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PUBLIC PARTICIPATION OR PUBLIC PROTEST: A CRITICAL ANALYSIS OF PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT IN SRI LANKA

H N D Gamalath

The Open University of Sri Lanka, hngam@ou.ac.lk

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ABSTRACT

Since Sri Lanka transferred to a free trade economy in 1977, all subsequent governments have launched new development projects. Most of such development projects have been related to infrastructure and/ or agreements with foreign investors. The process of EIA was elucidated in the environmental legislations in Sri Lanka. A few researchers have discussed the effectiveness of EIA in Sri Lanka as well as EIA's contribution towards facilitating public participation in the decision making of the development projects that can impact on the environment. This study argues that a lack of public participation and a disregarding public consultation on such large projects can result in public protest. The objective of this research paper is to analyze the link between public protests to major development projects in Sri Lanka and the ignorance of public participation at the proposal level or before starting the projects without the fulfilment of EIAs.

INTRODUCTION

The Environmental Impact Assessment (EIA) process can be considered as an opportunity for the public to seek sustainable solutions by interacting directly with government officials and project proponents on environmental issues in development projects. The sustainable development is a key concept encapsulates in the EIA process which provide the opportunity to public participation and public hearing. EIA is a pre-decision-making that facilitates the identification of negative and positive impacts of proposed development projects and ensures environmental protection. The legal system of many countries,

including in Sri Lanka, provides for the participation of the public in the process of environmental decision-making in environmental legislation on EIA. A public hearing is the only medium in the environmental clearance process through which people can interact directly with the government officials and the project proponents regarding project-related concerns. Public protests raised as a result of ineffective public participation and the failure to enforce the EIA process in a timely manner, which in selected three cases, ineffective environmental impact assessments resulted in significant court interventions and with significant results from the orders issued by the courts.

METHODOLOGY

In this paper, a qualitative approach was adopted, and an extensive review of the existing literature on selected environmental cases in Sri Lanka was considered. Three landmark cases were selected to this study namely Eppawala case,² Chunnakam case³ and Wilpatthu case⁴. Even though there are a number of major environmental issues can be found, this research is limited to selected three case studies. The judgments of these three environmental issues were analyzed to understand court's interpretation of the EIA and Sri Lankan judiciary's perception on public participation. National newspaper articles and other related materials on the three incidents were studied to understand and standardize the context of public protests. This study can be used as a foundation for future research on improving the statutory duty of public authorities in Sri Lanka to enforce the public participation law on EIA in a timely manner.

EIA AND PUBLIC PARTICIPATION IN SRI LANKA

In Sri Lanka, there are three pieces of legislation that incorporate EIA procedural law. First, the Coast Conservation Act No. 57 of 1981 in Sri Lanka. Subsequently, the EIA procedure was incorporated into the National Environmental Act (NEA) No. 48 of 1980, which was first amended by Act No. 56 of 1988. Third, the Fauna and Flora Protection Ordinance was amended by Act No. 49 of 1993 incorporated EIA laws. Furthermore, several regulations were enacted under Section 23Y of the NEA to establish the EIA procedure in Sri Lanka which prescribed projects and project approving agencies among other things. According to Section 23 BB of the NEA, the project approving agency (PAA) must publish a notice to the public in the Gazette and one news paper in Sinhala, Tamil and English and invite public comment. Public comment was added to both the Initial Environmental Examination (IEE) report and the Environmental Impact Assessment Report in 1988. However, later in 2000, its amendment act No. 53 of 2000 limited public comments to EIA reports only. Furthermore, the IEE report is considered a public document for the purposes of sections 74 and 76 of the

Evidence Ordinance (Chapter 21) and is open to public inspection. A period of thirty days is given for public comment. After receiving public comment, if PAA deemed any of the comments to be appropriate in the public interest, allow any such person to be heard in support of his comments.

DISCUSSION

First, Eppawela case which took place in 1997, representatives from the government and Freeport Mac Moran a US company reached a "Mineral Investment Agreement" in relation to a phosphate rock deposit in Eppawela, Anuradhapura district. There was a significant public protest against this agreement began in 1998, and tens of thousands of protesters, including clergy, farmers, and other actives, gathered Eppawala and Colombo areas. During these protests in November 1999, a police officer and a local schoolboy were reportedly killed. Meanwhile, seven residents from the Eppawala area filed a fundamental rights case at the Supreme Court. In Eppawela judgment the supreme court held that the Environmental impact assessment must first be done to the satisfaction of the Central Environmental Authority (CEA) with notice to the public to enable public comments and representation.² Furthermore, while reviewing the laws governing public comments and hearings under the NEA, the court determined that the Central Environmental Authority is required by law to provide an opportunity for all those who have expressed their opinions to support those opinions.

Second, a public protest that began in June 2015 against the oil spill at the Chunnakam power plant, which polluted groundwater in Chunnakam area. The power station in question did not fall within the scope of the prescribed project at the time it was built. However, the power generation was later expanded and fell within the scope of the NEA's prescribed project. A proper Environmental Impact assessment was not conducted before launching this expanded project. Simultaneously, the case was came before the Supreme Court of Sri Lanka as a fundamental rights case in the public interest.³ The supreme court found that either the Central Environmental Authority or the Board of Investment had failed to fulfil their statutory and regulatory duties with regard to the consideration and approval or refusal of a "prescribed project" including obtaining and considering an IEE or an EIA. Thus, the omission of these statutory bodies was amounted to a violation of the constitutional rights. When the Chunnakam power plant was proposed, the people were denied the opportunity to participate in the decision-making process. The judgment stated that the EIA or IEE was not ordered to provide such an opportunity, recognizing that the stage for doing so has passed. However, the court ordered the Board of Investment and CEA immediately to take appropriate steps under the National Environmental Act and regulations

made there under to prevent environmental harm, degradation or damage being caused including, where appropriate, suspending the operation of the 8th respondent's thermal power station until corrective action is taken and the effectiveness of such corrective action is verified.

The Wilpattu case is the third case study. Approximately 1500 families have illegally settled, and several houses and roads have been constructed in order to settle the internally displaced persons (IDP), in a reserve declared in Wilpattu area under Section 3 of the Forest Conservation Ordinance. These actions were taken without obtaining approval for resettlement project under the provisions of the National Environmental Act, Forest Ordinance and Fauna and Flora protection Ordinance and Antiquities Ordinance as amended. Number of civilians and civil organization started protesting the deforestation of the Wilpattu area. Several civilians and civil society organizations protested the destruction of the Wilpattu area in various forms, including online petitions and social media protests. The court in this case accepted that re-settlement was contrary to the prevailing laws of the country, including environment regulations. However, the court also did not issue any order to conduct an environmental impact assessment in the future before launching the alternative site as a resettlement site.⁴

CONCLUSION

All three case studies demonstrate a direct link between non-environmental impact assessment and subsequent loss of opportunity to the public participation and resulting public protests. Further, it provides evidence about the link between the denial of public participation in environmental decision-making and public protests. These observations further unveil the conceptual gaps in the application of the concepts of Sustainable Development, Public Trust Doctrine, and Good Governance in environmental decision making in Sri Lanka. Finally, it demonstrates that the authorities who make decisions on behalf of the people exercise the sovereignty of the people and are failing to fulfill their statutory duties. Otherwise, such arbitrary decisions could make their actions substantially lacking, and erroneous in the absence of scientific or legal scrutiny before the courts. Although, relief has been granted through the intervention of the judiciary, irreparable damage could occur in some cases.

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