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சுற்றாடல் நீதிக்கான கேந்திர நிலையம்
Centre for Environmental Justice



20/A, කුරුපු මාවත, කොළඹ 08.
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1st May 2020

Director General,
Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Battaramulla

Dear Sir,

Re: Comments on Environmental impact assessment of the PROPOSED KIVUL OYA RESERVOIR PROJECT

Centre for Environmental Justice is a public interest environmental organization based in Sri Lanka established in 2004. We herewith send our comments to the above EIA under the request for public comments as per the National Environment Act, No 47 of 1980.

This comment was slightly delayed due to the current COVID 19 pandemic situation and lockdown. We hope you will still consider this comment valid.

NO EIA in Sinhala and Tamil:

It's the best practice that you have maintained to have the EIA document in all three language. It's a legal requirement too. We have checked the CEA website for the Sinhala and Tamil copies of the EIA however we found none other than the Archeological impact assessment in Sinhala language. We don't know whether Sinhala and Tamil EIA copies are available in the said government officers mentioned in the Notice appeared in the CEA website. This notice also misses the usual language stating the availability of the EIA copies in all three language.

There are number of affected rural communities in this area speaks Sinhala or Tamil language only and they are not able to read and comment this EIA without the EIA available in their preferred language.

Therefore, please make sure that they will be given such copies and provide adequate time for the public comments.

No Public consultations:

The EIA only annex a copy of the public opinion taken from the Government officers. It seems no public is consulted during the EIA making process.

Government Policy and wrong feasibilities

The section 1.5 in page 11 gives ample evidence that the feasibility studies and water resource planning for the irrigation projects are not doing right in the past decade or more.

It says that “ The MASL has taken action to settle families in this area since 1983. A total of 3,100 families were settled in the left bank of Ma Oya in Weli Oya area. Some of these families left their lands during the north east conflict, but now they have returned to their lands. Land problem of 2nd and 3rd generation families is also a considerable issue to the government. As such, now the government is faced with the problem of developing livelihoods for those who have come back and also the population who remained during the period of war. There is good potential for an agriculture based livelihood development project in the area, when land and water resources are concerned.

“The government has already recognized the need to develop this area under System L of Mahaweli Ganga Development Plan. It was proposed to supply water through NCP canal under the original plan. However, according to recent water balance studies, it has been realized that water availability from Moragahakanda reservoir complex is not be sufficient to meet water demand required for the development of the anticipated area. Therefore, the water resources planners have to depend on in-basin water resources development rather than trans-basin water transfers. The government has agreed to this policy of in-basin water resources development.”

In our past engagements with the GOSL we have mentioned that Moragahakanda water is not adequate to bring water to the North as they forecasted based on false statements made by the water resources planners both national and international. GOSL has spent millions of unnecessary expenditures and gives false promises to the people and now spend more public money based on the opinion of the same experts.

Both Malwathu Oya and kivul oya seems too new additions based on false information and data. In our opinion there is no much potential for this kind of large project in Sri Lanka anymore considering the forest destruction, climate vulnerability etc. Best solution is to rebuild the ancient tank system to replenish the ground water system. It will reduce the expenditure on concrete canals and large dams and will build small village tank based economies which is more sustainable in future.

Inadequate Social Impact Assessment:

It is interesting to see the statement in para 3.3.6 “There are no major environmental and social issues in the area, except for human-elephant conflict and occasional floods”.(Page 77) CKDU is the only area specific health issue.

Table 3.19 and 3.20 are miss titled.

According to the Table 3.20 all people in 5 areas in Wali oya and 2 areas in Padaviya are Sinhala Buddhist. It's not clear whether they all will be relocated or not.

Meantime there were some mobilization against this project by the Tamil community in this area. We came across the letter they have submitted to the District Secretary, District Mullaitivu. On the 28 August 2019. Some excerpts says

“We the people of Kokkuthoduvai, Kokkilai and karunatkerni areas of Maritimepattu (Karaithuraipatru) division of Mullaitivu district present our plea before you. 1615 acres of our paddy land areas which are located in the villages namely Uththarayankulam (Nelunkulam), AmayanKulam (Kiribanweva), Kulavadukkulam, Adayakaruththaankulam, Nayadichchamurippu, Sivanthamurippukulam, Thattamlai, Kunjukkulam (Tikiriweva), Sagalaatruveli of the Kokkuthoduvai, Kokkilai and karunatkerni areas of Maritimepattu (Karaithuraipatru) division of Mullaitivu district are now confiscated for the development of the Kivul Oya Project of the Welioya Integrated Mahaweli “L” zone expansion.”

“But, more than 7000 people are going to be settled in the Mahaweli “L” zone. Already land katcheri was held for 5000 people and 2000 have been settled. Only Sinhala people are given lands under

the Mahaweli “L” zone development. None of the minorities, Tamils or Muslims were given land under this project. This is violating the above stated Article 2.5 of the Constitution”.

“In spite of the recommendations of the Lessons Learnt and Reconciliation Commission under paragraphs 9.143 and 9.2275, the Mahaweli authority is confiscating our lands from us with the support of the army and giving it to Sinhala people. Due to the implementation of the Mahaweli project in Mullaitivu district Tamil villages are transformed to Sinhala villages. It is more evident as per the 10th page of the Resource Profile Report 2016 of the Mahaweli Authority 6, the official map of the Mahaweli “L” zone which was developed by this Authority 7 and the Daily News e-paper news on Mahaweli L zone (a state sponsored newspaper)8. Schedule 9, List 1, Item 18, Appendix II, Article 1.1 of the 13th Amendment states, “State land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilised by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilization of such land in respect of such subject.” But, without consulting the Northern Provincial Council the land distribution is taking place.”

Full letter can be downloaded from this link.

<https://srilankabrief.org/2019/08/people-of-mullaitivu-writes-to-prez-sirisena-fundamental-rights-violations-by-the-mahaweli-development-l-zone-project/>

This seems that the full social, cultural and ethnic situation is not given in this EIA. They have not given a chance to share their grievances during the Kivul Oya project planning process held since 2012.

Although we understand that this may be beyond the scope of the EIA process, this information is very relevant for decision making. This is the only opportunity to obtain this information and feed into the National planning process. Further, as we know this is the only opportunity for the public to engage in the decision making process. Therefore, we believe it is the right approach to highlight this point to the relevant decision making bodies.

Loss of Forest cover, animal habitats and Carbon sequestration

In the recent past Forest cover in the dry zone has been heavily lost due to the irrigation project implemented.

Irrigation Project	Forest Cover Loss
Moragahakanda	Wet zone semi evergreen forest -3540 ha Dry mixed evergreen forest -1804 ha Scrub Forest – 108 ha
Malwatu Oya	Dry mixed evergreen forest and scrub -5131 ha
Yan Oya	Dry mixed evergreen forest -1438 ha Resettlement – 2194 ha
Kalu ganga	Wet zone semi evergreen forest -518 ha Dry mixed evergreen forest -4990 ha
Upper Elahera	Dry mixed evergreen forest -149 ha Scrub Forest – 56 ha
Wayamba Ela	Dry mixed evergreen forest – 300 ha Scrub Forest – 50 ha
Total	20278 ha

Total of 20278 ha has been lost as a result and the proposed Kivul oya will add another 2500 ha to the above. Therefore, the impact of forest cover loss should be estimated as cumulative impact to the total forest cover in Sri Lanka.

The proposed project will have a significant negative impact on natural habitats due to the inundation and land clearing in the command area, resulting in an overall loss of approximately 2500ha of the BEST FOREST IN THE AREA according to both Wildlife Department and the Forest Department officers.

However, Reforestation of 1000ha in extent is proposed as a compensation measure for the estimated loss.(Page 117) This is not even identified at the table in page IV. Although it was identified in the page 128 table 7.1 it's not clear how many hectares each enrichment will add to the compensation forest. This enrichment include 100 m buffer zone around the proposed reservoir, proposed elephant corridor and revering forest, burrow sites and catchment area.

As we all know this enrichment under any past projects have not brought good results. Once destroyed a habitat, it's impossible to make a similar forest to provide similar habitats and ecosystem services. We consider this enrichment as a greenwash. Therefore, we request the Central Environmental Authority and the Technical Evaluation Committee to look at this issue seriously and consider alternatives that can significantly reduce the natural forest destruction under this project.

Although the map 5.1 shows (page 110) shows a proposed 3000 Ha Wildlife Sanctuary, the text does not mention anything on this matter. According to the google earth the said proposed sanctuary area is degraded forest. I have checked with the Wildlife Department and they seems not aware of the proposed sanctuary. Therefore, this map may be another greenwash and gives false information to the public as well as the TEC.

Human Elephant Conflict: TOR issued by Central Environmental Authority request baseline data relevant to Human Elephant conflict of the area (presence / absence of elephants, intensity Human Elephant conflicts etc.) However, the EIA report does not include such baseline data and proposing the elephant corridor based on no background study is questionable. It does not identify areas where elephants were observed. EIA report says

“At present, little or no human-elephant conflict is reported in the 700 ha cultivated in the command area. Therefore, changes in cropping pattern due to the provision of water through the proposed project will not result in an increase in the human-elephant conflict in the area. However, the new settlement located downstream of the left bank of the proposed Kivul oya reservoir is already subjected to elephant depredations resulting in loss of crops and property . This conflict level will be elevated after the commissioning of the project, as the elephants will loss about 1500 ha of habitat due to the proposed project.”(Page 86)

Erection of electric fence has been failed solution to many areas around the country where human elephant conflict is observed. In our view, the proposed elephant corridor might increase the human elephant conflict. Erection of about 50 km long elephant fence along the elephant corridor as suggested in could be a waste of resources unless used wisely. Project has allocated Provision of extra 50 km of elephant fence for new conflict areas that will be created as a result of the project.

Project contains a dairy production development program. However, feasibility report has not identified any areas for grazing. If cows will be brought to the proposed elephant corridor/ sanctuary for grazing, it would impose further pressure on elephants and other wild animals.

However, we think there is no adequate information about the Elephant activities and it's not in line with the TOR.

No Climate impact assessment

The EIA report mention Climate change, flooding etc., however this report grossly inadequate on the CLIMATE IMPCAT ASSESSMENT. The EIA report only rights about the CLIMATE VULNARABILITIES it doesn't show how the project impacting to the CARBON EMISSION and how the forest destruction reduce the carbon sequestration and impounding of a reservoir increase the Methane emission or how many tonnes of carbon increase or decrease due to various project activities.

Under the SRI LANKA NATIONALLY DETERMINED CONTRIBUTION(NDC) for Mitigation intends to reduce the GHG emissions against BAU scenario by 20% in the energy sector (4% unconditionally and 16% conditionally) and by 10% in other sectors (transport, industry, forests and waste) by 3% unconditionally and 7% conditionally by 2030.

Although Sri Lanka is committed the above numbers under the Paris agreement, CEA as the project approving agency has failed to include CLIMATE IMPCAT ASSESSMENT in the given TOR. Its unfortunate Sri Lanka has destroyed more than 20,000 Ha of forest already for the recent irrigation project without understanding the climate impact of those irrigation project due to the ignorance of the relevant officials.

Even under the climate vulnerabilities, EIA report mentions about extreme floods during the rainy season. However, the report does not contain any details of such flooding areas, past events or flooding frequencies etc. This information is vital to assess the project impacts in overall. The impact of Chena cultivation within forest areas must be studies too.

Destruction of Wildlife habitats:

Fresh water fish in Sri Lanka is heavily threatened due to habitat modification. *Garra ceylonensis* (Stone sucker) listed as nationally Vulnerable was recorded from the aquatic habitats in the area. Reduction in river flow, once the dam is constructed will significantly impact the existence of this species. Therefore, environmental monitoring is very important and if the species is heavily impacted must be transferred to a similar habitat further upstream.

Leopard habitats:

Some maps and information online shows that this area is a known leopard habitat. The EIA does not carry any information related to availability of other big animals other than elephant. We request the CEA to check this matter again.

Archeological Impact assessment:

We are happy to see quite elaborated Archeological impact assessment is done for this project. There are 47 Archeology important sites identified in the project area and it has identified several major archeological sites will be damaged by the project. We understand that dry zone in Sri Lanka has many such sites.

The archeological report has been done in 2014 and the approval already granted in that year. The said letter state that since the archeological commissioner received the later NH/4/1/2/17 dated 2014.04.25

by the Secretary to the Ministry based on the approval by the Minister, he issues this conditional letter. In our view, it is the Archeological commissioner who has the authority to make such decisions and not the Minister. We would like to receive a clarification about this process.

We further wondering whether there is any new information have been found or any new studies done in the said area in the past 6 years which should be considered in this decision. We are not much in favor of dismantling and restoring those archeological sites unless otherwise that is no way to avoid.

We believe that considering building small tank system rather than building a large reservoir might save more archeological sites to preserve our great civilization to the future generations.

Approval by other departments:

The EIA state that “There are no conditions laid down by state agencies for the project. The main agencies involved in the project are Mahaweli Authority of Sri Lanka, Department of Wildlife Conservation, Forest Department, Archeology Department and respective Divisional Secretaries.(Page 11)

The relevant note in page 12 states

Note: A meeting was held between the Secretary, Ministry of Mahaweli Development and Environment and the Forest Department on 11.03.2019 regarding the use of land under the management of Forest Department for the proposed project. At this meeting forest department has given its consent for the use of lands under the management of the Forest Department subjected to obtaining environmental clearance for the said project from the Central Environmental Authority and with minimal damage to forest and the environment (Please see attached letter in Annexure V).

Although the report states that the consent letter from the Forest Department has been issues, it does not attach to the EIA.

To our information the forest area going to be destroyed under the project is the only best forest in this area and Forest Department is very concern about the destruction of the said area. We think the conditional consent of the Forest Department subject to the environmental clearance means that they give the responsibility to the CEA to make a due process.

Even the said conditional consent was granted when both Ministry of Mahaweli and Ministry of Environment were under the same Minister and the same secretary which is in conflict of interest. We request the CEA as the project approving agency to reevaluate this conditional consent before making the final decision.

Further, although this is not the right approach, we think the responsible government officers or agencies want to pass the ball to another agency due to highly political nature of these projects. This was one of the major issues identified by the national conference and Gap analysis jointly conducted by CEJ and others in 2018.

Therefore, CEA and the Technical Evaluation Committee now in a more pressured situation and it required more information to make a better decision. However, we think this EIA is inadequate in some important information such as the once we have raised here. We hope CEA and the TEC will request further information and share them with the public before any decision.

In our opinion the project as it is will have severe impact. The alternatives suggested is not cover whether the site has small tanks which could be rebuild, or whether reducing the dam height can reduce the inundation area etc.

We are happy to see an elaborated Extended Cost benefit analysis. Although there is not Climate Impact assessment to support It has considered the loss of carbon sequestration too. The report under 4.7 Impacts on Ecosystem services also state

“The natural terrestrial habitats that will be inundated provide many ecosystem services such as provision of timber, non-timber forest products, functioning as the catchment of the Kivul oya, carbon sequestration and functioning as the habitat for terrestrial fauna and flora. The conversion of these terrestrial habitats into a reservoir will result in loss of these services.”

We think loss of some of other services mentioned above could have included in the costs benefit analysis. For example, NTFP including medicinal herbs would be a high value too. Keeping and preserving the Archeological sites in the project area would be adding a very high value too. This would have increased the cost and it would have made significant impact on the ratio.

As we mentioned above we are not happy with some mitigations and we think they should have looked at more alternatives to reduce the damage further. We strongly suggest that rebuilding the small tank system should be considered instead large dams with low success in this era of climate change. In conclusion, we urge the PAA, TEC and the PP to consider above comments we made in the interest of public and make the best decision.

We further request that there should be a public hearing on this matter and you shouldn't rush to approve this project during the COVID 19 pandemic lockdown period which will inhibit public engagement at the decision-making process.

Thank you

Yours sincerely



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Executive Director
Centre for Environmental Justice

Indica Rajapaksa
Environment Officer,
Centre for Environmental Justice