Challenges before forest conservation in Sri Lanka: comparatively analyzing the laws against illegal timber logging

DMNS Dissanayake#

Sri Lanka Law College, Sri Lanka #nimtharad@gmail.com

Abstract: Deforestation is one of the major environmental crisis faced by many nations. Even so, most of them have successfully face this challenge by practicing effective forest conservation policies. Population growth and the high demand for timber market has adversely affected the rate of deforestation in Sri Lanka as well. Before 1970s, natural forests catered the country's timber requirement. When the Government, declared some natural forests as protected areas, and imposed regulations that banned harvesting timber from unprotected natural forests and restrictions on felling and transport of timber, created an artificial scarcity of timber in the country. This led to illegal timber logging and other forest offences. This research aims to review the laws relating to illegal timber logging in Sri Lanka, to analyze the effective implementation of those policies and to compare Sri Lankan policies with those in Australian jurisdiction to identify how they have achieved better conservation of forests. It further aims to recognize the loopholes prevailing within the Sri Lankan legal framework and to provide recommendations as to how to improve the existing legal regime with regard to timber logging in Sri Lanka for a better forest conservation. The research was conducted using black letter approach using relevant primary and secondary sources as a comparative analysis between Sri Lankan and Australian jurisdictions. The study concludes Sri Lankan legal system is inadequate to prevent illegal timber logging and lacks forest policies to address the issue of deforestation and thereby, recognizes the importance of adopting from

Australian standards in order to control deforestation and achieve better forest conservation in Sri Lanka.

Keywords: Deforestation, Forest Conservation and Illegal Timber Logging.

1. Introduction

"A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people" -Franklin D. Roosevelt.

Sri Lanka is an island with 65,610 square km land area and blessed with a rich biodiversity. Due to its tropical climate, it is the house for over twenty million people and a rich array of flora and fauna. In the beginning of the last century, Eighty percent of the total land area of Sri Lanka was covered with closed-canopy natural forests. However, it reduced alarmingly over last few decades due to numerous reasons. At the early stage of the decrease, forests have been lost due to the spread of plantation agriculture introduced by the British administration. In the twentieth century, rate of deforestation increased with the expansion of informal settlements due to population growth, national development projects and planned settlement programs of the government and land encroachments. Due to large-scale plantation and excessive harvesting of timber, at present only 25% -30% of the total land area is covered by natural forests. Thus, it is evident that, forests are

continuously subjected to violation due to numerous reasons such as, agricultural expansion, industrialization, urbanization, large-scale timber extraction and climate change. In Sri Lankan context, the historical pattern of forest utilization began from forest exploitation in 1880. After that timber harvesting during 1880 to mid-1950s, was followed by peak and decline of timber harvesting from mid 1950s to early 1980s, and consolidation from mid-1980s. finally (Ruwanpathirana, 2012) At present, the remaining major forest areas have been restricted to three key regions of the country; Mahaweli River basin and Northern plains, Central hills, and Yala sanctuary in Southeast. In addition, the Forest Department manages around 90000 hectares of forest plantation in Sri Lanka, out of which average 1100 hectares of plantation is released annually to State Timber Corporation for harvesting. According to the Ministry of Forestry and Environment, annual sawn wood consumption per 1,000 persons in Sri Lanka in 1993 was estimated at 31 cubic meters and sawn wood demand in Sri Lanka is projected to grow from 0.544 million cubic meters in 1993 to 0.885 million cubic meters in 2020, at a rate of 12,600m3 per year. (Gunatilake, 2007) MFE predicts with the increasing demand for plywood and other panels would wood-based increase respectively, at rates of 2.8% and 3.5% per year (MFE, 2005) Scarcity of timber in the country led to raise in timber prices and this unfortunately provided incentives for illegal from natural forests. logging Thus. enforcement of regulations that restrict illegal timber logging and implementation of legal framework for an effective forest conservation is necessary. Therefore, this research review the existing forest policies in relation to illegal logging in Sri Lanka to perceive whether the existing laws in Sri Lanka are adequate to control and prevent illicit felling of trees. The Sri Lankan legal framework is compared with the Australian legal framework in order to recognize the shortcomings of the Sri Lankan framework to achieve a better forest conservation.

2. Methodology

The research was carried out as a library research adopting the black letter approach. Black letter approach was adopted because effective access to empirical data was challenging due to limited access to the libraries due to the current situation prevailing in the country. It was conducted by collecting data through primary resources such as relevant legislations, international conventions and judicial decisions and secondary resources such as research articles, books with critical analysis, journal articles and other electronic resources. This research was carried out as a comparative analysis by comparing the Sri Lankan legal framework with the Australian laws. Australian standards were selected due to its comprehensiveness and accuracy in addressing the issue of deforestation and forest conservation, thus enabling these standards to be adapted in to the Sri Lankan legal framework.

CHALLENGES BEFORE FORESTCONSERVATION IN SRI LANKA

Forests are essential for the affluence of living on earth as it provides the substrate for life on earth. In the perspective of human beings, forests provide for many needs and environmental services, which are demanded by the people. It is quite evident that a satisfactory extent of forests should prevail for the existence of life on earth, but the deforestation and forest degradation has endangered the very existence of Forests. Therefore, this loss and degradation of forests no longer concern only the affected nation but also of the global community. Deforestation is generally referred to as the conversion of forest land in to an alternative none forestland use systems such as agriculture, grazing or urban development. (Kooten and Bulte, 2000) According to the United Nations Framework Convention on Climate Change secretariat, deforestation is caused mainly because of clearing and using land for agricultural purposes. He elaborated further. that subsistence farming is for 48% responsible of deforestation; commercial agriculture for 32%; logging for 14%, and fuel wood removals make up 5% of deforestation. (Ekanavake and Theodore, 2017)

The Government of Sri Lanka owns all the state forests lands and they belong to four classes. Class one forests are preserved forests for it is rich with biodiversity and class two forests are preserved for non-extractive uses while class three and four forests are used for sustainable multiple uses and plantation respectively. According to the 1985 forest inventory report, there are two types of forests in Sri Lanka namely: Protection forests and Production forests. The two main government institutions; 'Department of Forest Conservation' and 'Department of Wildlife Conservation' do management and control of all forestlands. In addition to these, four other institutions namely; 'The Ministry of Forestry and Environment', 'The Ministry of Public Administration, Parliamentary Affairs and Plantation Industries'. 'The Ministry of Education' and 'The Ministry of Industries that controls Forest Industries' governs the forestry sector of Sri Lanka.

With the introduction of new administrative and legislative changes, the demand for high and medium yield timber in wet zone forests particularly in low land areas increased. After the creation of the STC in 1968, as a separate arm of the forest department to implement the functions of logging, extraction, sawmilling,

and marketing of timber, timber-utilization rates remained low. However, since then the activities of forest department were much focused on reallocation of resources for conservation, afforestation, training, and forestry extension. Forest Department records show that threat of logging is much higher in forest plantations than in natural forests. During the period of 1985 to 1995, an average of 2 000 cases of illicit cuttings were recorded per year, from forest plantations while, only 1 000 cases were recorded from natural forests. Out of these forest plantations, Teak plantations are the most vulnerable to illegal cuttings. Further, volume of timber involved in such cases were recorded about 1 130 m3 per vear.

In 1972, due to the public outcry against logging in Sinharaja, halted all commercial timber harvests and the reserve was designated a conservation area with the exception of allowed selective felling in the dry zone forests until late 1998. Then in 1990, a complete ban was imposed by the forest department and the STC, against logging in all natural forests until growing stock is fully recovered. Under this, all logging operations in natural forests and forest plantations require an environmental impact assessment. This ban was imposed in order to preventing further degradation and loss of natural forest cover, rehabilitate forests that have been heavily degraded, protect and maintain biodiversity, maintain environmental and hydrological functions of forests and to preserve recreational, aesthetic and cultural values.

Even though a logging ban was imposed, neither a formal policy revision, enactment of a special legal provision nor amendment to the Forest Ordinance was made regarding regulation of this logging ban. The National Environmental Regulation No. 1 of 1993 through the EIA procedure governs the control and extraction of timber from natural forests

and thus it is in accordance with precautionary principle. However, Sri Lankan legislation lacks many sustainable measures in forest conservation. Therefore, the requirement of mandatory environmental clearance in controlling logging operations of extracting of timber from both natural forests and forest plantations should be applicable not only to forests clearings exceeding five hectares but also to other mass scale clearings as a preventive measures to prevent further such massive destructions of forest cover. Therefore, as the existing system lacks such preventive and precautionary measures controlling these illicit felling, even at present, illegal cutting in natural forests occurs in large scale. According to the forest offense records by the forest department's in 1993 revealed 639 offenses of illegal harvests that produced 706 m3 of timber from the natural forests. (Asia- Pacific Forestry Commission, 2001)

SRI LANKAN FOREST POLICIES REGARDING FELLING OF TREES AND ILLEGAL LOGGING

During ancient times, the village community lived in harmony with the neighboring forest environment and had its own privileges and a good deal of self-administration. (Zoysa, 2002) The establishment of rules and regulations for the felling of trees can be dated back to the King Mahinda IV period of 972 to 959 BC. (Zoysa, 2002) Later inscriptions belonging to Pollonnaruwa Kingdom also proves that there were rules against illegal logging of fruit bearing trees such as coconut and Palmyra.

Exploitation of timber was first instituted through the adoption of Felling Rules In 1835. With the enactment of Timber Protection Act No 6 of 1878, a standard system to enforce laws against felling and logging of trees was introduced. In 1879, system for issuing Timber-cutting licenses and its management was introduced. However, Timber Protection Act only remained in effect for seven years. After that, basing on the observations made by scientist D.A. Vincent in his report submitted to the government of Sri Lanka in 1882, the Forest Ordinance No 10 of 1885 was enacted repealing Timber Protection Act No 6 of 1878. With the enactment of the Forest Ordinance No 10 of 1885 enabled the declaration of reserved forests, sanctuaries and controlled the felling and transport of timber. However, forest conservation and forest management took a scientific approach only after the introduction of Forest Ordinance No 16 of 1907.

At present, the legislation that governs the illegal logging and felling of trees is the Felling of Trees (Control) Act No 9 of 1951. The Government in 1953 introduced а comprehensive sectoral forest policy with the aim to maintain a sustained yield of timber and other forest products for general housing and industrial requirements. By the 1986 Forestry Master Plan, introduced a moratorium on logging operations in natural forests in the wet zone. As a result, a 'Forestry Sector Development Project' was launched in 1990, which enabled the establishment of an 'Environmental Management Division' in the Forest Department. Subsequently, a logging ban was imposed in all natural forests including the Sinharaja Forest, after it being declared a national heritage under the National Heritage and Wilderness Areas Act No 3 of 1988.

Offences in relation to reserved forests has been described in the part II of the Forest Ordinance No 16 of 1907 by the sections 6 and 7 under prohibited acts. Section 6 (b) states, any person who in a reserved forest, causes any damage by negligence in felling of any tree, or cutting or dragging any timber, shall be guilty of an offence, and be liable on conviction to imprisonment or to a fine or for both fine and imprisonment. Further, by section 7 (1) (a) makes any person who makes a fresh clearing in a reserved forest, guilty of an offence and be liable on conviction. Section 7 (1) (d) states, any person who fells, cuts, saws, converts, collects, removes or transports any trees or timber or collects, removes or transports any forest produce or has in his possession, custody or control any tree, timber or forest produce shall be guilty of an offence and be liable on conviction. However, by section 8 (1) excludes any person from such liability for the prohibited acts prescribed in sections 6 and 7, if such act is done with the prior permission of a forest officer or done in accordance with a regulation made by the minister will be excluded from this liability. Forests offences relating to village forests are described by the part III of the ordinance. Section 14 prohibits from 'any person from removing any tree enumerated in the schedule one. Part IV of the ordinance regulates of the protection of forest and forest produce. Section 19 it prohibits any person from cutting, marking , lopping or injuring , by fire or otherwise, of reserved tree in any forest, except with the leave of rules made by the Minister in this behalf, or by permission in writing of a forest officer empowered by the Minister to grant such permission.

The Act No 30 of 1953 and Act No 1 of 2000 have amended Felling of Trees (Control) Act No 9 of 1951. Subsection 1 of section 2 provide Minister the power to make Orders prohibiting or regulating the felling of trees and making orders regarding issuing of permits. Further subsection 2 of section 2 states order made under this section, will have effect either throughout Sri Lanka or in any particular area in Sri Lanka, and may prohibit the doing of anything regulated by the Order except under the authority of a license granted by such officer as may be specified in the Order. As amended by the Act No 1 of 2000, section 4 provides for the Penalty for contravention of any order made under this act. It states, any such person act in contravention of order shall be guilty of an offence, and shall be convicted after summary trialed by a Magistrate. In addition, he will be liable to a 'fine not less than five thousand rupees and not exceeding fifty thousand rupees or to imprisonment of either description for a term not less than six months and not exceeding one-year or to both such fine and imprisonment. By section 4(2) states upon the conviction of any person for an offence under subsection (1), any tree or part thereof in respect of which such offence has been committed shall, by reason of such conviction be forfeited to the State. According to subsection 4 of section 4 an officer designated in writing by the Conservator of Forests shall take charge of any tree or part thereof vested in the State, and shall dispose of it in accordance with the directions of the Conservator of Forests. However, with the exception of Jak Fruit, Bread Fruit and Palmyra trees owned by the private landowners, this act does not impose a restriction on cutting down trees in the private lands by their owners. Further, the act does not make it mandatory to have a license for cutting down trees that are excluded from the above restricted category unless they to be transported.

As opposed to this view, the National Environment Act No 47 of 1980 makes it mandatory to have a license in cutting down trees even from the privately owned lands. Under the section 21 of the act, states the national environmental authority shall in consultations with the national environmental council with the assistance of the Ministry shall recommend to the Minister a system of Management policies for forestry.

AUSTRALIAN FOREST POLICIES REGARDING FELLING OF TREES AND ILLEGAL LOGGING The world's attention was directed to the wideranging detrimental effects of illicit logging of trees when the G-8 raised the issue in 1998, and launched an Action Program on Forests. In 2005, the G-8 Environment and Development Ministerial Conference prepared a plan of action, subsequently adopted by G-8 leaders, for reducing illegal logging activity and trade of illegally sourced timber.

Australia's Illegal Logging Prohibition Act No 166 of 2012 was implemented in order to regulate illegally logged timber and timber products. According to a 2005 study by JP Management Consulting for the Australian Government, Australia is a significant importer of wood products (AUD\$ 4.4 billion in 2014) of which up to AUD\$ 400 million come from sources with some risk of being illegally logged. (Pepke, 2015) According to AILPA, illegally logged timber is defined as timber, harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested. Section 8 and 9 of the AILPA considers "intentionally, knowingly or recklessly" importing or processing illegally logged timber a criminal offense. The Act covers timber harvested both nationally and internationally in compliance with World Trade Organization rules, like the European Union Timber Regulation. Further, the Act is designed to complement United Sates Lacey Act Amendment.

This legislation only focuses on requirements of Australian businesses, whereof both importers and processors are required to practice and prove due diligence. Australian businesses must practice due diligence to assess and manage the risk that the timber or timber products they are importing for processing has been illegally logged. Part II of the Act states the regulations must prescribe due diligence requirements for importing regulated timber products. Such requirements must be prescribed only for the purposes of reducing the risk that imported regulated timber products are not made from illegally logged timber as per section 14 (2). Further, section 13 makes it mandatory for Importers to submit a declaration to the Custom Minister at the time of import to declare that due diligence has been undertaken. Part III of the AILPA provides for the requirements for processing raw logs with due diligence.

addition, AILPA has established In comprehensive monitoring and investigation powers to enforce the requirements of the Act. Part IV of the act has laid down legal provisions governing appointment of inspectors, monitoring and investigation. According to section 22, an inspector may enter any premises and exercise the monitoring powers for determining whether this Act has been, or is being, complied with or determining whether information given in compliance, or purported compliance, with this Act is correct. Such entry must be with the consent of the occupier of the premises or under an investigation warrant. Further, as per section 27 inspector may take assistance from other persons in exercising powers or performing functions or duties, if that assistance is necessary and reasonable. Maximum penalties imposed by the AILPA for the importation or processing of prohibited products are five years' imprisonment and or fine of USD\$ 55 000 for an individual and or USD\$ 275 000 for a corporation.

COMPARATIVE ANALYSIS AND LESSONS TO BE LEARNT

Sri Lankan logging ban was imposed without any formal policy statement or amendments to the existing forest policy. It was implemented with the directive provided by the Ministry Of Lands, Irrigation and Mahaweli Development in 1990 to the forest department. However, the Australian legislative enactment has been in force since 2012. Further, when compared to the AILPA, Sri Lankan legislations are not been updated for a long period. With the new developments in the technological and scientific fields, environment has undergone many novel challenges. This development in the technological fields has adversely affected all aspects of the environment. Thus, legal regime governing the environment should amend accordingly to counter these adverse impacts. In that regard, while the AILPA amended several times in 2013, 2015 and 2018, the forest conservation legislations in Sri Lanka has lastly amended in 1900.

Even after the implementation of the logging ban in 1990, some of the natural forests in the Mahaweli Development area was subjected to continuous clearing due to the development purposes until late 1996. In addition, the areas along roads in northern and eastern parts of the country were excluded from the effect of the ban under the clearance for security reasons. Therefore, logging by STC has continued by the prior approval of the Forest Department at the request of the defense institutions.

When compared to Australian legal framework. Sri Lanka lacks effective enforcement of the law due to lack of monitoring and investigating system regulating such enforcement. As provided by the part IV of the AILPA, it has laid down legal provisions governing appointment of inspectors, monitoring and investigation.

3. Recommendations

Thus, it is evident that, a robust law enforcement mechanism is vital in order to conserve the Sri Lanka's forests against these adverse impacts of illegal timber logging. These multitudes of legislations governing protected areas should be amended to make effective use of those forest policies. In addition, offences relating to forests should be made cognizable and should incorporate legislative provisions in relation to illegal logging and forest conservation and other matters to be dealt with in a timely manner, in order to ensure that all the adversities could be countered and addressed with this evolving nature of threats. Moreover, penalties and fines imposed should be made vigorous and increased according to the monetary values in the present day to ensure that the parties understand the seriousness of their actions towards the environment and to make sure such offences are not repeated.

Appropriate policy and legislative framework regulating the logging ban should be developed for an effective implementation of the logging ban. As mentioned above, the logging ban has been instituted by the order of the Ministry of Lands, Irrigation and Mahaweli Development in 1990, without any formal policy statement or an amendment to the existing forest policies. Therefore, appropriate policies with functional and clearly defined conservation goals have to be introduced. Further, development of suitable institutional sector, other than the forest department and STC have to be established for regulation and monitor of these policies. In this regard, political will, the support of the Government and their commitment would be necessary for a successful and effective implementation of the logging ban. Survey and demarcation of the forest boundaries is essential to prevent illegal felling and encroachment. Along with the increase in population, many forests lands have been encroached for residential and agricultural purposes. These illegal encroachments have led to reduction of forest cover in both reserved and other conserved forests. In order to control and minimize these illicit felling and encroachment, programs have to be prepared to conduct surveys and demarcate the forest reserves and other State forests.

Development of non-forest wood resources along with forest plantations can act as viable alternative to timber from natural forests. Incentive schemes prepared bv the Government can encourage the private sector to establish forest plantations and plant trees in home gardens and agroforestry systems. Such an arrangement would be beneficial as it would reduce the current market demand of the timber and timber products and thereby, minimize the illegal logging and other illicit felling in the natural forests.

Adequate resources for forest protection and law enforcement would be a necessary mandate for the effective law enforcement. In order to provide a better forest protection against illegal felling and encroachment, to the island wide natural forestry sector, the number the number of field staff from the DWLC and the Forest Department has to be increased. Furthermore, they should be provided with proper training to enhance and strengthen their law enforcement capabilities.

Another improvement to for a sustainable forest management could be the development of an appropriate monitoring system. Development of criteria and indicators constitute an important aspect of the sustainable forest management. Although there have been several international initiatives on the development of criteria and indicators, Sri Lanka should place much emphasize on enforcement of such mechanism.

Efficiency of the forest industries should be improved to raise the productivity in sawmill sector and other timber producing sectors. Old and inefficient equipment that has not been designed for small-dimension logs, and inadequate management and labor skills, are major problems faced by the forestry sectors at present. Thus, it has resulted in low recovery rates and poor overall productivity, particularly in the sawmill sector. Therefore, in order to reduce the waste produced, the efficiency rates of the wood-processing technologies should be enhanced.

Lastly, for an effective enforcement of logging ban and other forestry policies, political and public awareness of these policy implementations is of utmost importance. For the enforcement of any regulation governing the environment or protection of forestry sector in particular, the decision makers or the legislative bodies need to be familiar with the benefits of such forest conservation. The current extension and awareness programs implemented by the Forest Department, Department of Wildlife Conservation, and Non-Governmental Organizations should be strengthened and expanded to cover all levels of the target groups. Furthermore, the participation forest community in management would be beneficial in effective implementation of forestry policies. The National Forest Policy recognizes that the State alone cannot protect and manage the forests effectively. In this regard, people's participation in forestry development and management should be promoted as one of the main strategies for forest conservation.

4. Conclusion

Sri Lanka is an island with 65,610 square km land area and blessed with a rich biodiversity. Due to its tropical climate, it is the house for over twenty million people and a rich array of flora and fauna. According to the forest cover map presented by the forest department in 1992, two million hectares were covered by natural forests out of its total land area of six point five million hectares. However, over the past few decades due to rapid growth of population, illicit cutting of trees. encroachments, clearing of lands for agricultural purposes and plantations has contributed to the significant drop in forest cover. Therefore, it is important that the relevant stakeholders understand that, if these adverse impacts continues to grow, it will be unstoppable both in the short and long term, as those repercussions can immediately affect in the decline of biodiversity, wildlife, stability of local weather and ultimately risks our own quality of life.

When comparing to the Australian standards it was evident that the Sri Lankan legal framework is inadequate to address the issue of deforestation due to illegal logging activities and felling of trees in both natural forests and plantations. As discussed above the existing legislative provisions governing illicit logging and the logging ban imposed are not adequate in effective conservation of forests in Sri Lanka. Thus, Sri Lanka needs to implement timely concerned forest policies and effective monitoring system to address these adverse impacts on the forest conservation. The study recognize the importance of establishing a system to regulate and monitor the logging ban and other illicit cuttings by relevant authorities. In this regard, the study recommends amendment of the existing legislature and implementation of a more coherent, stringent and an effective legal framework to achieve a better forest conservation

References

De Zoysa, (2002). A Review of Forest Policy Trends in Sri Lanka. Policy trend report

Ekanayake EMBP and Theodore M, (2017). Forest Policy for Sustainability of Sri Lanka's Forest. International Journal of Sciences, 3, p28 Forests out of Bound: Impacts and Effectiveness of Logging Bans in Natural Forests in Asia-Pacific, (2001). Asia- Pacific Forestry Commission report.

Gunatilake HM and Gunaratne LHP, (2002). Policy Options for Conserving Sri Lanka's Natural Forests; Economy and Environment Program for Southeast Asia Illegal Logging Prohibition Act 2012 Pepke E and others, (2015). Impacts of Policies to Eliminate Illegal Timber Trade. Dovetail Partners Outlook Ruwanpathirana, N, (2012). Sustainable utilization of timber resources in Sri Lanka. SOBA 56 The Felling Of Trees (Control) Act 1951 The Felling Rules Act 1835 The Forest Ordinance Act 1907 The Forest Ordinance No.16 (Amendment) Act 1951 The Forest Ordinance No.16 (Amendment) Act 2009 The Forest Regulations Act 1995 The National Environmental Act 1980 The National Environmental Act 1988 The National Environmental Act 2000

Abbrevations and Specific Symbols

DWLC- Department of Wildlife Conservation

EIA - Environmental Impact Assessment

MFE- Ministry of Forestry and Environment

STC - State Timber Corporation

Acknowladgment

I would like to extend my heartfelt gratitude to my parents for advising and encouraging me to get the best outcome from this study. I would not be able to accomplish this study without their tremendous support and cheerfulness to battle the inconveniences that ensued throughout the study. Further, I would also like to thank my colleagues for their humble support, guidance, and encouragement to make this study a success.

Author Biography



Nimthara Dissanayake is currently following a Masters Degree in International Relations at Postgraduate Institute of Humanities and Social Sciences at University of Peradeniya and also she is a final year student of Sri Lanka Law College. She obtained her LLB from General Sir John Kotelawala Defence University. She takes keen interest in the areas of Human Rights Law, International Law and Commercial Law.