIA process, but it must be assured that the project complies with SEA recommendations.

Area to improve	Existing condition/s	Recommendations to improve
	Many projects submitted for environmental clearance are often not assessed for their feasibility	<p>Conduct a proper feasibility/pre-feasibility study before going for an EIA carried out by an appropriate agency through a well-established project evaluation mechanism. For example; for government projects National Planning Department (NPD), Private Sector: depending on the investment and sector agencies; BOI, SLTB, SLSEA, etc. Large projects should consist of financial feasibility, economic feasibility and social feasibility studies.</p> <p>In addition, Ministry of Finance and or Ministry of Planning should be deciding projects in pipeline for Sri Lanka in line with the economic imperatives, national spatial plan etc.</p>
Laws pertaining on the EIA process	According to the law the project "may have a public consultation".	It should be changed as "shall have a public consultation". in order to make it compulsory.
	The coastal area is excluded from the NEA	NEA (National Environmental Act) regulations should be revised to remove the condition that excludes the coastal area.
	The secretary's appeal power	Should be removed in order to prevent the ability to approve a project that was rejected by CEA in line with the recommendations of the Technical Evaluation Committee.
	The list of "Prescribed projects" is misused by investors through implementation of projects just below the threshold. For example, when hotels over 99 rooms require IEE/EIA, investor builds a hotel with 89 rooms and add 10 rooms later.	The list shall be revised. Amendment to the NEA is required to emphasize that IEE/EIA process is an environmental approval rather than a project approval.
	Mitigation and other conditions established in the EIA during are not properly monitored.	Monitoring responsibilities of public/ private entities and procedures must be defined in the regulations. Self-monitoring, Third-party monitoring and community monitoring should be utilized in order to ensure an effective monitoring process for approved projects.
	EMP is not a legal requirement	It must be made mandatory to submit a detailed Environmental Management Plan (EMP) and to include relevant conditions to be transferred to contractors.
Structure of the EIA report	Due to the absence of a proper structure to the EIA report, many important facts are being disregarded.	EIA report format for different projects should be given and strictly followed.
	EIAs do not cover indirect and extended impacts.	There should be a defined structure for EIA reports with respect to the development area that cover all the important aspects and details of the project area without being able to omit any important information.

Area to improve	Existing condition/s	Recommendations to improve
	It is often noticed that an EIA report is full of unnecessary false information while many important relevant data are omitted.	The report shall be reviewed by a committee to omit misinformation, to avoid lack of information and weak analysis.
	It is indicated that the EIA should briefly describe the environment of the area(s) to be affected by the proposed project. In reality a good impact assessment is rarely observed.	Report shall have an impact assessment. These impacts must be quantified and prioritized according to their significance. The reports shall also address climate change scenarios and Climate Impact Assessment.
Process of granting permission	The project approval is decided based only on the EIA.	A third party should be established to review the EIA as well as other hidden facts relevant to the project including public perception, before approving a project. This party should be an authority that has powers above all those that involve in the project and independent from the conflict of interest.
	EIA approval notice is published without indicating the conditions subjected for approval.	The conditions for approving the project should be published, preferably in the website. This will increase the transparency of the process and the approval. In addition, implementing records, annual planning must be available at public domains.
Capacity and skills	It is often observed that certain areas of importance are not covered by the EIA study.	It is recommended to have a technical committee composed of experts relevant to the project, representatives of civil society/ community/persons concerned with environmental issues and a chairman who is an experienced outstanding ecologist or environmentalist or technical professional with wide managerial experience in the relevant development area.
	The EIA process depends extensively on external expertise	It might be important to train an in house pool of experts at least in some areas wherever possible (air quality, water quality, biodiversity, industrial pollution, etc.).
	There is no authority for accreditation of experts.	It is recommended to handover the authority of accreditation of consultants and monitoring the consultants' code of conducts by IEPSL (Institute of Environmental Professionals Sri Lanka). Thereby, consultants who violate the code of conducts should be black listed. Also, it is important that the consultants do not involve in the TOR and the Technical Evaluation Committee, in order to avoid conflict of interest. These experts (those in TEC) should not be involving in the IEE or EIA process.
	The PAAs are often biased with conflict of interest.	Should adopt a better system to select PAAs
	Capacity building and awareness raising is lacking	Guide books should be updated using international experiences. Training sessions should be organized on EIA reports. Capacity building programmes for CEA/PAA officials and EIA preparers on biodiversity impact assessment must be conducted on a regular basis. An EIA guide book on Biodiversity Impact Assessment is a necessity.

Area to improve	Existing condition/s	Recommendations to improve
	Public awareness and EIA trainings	It is important to conduct public awareness at the project sites and train stakeholder groups including the CSOs. Public private partnership approach can be considered for conducting EIA trainings.
	Citizens monitoring	Expertise of the Citizens and interested groups can be obtained to develop the monitoring plans and invited to engage in systematic citizen centric monitoring.

CONCLUSION-

Sri Lanka EIA process has not been updated and over 25 years, therefore, inadequate to provide for the required environmental governance and the environmental protection in the country. International EIA practices, tools and processes have been changed significantly in the recent past and the experience is available to update/upgrade the Sri Lanka EIA processes. The widely accepted regime of social and environmental safeguards need to be adopted for all projects, whether prescribed or not, and a multi-stage EIA process for projects of differing size and impact should be developed for pragmatic application of the EIA.

With growing environmental challenges including changing climate, proper environmental management systems such as EIA plays a vital role in managing both short-term and long-term environmental issues. This requires multi-institutional and multi-stakeholder policy and approval coordination, preferably with limited PAA's to manage conflicts of interest.

Enabling environment for successful EIAs include availability of data and map information required for EIA development, monitoring and mitigation. Investing on a comprehensive central database and an access system may help strengthen the EIA process. In addition, capacities of agencies and individuals to be developed to be in par with current demands including the use of modern techniques such as remote sensing, GIS and computer simulation of what-if-scenarios to evaluate alternatives. As such a comprehensive training and capacity effort is a must. An updated knowledge on international conventions and country obligations is also a must.

Investment on awareness and education of the value and positive uses of the EIA processes and incentives for public participation in the EIA process are key areas leading to a transparent and productive EIA process. Engagement of unconventional partners such as media in the EIA process could add value in terms of transparency and availability of correct information to public.

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