

Horizon Line of National Development in Light of Issues and Challenges in Sri Lanka: with Special Reference to Uma Oya Multi-Purpose Project

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Abstract— The notion of development is an essential element for a developing country. It provides a qualitative lifestyle for their citizens. Sri Lanka in the last 30 years has been battling with the problems of development in spite of war and still struggling with monetary funds, technology and skill labour together with environmental issues. The main piece of legislation that relates to this issue in all ways is the National Environmental Act No.47 of 1980 and the subsequent Amendments done to; mainly regarding the EIA process, improper use of land planning and other significant environmental aspects. National as well as International legal instruments are desirable to be addressed in our study, such as the 1992 Convention on Biological Diversity, to which Sri Lanka is a party. The objective of this paper is to pay serious consideration in regard to environmental issues and challenges as horizon line of Uma Oya Multi-Purpose Development Project in Sri Lanka. And also to aware the public with regard to issues and challenges of this national development and to acknowledge responsible authorities to maintain a strike a balance between national development and its confronts. The paper adapted secondary data as sources of information. The paper will conclude that faithful national development implementations in terms of intra-generational equity as challenges for the future and inter-generational equity as issues of present on our way to national development.

Keywords— National Development, Environmental Issues, Challenges

I. INTRODUCTION

The pride of any government is the attainment of higher value level of development in such a way that its citizens would derive natural attachment to governance. National development can be described as the overall development or a collective socio-economic, political as well as religious advancement of a country or nation (Lawal and Oluwatoyin, 2011). It happens through major development projects construct in a country. But there are issues and challenges arise when operating these projects in the process of its national development. As

we know, the horizon is a place where no one can achieve. Similarly, national development of a country cannot achieve through such projects easily because issues and challenges become a bar to it.

Since 2009, after eradicating civil war in Sri Lanka, most of major development projects which contribute to the increase of national development have operated successfully. Amongst, mostly discussed recent development project is Uma Oya Multi-Purpose Project. Uma River is a major offshoot of Mahaweli Ganga which has its headwaters in the Pidurutalagala Range. It flows through welimada and Kandeketiya in the Badulla District. It flows together with the Mahaweli River.

Uma River is one of the main water sources of the irrigation system supplying water to the areas developed under the Mahaweli Project. Uma Oya Project is a river diversion which will have the capacity to generate 90 MV of electricity and irrigate 5,000 hectares of agricultural land.

The General Principles of International Environmental Law such as intra-generational equity, inter-generational equity and public awareness are mainly significant principles in regard to this project. Intra-generational equity means equity between people of the same generation whereas inter-generational equity means equity between present and future generations. Public plays a vital role in granting approval to the operation of major development projects. Therefore, public awareness, which means the environmental protection awareness through governmental and non-governmental agencies to take part in protecting the environment, is significant in this regard.

The paper consists of five main parts to evaluate the contribution of Uma Oya Multi-Purpose Project towards the national development in Sri Lanka along with issues and challenges. The first part deals with the legal standards relating to this project. Then the paper focuses on issues and challenges of UMA OYA Project. The third part is an analysis of how General Principles of International Environmental Law applicable to this. In the

fourth part, the study focuses on opinions of environmental experts. The final part concludes the paper with suggesting recommendations to solve problems.

II. LEGAL STANDARDS RELATING TO THE UMA OYA MULTI PURPOSE PROJECT

Environment Impact Assessment (EIA) is the internationally accepted legal tool to assess the impact to environment caused by the implementation of major development projects and propose preventive measures to minimize the predicted impacts. The three-volumes of EIA Report of the Uma Oya Multi-Purpose Development Project were prepared by the University of Jayawardhanapura. The project proponent was the Ministry of Irrigation and Water Management whereas the Central Environmental Authority (CEA) acted as the Project Approving Agency (PAA).

According to Section 23AA of the National Environmental (Amendment) Act No. 56 of 1988, before starting the development project the EIA has to be done and approval must be required from the specific PAA. The EIA Report was opened to the public for review and comments for a period of 30 working days under the provisions of Section 23BB of this Act. During this time, letters were received by the CEA from many Environmental Organizations, Farming Organizations, Community Organizations and groups adversely affected by the project objecting its inception. Section 23P of this Amendment Act mentions about the restriction on noise pollution, but without taking into consideration this provision, this project emits an excessive noise to the environment which is harmful. This does not comply with the standards and limitations prescribed under the National Environmental Act in regard to the volume, intensity and quality of noise.

The proposed project would cause extensive damage to aquatic life, especially through destruction of habitat. This may also affect to the indigenous species of that area. It is inconsistency with the provisions of Section 18 of the National Environmental Act No. 47 of 1980 which states the management policy for fisheries and aquatic resources. The EIA acknowledged the risk of the survival of migratory species. According to Section 20 of this Act, the CEA shall recommend the management policy for wildlife. But there is no such policy recommended by the CEA in regard to the wildlife conservation. Improper land use planning was occurred from this project which is inconsistency with the provisions under Section 15 of this Act which says about the land use management. Section 17 of this Act says about the conservation and management of natural resources in order to preserve for future generation. But natural resources of this area are destroyed due to this project, so how we keep natural resources for the future generation as mentioned

in this above section? Also when preparing the EIA Report, the management policy on soil conservation under Section 22 of this Act is not taken into consideration and as consequence a vast damage is caused to the soil in this area.

The EIA further stated the serious impacts to the biodiversity, especially to the fauna. Section 42(1)(a) of the Fauna and Flora Protection Ordinance No. 02 of 1937 states that, "No person shall in any area remove, uproot or destroy, or cause any damage or injury to, any plant....." Especially, the EIA recognized that the lives of Sri Lankan Sloth Bear who is considered as critically endangered species have become a threat due to this project. The EIA also recognized a strong impact on elephants. Section 12(1)(a) of this Act states that, "No person shall, in any area outside a National Reserve or a Sanctuary hunt, shoot, kill, injure or take any tusker or elephant....." Therefore, it is clear that this proposed project has become a threat to Sloth Bears and elephants lived in that area but unfortunately it is not taken into consideration.

With the proliferation of international environmental instruments, there is an inevitable overlap in goals and subject area, some relatively comprehensive conventions, like the 1992 Convention on Biological Diversity, address the entire range of human activities in an effort to protect natural systems (Kiss and Shelton, 2004). Sri Lanka ratified this convention in 1994. Article 3 of this Convention says about the extension of the concept of state sovereignty. But this proposed project is inconsistency with this provision. Article 14 states that, "Each Contracting Party..... shall introduce appropriate procedure requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects..... ." But the problem is whether the EIA Report was prepared in accordance with this provision, since we are already a party to it.

The EIA stated about the necessity of permanently relocating residents. Moreover, the agricultural lands of 197 families will be acquired for the project and the livelihood of those families will be interrupted. Accordingly, fundamental rights of those people under Article 14(1)(h) of the 1978 Constitution of Sri Lanka are infringed from this project because they lost their freedom of choosing their residence. Also, it stated that around 38% of affected people are farmers who grow vegetables and potatoes. They cannot do planting in the soil of this proposed resettle area and they have to shift to a totally different employment of tea. Although 1 acre

of land is provided for this purpose, but it is doubtful whether they would be able to adapt to the new life. Therefore, fundamental rights of people under Article 14(1)(g) which states about the freedom to engage in a lawful occupation is infringed from this proposed project and the solution provided from EIA Report is not satisfied. According to Article 28(f) of the constitution, it is a fundamental duty of every person in Sri Lanka to protect nature and conserve its riches. But it shows that this project is inconsistency with this provision and the CEA should have considered about this fact thoroughly before granting approval.

III. ISSUES AND CHALLENGES REGARDING THE PROJECT

The main issue that has had occurred since the inception of this project is, violation of the Fundamental Rights of the people living in those areas. Puhulpola reservoir, which is one of the two main reservoirs aiding the diversion of the Uma River, is being built in the downstream of the town of Welimada. Due to the construction of this, 98 houses and farmlands of 128 families around those areas and 3km of the Welimada-Badulla road will be soon submerged. Likewise, the other main reservoir, Dayaraba reservoir which will be built in Atampitiya and the underground power station which will be located in Galbokka village in Wellawaya Divisional Secretariat Division also carries the same consequences. The authorities have craftily concealed this information from the people, not mentioning it in their EIA Report.

On the other hand the monetary value of the resources lost due to this project is considerable. The main harvests cultivated in the areas above mentioned subject to submersion are paddy, vegetables and potato. Even though it has been proposed to resettle the people displaced due to Puhulpola reservoir and those displaced due to Dayaraba, these resettlement areas are not suitable for cultivation. Therefore loss of Rs. 4.6 million in terms of revenue is caused by the paddy yield, and Rs. 6 million from vegetables and potatoes. Such a massive loss will occur upon the implementation of this project. People in those areas are also involved in animal husbandry including cattle and buffalo farming. But the EIA report indicates that provision of alternative meadows for grazing the cattle to restore the disruption to animal husbandry cannot be functioned meaning that fundamental rights of these farmers will be breached according to the plan of the project.

To compensate for agricultural land lost due to the Uma Oya Project, forests around Alikota-araandkuda oya reservoirs and Handapanagala tank in the Kirindi oya Basin will be cleared. This leads to various negative outcomes. Such as loss of forest cover in the Kirindi oya basin will increase siltation of the Lunugamwehera

reservoir due to soil erosion. Further, areas to be taken as agricultural land are situated in association with the Wetahira Mount Nature Reserve and in forests occupied by elephants. Loss of habitat of elephants is going to be a threat to human life.

Loss of soil stability due to vibration generated in underground mining activities, changes in the course of water springs and many effects to the water streams are some of the major adverse effects likely to be caused by this project. This is particularly disadvantageous to central highlands where most of the developmental processes of the project will be carried out since it is already highly vulnerable to landslides. Mining activities will magnify the potential of landslides, soil erosion, siltation of water bodies, and drop of water table in the areas involving the underground canals. To install transmission line to transmit power generated at the underground hydro power station a massive area of forest of the Ravana Falls Sanctuary must be cleared. As a result, biodiversity degradation is caused from the dissection of the Ravana Falls Sanctuary.

Because of the river pollution during the construction stage, the damage and its long term cumulative impacts on aquatic flora and fauna also is very high. Apart from that, the noise pollution in those areas can affect the hearing ability of people and the disturbance to the education of children.

Even though 84% of the benefits are from energy generation, increased yield of water is only 2% and cultivation of other crops in new areas is 11% of the total benefits of the project. More than benefits, the loss seems to be greater which will affect the livelihood and lives of people, freedom of animals, the fauna and flora, geology, the national wealth of a country. By proceeding with a project which isn't cost effective, it's the public who will have to bear the price of it by paying huge tax amounts to the government for generations. That way, it would be impossible to attain sustainable development.

IV. APPLICATION OF GENERAL PRINCIPLES OF

INTERNATIONAL ENVIRONMENTAL LAW TO THE PROJECT

Beyond the fundamental protections of human rights, States and the international community must fairly allocate and regulate scarce resources to ensure that the benefits of environmental resources, the costs associated with protecting them, and any degradation that occurs (i.e. all the benefits and burdens) are equitably shared by all members of society. In this regard, environmental justice is an application of the principles of distributive justice as it seeks to reconcile competing social and

economic policies in order to obtain equitable sharing of resources (Kiss and Shelton, 2004).

The principle of inter-generational equity emerged from the recognition that while the present generation is entitled to exploit the limited natural resources of the earth for its sustenance and survival, if it continues to do so at the present levels with the resulting environmental damage, the next and future generations would be born into a devastated planet which would be unable to adequately sustain human or animal life (Gunaratne, 2004). It explains that the present generation has a duty towards yet unborn to use natural resources in a sustainable manner and bequeath it to the next generation. This principle recognizes that there should be equity between the present generation and future generation in using natural resources in a sustainable manner. This concept was first articulated in the Stockholm Declaration and thereafter several other Conventions such as the Rio Declaration, Climate Change Convention and Bio Diversity Convention have also expressed the right of future generations. It is closely linked with sustainable development and the precautionary principle. In Sri Lankan context, this principle is discussed under the provisions of Section 17 of the National Environmental Act.

Judicial decisions of both national and international domain have expressed and upheld this principle. The sustainable use of natural resources is discussed in the case of *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others* [2000]. In this case, Amarasinghe J observed that "The inter-generational principle in my view, should be regarded as axiomatic in the decision making process in relation to matters concerning the natural resources and the environment of Sri Lanka in general, and particularly in the case before us."

Under the international context, the judgment delivered by Weeramanthry J in the case of *New Zealand v. France* [1996] is significant. He observed that "....., the principle of inter-generational equity – an important and rapidly developing principle of contemporary environmental law." The Philippine case of *Juan Antonio Oposa and Others v. The Honourable Fulgencio S. Factoran and another* [1994] has a recent importance in this regard. In this case the petitioners further claimed that in bringing this petition they wish to represent their generation as well as generations yet unborn.

Receiving public comments in finalizing EIA report is major requirement of EIA process. There are a number of advantages of receiving the public comments on in the

EIA process since they are the people who finally become the victims of the disaster occur by the project.

The UMA OYA Multi-Purpose Project is not accordance with the principle of Intra-Generational Equity because the entire environment including animals, fauna and flora, soil and so on is destroyed from this proposed project. The operation of UMA OYA Project can be considered as using natural resources by the present generation. But natural resources are not kept to the future generation that they also can use them because entire environment is badly affected by this project. This project is also inconsistency with the principle of Inter-Generational Equity which is of equity between various generations in a one society. As natural resources are destroyed from this proposed project, present generation is unable to use those natural resources. Public awareness plays an important role in the process of granting approval to major development projects. The EIA report of uma oya project is published in Ceylon Daily News in 2011, seeking public comments. There were over 110 public comments to CEA about Uma oya project. The CEA studied all those public comments and approved the EIA. Furthermore, again EIA was opened to public comments in 2013. Since the project has already started, they charge that the current EIA was just a showpiece but call for the public to register their objections so that authorities will be forced to find alternatives.

V. EXPERT OPINIONS ON THE PROJECT

Dr. G.T. Dharmasena, former Director General of Irrigation and a consultant to U.N Project Services in Sri Lanka stated, "It is illogical to assume that all available water at the dam sites can be diverted due to downstream water requirements and also to the rapid fluctuations of water levels in the river caused by flash floods....." Some of these matters are environmental and social impacts due to diminished flow in Uma Oya.

He also came up with an alternative seeing the enormous harm that is going to be caused to the National Development of Sri Lanka, which is still in the process of developing. He said that by damming Kumbukkan Oya at an appropriate location to Veheragala reservoir in the Menik Ganga basin via trans-basin reservoir, water for the Moneragala, Hambantota and Ampara Districts can be provided.

Emeritus Professor C.M. Madduma Bandara of the University of Peradeniya said that the tunnel trace could have been changed before construction started because there are sink holes especially in Welimada, Bandarawela and the famous Dowa Cave temple above the tunnel. Can national development be done by ruining significant places like this? ... Dulip Jayawardena, a retired Economic

Affairs Officer U.N ESCAP and a former Director of Geological Survey Department said that a “more detailed study should be carried out to come to a definitive conclusion on the economic and environmental feasibility of this mega project without rushing to conclusions with inconclusive technical evidence”.

By 2015, Rs. 76.3 Billion has been spent over to complete *one-third including the tunnel*. And now a large amount of money should be allocated from national income for building new houses for the development. Refugees *has to provide reasonable solutions to number of social, economical, ecological, geographical, geological issues in areas coming under this project*. Those who pollute must bear the cost of doing so. Remediation of the damaged environment is part of the process of development, but directly or indirectly the cost of pollution are finally born by the public rather than the pollutants.

The traditional concept that the development and ecology are opposed to each other is no longer available. And the human development paradigm needs to be placed within the context of our finite environment. Other than *damages caused to the houses of villages in those areas, there is a shortage of water with wells running dry. Since people lack drinking water and are compelled to depend on water distribution by the AG's office, its women and children who suffer a lot. Even though economic and social development is essential for ensuring a favorable living for man, is it right of a government to deprive a certain group of people of their rights and ensure the rights of another group of people living under the same roof ?*

Prof. Jinadasa Katupotha, Department of Geography of the University of Sri Jayewardenepura, strongly opposing the Uma Oya project admonished the existing Government to permanently shut down the project due to the above mentioned implications. He considered this as one of the most unsuccessful projects in the Sri Lankan history. He proposed that the Government should save the unused allocation of Rs. 55 billion of the project fund and invest that money to build some viable surface water storage projects in the Southern Province similar to the ancient reservoirs. Further, he stated that Sri Lanka will have to face a high magnitude disaster in future if they proceed with the project because more damages will be caused after completing the project rather than gaining benefits. He also says with utmost confidence that there is no experts in the field of engineering in our country who can do tunnel repairing as a solution to the tunnel leakage problem.

Mr. Athula Priyantha, an agriculture and environment specialist says that people in Moneragala and Hambantota will suffer from chronic kidney disease if they drink water supplies from chemical contaminated water in Uma oya. So, it's clear that this project leads directly to the destruction of the Human Affluence. And Mr. Sajeewa Chamikara of the Environment Conservation Trust warned that after the 26 km long tunnel is completed, the hilly areas of the Uva Province will be prone to severe landslide threats as the constructors carry out constructions in unstable rocky lands.

VI. CONCLUSION

Concluding the paper, the researchers would like to undertake a study to bench mark as Singapore; a country which had developed rapidly for recent past. It is important to stated that some of the great environmental achievements in Singapore on their way to development: Opening our reservoirs for recreational use and bringing nature back to our rivers, streams and canals; fostering the growth of a water industry and being a global thought leader of water policy and governance; championing the movement of live able cities and being a global thought leader on good urban planning, policies and solutions; launching multi-disciplinary environmental education, both at the undergraduate and post-graduate levels and at the Asia Pacific Centre for Environmental Law of the National University of Singapore; fostering a cooperative partnership between government, business and civil society.

So it is very clear that mere development won't achieve proper development in any country, development and sustainable development should be parallel railway line which won't over ride each other. They are very proud to say about the water management and good urban planning along with other environmental enhancement within the frame work of development.

But when analyzing Sri Lankan development process in terms of multipurpose developing projects its reflecting Sri Lankan incapacity for sustainable development. It was revealed that Asian Development Bank rejected to grant loan in the first instances of this project stating the destruction which can be caused to future generations. Move over it had revealed that Iran also did not conduct any feasibility study prior to the project. In the EIA report also the responsible authorities concealed some information which leads to not approve the project. As discuss in the issues and challengers in the paper, researchers had able to prove the breach of most of environmental principles by the decision makers, not only principles but also it over ruled the prescribed law of

the country. It is surprising to analyze the breach of power vested to the government by the supreme law of the country as a fundamental duty.

At the end of this study it's observed that some of main lag behinds of the project as undisclosed of important information from the project approving stage, no consideration of environmental principle, high political influences, planning inappropriate irrigation policies, overruling define law in the country.

We suggest recommendations regarding the proposed project as follows: decision makers should adhere to the well defined laws and regulations in the country and who used the power in *ultra virus* severely punish by the law; public Participation in terms of professional opining for the major projects make compulsory; preparation of EIA reports should not be limited to local specialist and foreign firm should be invited for this purpose. It may be argued that the amount which has to afford for foreign EIA Report is high but it should noted that the sum which have to spend to repair the economical and social damage is far more higher than this. This step will encourage the principle of precautionary approach as well; for major developments projects especially multipurpose projects in Sri Lanka; PAAs should be the Parliament; term of references should totally based on principle of sustainable development; Strict conditions should be gazette for an instances cut down of tree to implement the project should be maximum 2%, non of the streams make nude.

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