



**ENVIRONMENTAL
FOUNDATION
(GUARANTEE) LIMITED**

Comments on the draft National Environment Policy

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Executive Summary

We scrutinized and assessed the Draft National Environmental Policy. The time frame of one month for public comment insufficient given Covid-19 Pandemic restriction to travel and postal service. We further note the availability of the draft document online precludes the ease of access and review by the general public. The document does not outline the public consultation process and details regarding consultations held with the public and technical experts in the preparation.

The language in the draft NEP is open ended, vague and unclear statements made in this policy creates concerns in implementation. A policy should clearly demarcate the actions to be taken, toward which appropriate statements and details of the content provided. Some policy statements are very specific, while some are very broad and conceptual. It has to be consistent across the document and the language used has to be coherent and apt.

The draft NEP does not reflect the long history of environment management in Sri Lanka. We find due consideration of existing documents, legislation nor the current NEP of 2003 in this draft. Sri Lanka was ranked second in the world in Global Climate Risk Index (GCRI) in 2018. It is proof of failure on the part of previous policies concerning environmental management. The requirement of a new policy should be aimed at the gaps and additional elements lacking in the National Environmental Policy 2003.

The NEP of 2003 clearly sets out accountability of the state as imposed in the Public Trust Doctrine that natural resources are held by the Government under trusteeship for the benefit of the public which is omitted from this draft NEP. The goals mentioned in the draft NEP are not in-line with the Directive Principles outlined in Article 28(f) of the Constitution.

The policy principles and statements of the draft NEP deals with obligations of the Ministry of Environment; however it should focus on emphasizing the importance of environmental aspects to other agencies which are generally involved with environmental issues such as development oriented agencies and their environmental policies. Strategic Environment Assessment (SEA) is a crucial procedure used in sustainable development, the mechanisms for integration of SEA to National Physical Planning in not addressed Further the draft NEP does not consider the mechanism and limitation in devolution of environment management to the Provincial Councils.

EFL has serious concerns regarding this statement since the concept ‘sustainable development’ invoked in this policy appears to be economic growth that it seeks to remedy. Hence the policy vision is growth focused and seeks to enable exploitation of natural resources.

EFL recommends the draft NEP amended to remedy the many inadequacies in rationale, scope and application. Given the gaps identified it is recommended the draft NEP be subject to further review.

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Abbreviations and Acronyms

ADB	Asian Development Bank
CBOs	Community Based Organizations
CCIA	Climate Change Impact Assessment
CEA	Central Environmental Authority
CSOs	Civil Society Organization
DWC	Department of Wildlife Conservation
EEZ	Exclusive Economic Zone
EFL	Environment Foundation Limited
EIA	Environmental Impact Assessment
EIARs	Environmental Impact Assessment Reports
EPLs	Environmental Protection Licenses
EPR	Extended Producer Responsibility
FD	Forest Department
FFPO	Flora and Fauna Protection Ordinance
FO	Forest Ordinance
GCF	Green Climate Fund
GCRI	Global Climate Risk Index
GDP	Gross Domestic Product
GHG	Green House Gas
HEC	Human Elephant Conflict
HLAP	Haritha Lanka Action Plan
HWC	Human Wildlife Conflict
ICTA	Information and Communication Technology Agency
IEE	Initial Environmental Examination
INGO	International Non-Governmental Organizations
MBI	Market-Based Instruments
MER	Managed Elephant Reserve
MoE	Ministry of Environment
NBS	Nature Based Solutions
NDC	Nationally Determined Contributions
NEA	National Environment Act
NEAP	National Environmental Action Plan
NEP	National Environmental Policy
NEPS	National Environmental Policy and Strategy
NGO	Non-Governmental Organizations
NWP	North Western Province
NWSDB	National Water Supply and Drainage Board
OECD	Organisation for Economic Co-operation and Development
PA	Protected Areas
PAAAs	Project Approving Agencies
PTAs	Preferential Trade Agreements
SDGs	Sustainable Development Goals
SEA	Strategic Environmental Assessment
SWM	Solid Waste Management
SWMP	Solid Waste Management Plan
UNFCCC	United Nations Framework Convention on Climate Change

Public comments period

The draft National Environmental Policy (NEP) opened for public comments was thoroughly scrutinized and assessed in terms of its applicability, requirement, adaptation, coherency, transparency, and time provided for commenting. We note the time provided for public comment given the Covid - 19 pandemic restrictions has limited the ability gather to formulate substantive feedback.

It is an outward looking policy, and which is very global in its constituents, and it should be amended to be localized in its content to address the country context, instead of a global context of environmental issues. Given legislations and ordinances in place for over 40 years regarding the environment which have been built and amended during implementation.

It is unclear as to whom this policy is intended to apply. The key policy principles are connected to multilateral treaties and other legal obligations which Sri Lanka is a party to and which are not linked to in the draft NEP; the terminologies, concepts and ideas of these treaties and pacts should be used in the policy, and the definitions used for principles such as precautionary principle and concepts such as sustainable development are not in compliance with the standard international definitions.

Differentiating between the sections of the draft NEP, is problematic that the existing implementation mechanism is not properly taken up in the policy as there is only a single page annex which contains an incomplete list of the relevant laws. There are many gaps, and institutional responsibilities legal provisions are not appropriately linked into the policies.

Ex: fisheries in inland waters is not mentioned anywhere in the document.

The draft NEP tends to primarily focus on exploitation of mineral resources and land resources. Thus it ignores issues which have arisen with the overuse, over extraction and deforestation of land such as increased Human Wildlife Conflicts, and inherent the risk of loss of flora and fauna and loss of Biodiversity in Sri Lanka.

Transparency

There is also a lack of transparency in this draft NEP document, especially regarding the public consultation process; there is no mentioned date nor details regarding any consultations held with public or technical experts in preparation of this document.

Further, in relation to the call for public comments for the draft NEP itself, it is shocking that such an important notice was made to public two days prior to the imposing of a lockdown and travel restrictions imposed in the country on the 20.08.2021. The period provided for commenting was one month, which is hardly sufficient to garner the necessary documents and inputs from experts.

Ideally a policy should be time-bound to ensure its applicable period enabling accountability, revision, and monitoring and evaluation.

In consideration the language of this draft NEP policy document, we find the open ended, vague and with unclear statements made in this policy creates concerns in implementation. A policy should clearly demarcate the actions to be taken, toward which appropriate statements and details of the content provided.

1 Introduction

1.1 Background

As mentioned in the draft NEP, the rich endowment of the natural resources acts as a launching pad for achieving the sustainable development goals of the country, however the draft NEP does not provide any reference or statistics to support this statement. The draft NEP correctly identifies that the sustainable development can only be achieved by way of how sensibly the environment is managed. Presently activities such as development projects, industries, and agricultural activities commence in

violation of the existing laws governing the environment and escaping procedural requirements due to the gaps existing in the statutory legislation and the inefficiency of the public institutions. In such a context, the draft NEP lacks strong mechanisms to act as an overarching policy to the existing National Policies (Table 1: National policies dealing with different aspects of environmental management). In order for a NEP to have strong rooting, it must have clear legitimacy arising from a statutory provision/s which is not depicted in the NEP.

The introduction of the draft NEP mentions the country has an abundance of natural resources. However, then the requirement for such a policy when resources are abundant is a question. If so, then the need of this draft NEP should be aimed at the issues and challenges in protecting and safeguarding these natural resources, which is not provided correctly in the document.

Biodiversity Hotspot

One point, which is also mentioned in other reports as well, is that Sri Lanka is a biodiversity hotspot among 36 other global hotspots due to the richness of biodiversity assets. The link provided to conservation.org states that the qualifications of a global biodiversity hotspot is to have a high percentage of plants found nowhere else on the planet and 30% or less of its original natural vegetation which is a threatened status. If there is such a threatened status, then it has been made into a hotspot, which is also a call for urgent action. The draft NEP does not adequately address the requirement and need for the policy.

Additionally, regarding the forest cover, Sri Lanka is listed as a biodiversity hotspot along with the Western Ghats of India as mentioned in the conservation.org website where the assessments and information provided is largely on the Western Ghats. As such, the term 'hotspot' itself used is not proper, especially considering the different ecological zones of the country.

Public Trust Doctrine

The draft NEP has a listed number of laws without any references to the public trust doctrine. The public trust doctrine is important when it comes to accountability of the state regarding the nature and its resources. It depicts that natural resources are held by the Government under trusteeship for the benefit of the public. There is also a lack of mention of the Constitution and the Directive Principles of State Policy, in contrast to the 2003 NEP where these elements were mentioned. Another vital item which should be included in this draft NEP is public guardianship. The judgement law of the country has also moved forward to public guardianship, as was seen in the Eppawala case¹.

Community participation and participatory management

The introduction also mentioned community participation and collective management as well as private sector participation, of which aspects, role and nature are not clearly mentioned in the draft NEP. It is assumed to be an element planned for the future and related to participatory governance, however the policy does not clearly provide guidance or principles regarding these notions. Each key principle should incorporate community and public participation, as it is essential in each principle (an example is polluter pays principle where the responsibility of private companies is not defined). Other parallel sectoral policies, strategies, and action plans have not been considered in developing this draft NEP. In forestry sector, the community participation is an idea which was implemented before and lessons were learnt in this process. These lessons learnt ought to be incorporated into the policy document and the lack of any reference to previous actions taken does not provide a good foundation for the strategies provided in this draft NEP.

Although strategic plans and actions plans may change, a policy is suitable for long term and is applicable for the period of its existence. If there are elements which were not present in the original

¹ Bulankulama v. Secretary, Ministry of Industrial Development (2003) Sri L R 243

policy, then only those elements need to be included in the update. As climate change was not an element included in the previous NEP of 2003, this aspect along with elements such as regenerative agriculture, restorative agriculture are new areas that can be highlighted and included, whilst adopting the activities and forward actions of the environmental sector already implemented.

1.2 Need

The need for NEP in Sri Lanka is evident as Sri Lanka was ranked second in the world in Global Climate Risk Index (GCRI) in 2018. It is proof of failure on the part of previous policies concerning environmental management. Additionally, the draft NEP lists the emergence of new environmental challenges, development of scientific knowledge on the subject, emergence of new technological innovations in environmental management, etc. as reasons for the need of revamping the existing National Environmental Policy and Strategy of 2003 (NEPS). Thus, the overall objective of updating the NEPS and introducing the NEP is so that *its position as the foremost national policy statement on the environment in Sri Lanka will be restored, enhancing its relevance in line with other follow-up national policies formulated by the Ministry as well as related policies introduced by other ministries.*

The basis for this new policy as well as the need for it should focus on previous policy documents prepared, implemented, and lessons learnt during this process. The requirement of a new policy should be aimed at the gaps and additional elements which are lacking in the 2003 National Environmental Policy. The new policy brings in ideas and concepts which are implementable only if the environmental movement was not present in Sri Lanka at all. There are critical issues in policy implementation already in the country which are not addressed in this new policy document. An example would be the involvement of the provincial council for resolving of environmental issues, as mentioned in the draft NEP; however there is no policy statement as to what level the provincial councils can or should take up environmental issues. There are vital decisions made and implemented already in the environmental sector which have been crucial in the safeguarding of the environment that are not considered in the preparation of this policy document.

Therefore, the policy is economic growth focused as opposed to what it ought to be: focused on conservation of natural resources and pollution prevention.

1.3 Purpose and Context

The main purpose of the NEP is to *provide guidance for decisions taken to manage environmental issues that arise in the country at the national level as well as sub-national levels. The NEP further aims to place the environment in the broad perspective of sustainable development in the country, identifying the vision, goals and objectives of the NEP in line with the broad national agenda towards sustainable development, albeit not restricting only to SDGs.* But the draft NEP also mentions that in parallel to it the Ministry has also initiated steps to prepare the National Environmental Action Plan (NEAP) by way of updating the “Haritha Lanka Action Plan’ (HLAP) which spanned from 2009 -2016, which is not proper procedure when it comes to revision of policy documents nor action plans. It is indisputable that with the development of NEP an action plan for the same must be developed. However the action plan should be prepared after the policy document is approved and should be based on the policy. Simply updating the HLAP would not suffice to the objectives of the NEP. If such NEAP is to be prepared, it must be done so as a complementary action plan to the NEP as opposed to resurrecting a buried HLAP. The ten objectives of the HLAP are:

- Clean Air - Everywhere
- Saving the Fauna, Flora and Ecosystems
- Meeting the Challenges of Climate Change
- Wise Use of the Coastal Belt and the Sea Around
- Responsible Use of the Land Resources

- Doing Away with the Dumps
- Water for All and Always
- Green Cities for Health and Prosperity
- Greening the Industries
- Knowledge for Right Choices

If the said HLAP had functioned as desired initially, then we may not have met with the environmental destruction and disasters we are faced with today. As such, the NEP and the NEAP must also be developed complementary to one another and also given due recognition by means of existing statutory legislations.

1.4 Rationale

The rationale of the draft NEP is *to introduce a smoothly functioning, stable and consistent environment policy regime comprising a set of technical solutions, conducive policy incentives and institutional mechanisms for implementation that help fulfilling the conditions necessary for sustainable development in Sri Lanka.*

The draft NEP identifies those necessary conditions for sustainable development cannot be simply fulfilled by introducing technical solutions alone and it needs to be complemented by appropriate schemes of incentives set up in a place by key stakeholders. The draft NEP must also recognize that these technical solutions must also be reflected in the NEAP, which is not available yet, which makes it unclear as to how these technical solutions and active engagement of stakeholders are met. However, one of the consistent omissions of this draft NEP, any reference to regulatory mechanisms intended to be used to alleviate pollution or effects of pollution, loss of biodiversity, climate change or other issues mentioned in the PTAs identified in Part 4.

An element which is fundamentally missing in the document, is that a policy should be developed with an eye to the future, and it should be relevant for existing as well as the forecasted situation. An old policy, policy with no vision towards conservation or pollution prevention or a vague policy will not be able to guide an action plan for the future. A proper policy is aimed at the present, whilst the broad concept of the future goals and implementation mechanisms of achieving that goal should be the action plan, and the policy should be applicable to any given time in the future (that it is applicable for). However in this document the wording and the concepts mentioned are dated and not applicable to the current scenarios. A policy is updated through a learning process, and should not reflect actions which have already been completed or executed, and should straightforwardly mention the actions to be taken at present and future.

We note this document needs more depth as the country's environmental issues and challenges as well as previous strategies undertaken have not been considered in preparation of this draft NEP. After 40 or more years of environmental management, it is not realistic to have a vague environmental policy with no basis of past environment management policies. The draft NEP is not built on existing documents, nor the previous NEP of 2003. Additionally, there is a national physical plan for the country as of in 2002 and the new National physical plan has been planned till 2030 which is also not considered in the draft NEP.

2 Vision, Goals and Objectives

2.1 Vision

The vision by draft NEP reflects its desire to be in line with SDGs. But in its purpose, it is mentioned that the NEP does not wish to limit itself only to SDGs. As such, it should have been beneficial for the NEP to work on monitoring and evaluating activities affecting the environment while also incorporating

preventive measures to ensure that human made disasters would only impact the environment in a minimal nature.

EFL has serious concerns regarding this statement since the concept ‘sustainable development’ invoked in this policy appears to be economic growth that it seeks to remedy. Hence the policy vision is growth focused and seeks to enable exploitation of natural resources.

2.2 Mission

As mentioned above, prevention along with monitoring and evaluation in relation to the protection of environmental resources has not been incorporated to the draft NEP at any level.

Draft NEP is also lacking in any reference to specific regulatory mechanisms to address the themes identified in section 4. This confirms the fact that this policy is development focused and in a manner that would counter environmental protection.

2.3 Goals

The goals of the draft NEP have been developed in such a way that its main priority is the use of the environment for the supplementation of economic growth as opposed to putting the environmental needs first. As aforementioned, the objectives do not also touch any element of precautionary methods of preventing environmental destruction nor address inclusion of a monitoring and evaluation as a goal. Further, the goals mentioned in the policy are not in-line with the Directive Principles outline in Article 28(f) of the Constitution which states “The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka to protect nature and conserve its riches”.

“A sound land use planning system will be in place for the allocation of land resources according to scientific criteria based on a well-defined systems of land use zoning and land suitability classification”

Some commitment is required to ensure that decision making is done based on these scientific criteria and those decisions cannot be overridden by any other forces. Accountability of the state for actions undertaken by the state should be ensured by introducing new mechanisms.

“The integrated approach for managing land, water and forest resources including underground resources will be mainstreamed in decision-making, planning, and management at national, provincial and local government levels”

Since natural borders do not overlap with administrative borders a mechanism should be there to integrate the sectoral planning.

“The extent of forest resources will be raised to one third of the total land cover of the country and maintained at that level as a minimum limit”

There should be a statement regarding the forest cover percentage which should be maintained by the state as an obligation. It should be made as an obligation of the state itself to maintain the forest cover at least 20% or 25% at minimum. This should be one of the criteria taken for consideration in land use planning.

The policy document should also define how the forest cover is to be maintained across the different ecological zones. Preservation of existing ecological zones, and especially the sensitive zones such as the wet zone isn’t provided clearly in the document.

6th National Report on Biodiversity of Sri Lanka² for the Convention of Biodiversity under the Biodiversity Secretariat, where the most updated information on the existing condition is provided is also not reflected in the policy document.

“An integrated system of waste management covering all local government areas in the country will be in place for effective management of municipal solid waste, agricultural and industrial waste, construction and demolition waste, e-waste, wastewater and all forms of hazardous waste”

Equal weight should be given to prevent/ minimize consumption and subsequent waste generation as a goal. This element is missing even though the relevant tools such as 3R, 5R and 7R are discussed.

There should also be a focus on resource recovery as well. Concepts such as “Closing the Loop”, “Circular Economy” should be adapted in the future.

“Valuation of ecosystem services and application of environmental economics analytical tools will be made mandatory in evaluation of all investment and resource allocation decisions”

Valuation of ecosystem services and environmental economics should not be used to justify resource exploitation but to make evidence-based decision making.

“Compliance with multinational environmental agreements will be mainstreamed to address global environmental challenges, also taking the advantage of emerging global knowledge on green development initiatives and nature-based solutions including ecosystem-based risk reductions”

Conceptual and behavioral changes of the public are very much required in achieving these goals (eg: changing consumption patterns, reducing waste generation, accepting reuse and recycling, resource pooling/ sharing, sustainability over convenience). Therefore, public awareness and education is essential.

2.4 Objectives

The objectives reflect the same principle visible in the goals which is its bias towards economic development as opposed to environmental protection. Further, the draft NEP does not contain how it intends to achieve the set goals and objectives. This is an essential requirement as to why the NEAP must also be developed in line with the NEP as opposed to acting as a separate instrument free from the obligations of NEP.

“To create incentives for investing on sustainable practices in agriculture (e.g., organic farming), industry (e.g., cleaner production practices) and services (e.g., transport, eco-tourism and nature-based tourism) for win-win economic, environmental and social outcomes”

Need to increase public/ institutional/investor awareness and demand for environmentally friendly products/ processes to generate competition among the industries and suppliers - Eco labels, eco designs, green procurement, awarding front runners, etc.

3. Key Policy Principles

3.1 Sustainable Development and Green Growth

Definition of ‘Sustainable Development’ appears to have been extracted from World Commission on Environment and Development's Brundtland Report 1987 titled, ‘Our Common Future’ which acted to crystallise intergenerational equity principle in environmental conservation. Accordingly, meeting the needs of the present without compromising the ability of the future generation to meet their own needs

² MoMD&E 2019 Biodiversity Profile - Sri Lanka, Sixth National Report to the Convention on Biological Diversity, Biodiversity Secretariat, Ministry of Mahaweli Development and Environment, Sri Lanka. pp.200

is commendable. Furthermore, this principle has been recognized in the celebrated case of *Bulankulama and Others v Secretary, Ministry of Industrial Development and Others*.³

Definition for ‘Green Growth’ in the draft NEP can be attributed to the Organisation for Economic Co-operation and Development (OECD). As mentioned, Green Growth is not a replacement for Sustainable Development, but a practical and flexible approach to achieve progress across economic and environmental pillars. However, the definition of Green Growth which is, ‘fostering economic growth and development while ensuring that natural assets continue to provide the resources and environmental services on which our well-being relies’⁴ takes an economist’s view at conservation, that is ensuring that natural assets can deliver their full economic potential on a sustainable basis. OECD lays down the aims of Green Growth as; enhancing productivity, boosting investor confidence, opening new markets, contributing to fiscal consolidation and reducing risks of negative shocks to growth. However, upon a planet with finite resources, Green Growth principle does not particularly address how to mitigate resource depletion due to higher consumption of resources.

A Strategic Environmental Assessment (SEA) is a crucial procedure and document which is used in sustainable development, which allows for zoning of areas and identification of sensitive zones whilst safeguarding the environment. Although in this policy document the SEA is briefly and vaguely mentioned under sections 4.5.1.9 and 4.5.2.5, SEA should be a part of the policy principle itself. Apart from the EIAs already implemented, the CEA has amended the National Environmental Act to make Strategic Environmental Assessment a legal requirement in the country, which is also not mentioned anywhere in the policy document.

3.2 Polluter pays, Beneficiary pays and the Compensation

Polluter pays is a principle that has been recognized in international law, under Principle 16 of Rio Declaration on Environment and Development 1992 (Rio Declaration 1992). While it tasks the polluter to pay for his pollution, it shall not offer the recourse to the polluter to buy his way out as well, because ‘damages’ in Civil Law or ‘fines’ in Criminal Law, would lose their essence and not cater to the initial purpose of their concepts. What remains to be clarified is who to determine who the “polluter” is.

Whilst health and environment is mentioned under this principle, livelihood activities with respect to the polluter pays principle is not mentioned. It is to be noted that livelihood activities are also tied closely to this principle, as was apparent in the Chunnakam power plant case⁵.

Additionally, when considering the polluter pays principle, the CEA has carried out relevant amendments to the NEA to charge industries according to pollution load, and are about to implement the laws of the act, which is not reflected in this draft document.

Beneficiary pays principle is also commendable as the ecosystem services can be maintained and nourished with the payments made. However, this principle shall not tamper with public access to public places.

3.3 Life Cycle, Circular Economy and 3R

Taking a holistic approach to assess the environmental impact at each stage of a product’s life cycle is praiseworthy as Sri Lanka has an unsolved waste problem whereas it is reported that:

³ [2003] 3 Sri LR 243 at 276 and 277.

⁴ ‘What is green growth and how can it help deliver sustainable development?’ (OECD, 2018) <<https://www.oecd.org/greengrowth/whatisgreengrowthandhowcanithelpdeliversustainabledevelopment.htm>> accessed 01 September 2021.

⁵ Ravindra Gunewardena Kariyawasam v. Central Environmental Authority and others, SC FR Application No. 141/2015

‘Sri Lanka generates 7000MT of solid waste per day with the Western Province accounting for nearly 60% of waste generation... According to the Waste Management Authority and the Central Environmental Authority, only half of the waste generated is collected.’⁶

Therefore, when granting approval for Environmental Impact Assessment Reports (EIARs) and Environmental Protection Licenses (EPLs), it would also be holistic to take account of the mega-production plants and the course of life of the manufacturer’s products as most products are mobile and would travel out into other parts of the country without impacting the environment of their origin. Similarly, the Auditor General has noted that there would be a greater increase in electronic waste as well.⁷

Circular Economy is a noble concept that promotes reuse, but it is better to make the used goods to be upcycled and form value-added products than what the goods were previously. This method reduces waste generation and also encourages the public to earn money by effective recycling through upcycling. As the Draft NEP aptly puts it, the 7R concept needs to be publicized so that people rethink and refuse unnecessary luxurious consumer goods.

3.4 Safe Minimum Standards

‘Protecting’ a minimum level of renewable natural resources unless social costs of doing so is excessive is the baseline for the concept. Minimising possible losses as long as social costs are acceptable, is an acceptable practice. Yet renewable natural resources include biomass energy (such as ethanol), hydro-power, geo-thermal power, wind energy, and solar energy, etc. Therefore, how exactly wind power and solar power can be ‘protected’ has not been discussed.

The “Life Cycle” perspective will have to be taken into consideration in identifying suitable renewable energy sources as those may incur other externalities, depending on the location, technology, raw materials, etc.

The Cabinet of Ministers has called for Expressions of Interest to implement renewable energy projects under private sector investments and has targeted to meet 70% of the country’s electricity demand from renewable energy sources by 2030 as hydro-power development has reached a critical point⁸ in energy generation due to increasing energy demand in the country. In this context, emphasis has to be on **maximum** protection of renewable natural resources that generate energy given the statistics of 2017 reported by the Asian Development Bank (ADB):

‘Petroleum, imported as crude oil and finished products, provides the highest share (43% in 2017) of energy to the national economy, followed by biomass (37%), coal (11%), hydro (6%), and new renewable energy (3%).’⁹

ADB also adds that ‘among 15 countries reporting per capita GDP between \$3,000 and \$4,500 (nominal) in 2014, Sri Lanka has the highest energy intensity in the economy, indicating a comparatively higher economic output per unit of energy used.’¹⁰ Therefore, this also concretes the

⁶ ‘Status of Waste Management in Sri Lanka’ (*Environmental Foundation Ltd.*, 14 June 2017) <<https://efl.lk/status-waste-management-sri-lanka/>> accessed 01 September 2021.

⁷ Auditor General’s Department: Performance And Environment Audit Division, ‘ELECTRONIC WASTE MANAGEMENT IN SRI LANKA’ (2016) at page 20 available at <http://www.auditorgeneral.gov.lk/web/images/audit-reports/upload/2016/performance_2016/e_waste/Electronic-Waste-Management-in-Sri--Lanka---Performance-and-Environmental-Aiudit-Report_1-E.pdf> accessed 01 September 2021.

⁸ Item 11 on Cabinet Decisions on 30 August 2021 available at <<https://www.dgi.gov.lk/news/cabinet-decisions>> accessed 01 September 2021.

⁹ Asian Development Bank, *Sri Lanka Energy Sector Assessment, Strategy, And Road Map* (2019) 01 and 07 available at <<https://www.adb.org/sites/default/files/institutional-document/547381/sri-lanka-energy-assessment-strategy-road-map.pdf>> accessed 01 September 2021.

¹⁰ *ibid* 06.

position that it is high time that Sri Lanka also shifts her energy sources to renewable and natural resources.

That a system of ‘protection’ supplements a ‘cost-benefit analysis which places greater emphasis on the protection of the environment when thresholds of irreversible damages are involved’¹¹ is questionable. Steps have to be taken to protect the environment despite that the damage faced by it due to energy projects is irreversible or reversible.

3.5 Precautionary Principle

This principle is also recognized under Principle 15 of the Rio Declaration 1992. Caution is necessary when making decisions in situations with high levels of uncertainty. Draft NEP states that precautionary principle comprises of four components namely: taking preventive actions in the face of uncertainty, shifting the burden of proof to the proponents of an activity, exploring a wide range of alternatives to possibly harmful actions, and increasing public participation in decision making.

Precautionary principle in action can be further strengthened via the EIAR process by facilitating effective public participation and conducting capacity building programmes for the Project Approving Agencies (PAAs) and for experts who compile EIAs and by imposing a duty of good faith on the project proponent and the experts.

3.6 Rewards, Stewardship and Reciprocity

Recognizing the crucial role played by individuals and organizations that care for nature is a step forward to also recognizing that the civil society organizations and non-governmental organizations are a voice for many people and wildlife adversely affected by environmental destruction or unsustainable, erratic development projects. However, it is not only a role that organizations have to play, but also a civic responsibility in management and conservation of environmental resources.

Therefore, NEP has to provide a pathway to inculcate in the public that every action of theirs matters for environmental protection and that they also have a role to play. Affirmative responses by PAAs when public comments are submitted to them during the EIA process also uplifts the legitimacy and social acceptance of the development projects that are proposed.

3.7 Equity, Inclusiveness and No one left behind

The objective of Draft NEP under this concept is to distribute benefits of sustainable development and ecosystem services among all members of the society and be shared equitably to the maximum extent possible. Without discrimination all persons are included in sustainable use, management, and protection of environmental resources.

Thus, intra-generational equity is reflected in this concept. However, attention must also be paid to the inclusiveness of the differently abled, and the elderly. Benefits have to be shared across regions without accumulating benefits in one region as adverse effects and positive effects of development projects and environmental conservation are transboundary concerns that need to be addressed.

3.8 Planetary Boundaries

The planetary boundaries are namely: ‘biosphere integrity, climate change, novel entities, stratospheric ozone depletion, atmospheric aerosol loading, ocean acidification, biochemical flows, freshwater use, and land system change.’ Draft NEP focuses on international cooperation to maintain the world’s actions within the limits of safe operations of the boundaries identified. Sri Lanka being an island nation,

¹¹ Draft NEP 2021, 12.

most of the aforementioned boundaries are caving in for Sri Lanka as the country is ranked as the sixth in the Global Climate Risk Index 2020¹².

3.9 Common but differentiated responsibilities

This principle recognizes the necessity of assigning differentiated responsibilities to each stakeholder according to variable contributions by different parties or actors to the problem concerned, stage of development of respective countries and their distinct capacities to address the problem according to Draft NEP. It is a progressive step that identifies that each individual's role could be different but still common in the endeavor to achieve sustainable development.

Although the suitable principles have been identified, the use of those principles in the policy statement is not very clear. Some policy statements are very specific (like action points) while some are very broad and conceptual. It has to be consistent across the document and the languages used has to be coherent and apt.

4. Policy Statements

4.1. Land and Water Resources

As land and water resources are two different and separate concepts, it is suitable to divide this into 2 separate policy statements as the content is diluted when combined together.

4.1.1 Integrated management of land and water resources, national spatial strategy and land use planning

4.1.1.1. Land and water resources in the country will be brought under a framework of integrated resource management so that competing demands for land and water are balanced to optimize economic, social and environmental benefits that are shared more equitably.

This section only discussed land management, the theme itself is misleading as it only discusses one aspect of the resources.

Integrated land and water resource management is a practice that has been tried and failed, mainly due to fragmented ministries and lack of coordination between the key agencies. The draft NEP should stress the importance and introduce a rational organization of sectors for integrated management. The policy should also stress the importance of rational fragmentations of organizations. This draft NEP does not address the integration of organizations, and certain statements in the policy do not reflect the realities in the country. Additionally it should adequately cover mechanisms via which the integration should happen. As the problems and issues which have already been tackled are known, a policy which does not understand that and does not address matters in a practical sense is meaningless.

There is also a mismatch between sections on the draft NEP, as under the goals of the policy it mentions that one-third of the country should have forest resources, which is not reflected again in land and water resources section. It is essential item that should be included.

SEA should also be included in this section as the national spatial strategy and land use planning is an element of this section. SEA is a crucial element for land use planning and zoning.

In May 2021 the World Bank signed on with the government for a water sector development project mainly involving repairing dams and preparing a water resources plan within the next 2 years there will be a plan for the upper Mahaweli watershed. The Ministry of Irrigation with GCF funding to implement

¹² 'Global Climate Risk Index 2020' (Germanwatch, 2020) <<https://germanwatch.org/en/17307>> accessed 01 September 2021.

this plan as well, and money is also allocated for Ministry of Environment which is the mandated organization to implement the 2004 national watershed policy.

The water policy which currently being drafted is currently with the Secretary of Ministry of Irrigation after being prepared by a Prime Minister's appointed committee. As such the priority is given to this and the Ministry of Irrigation has been requested to identify water sources, around 78, and the committee and Ministry of Irrigation are currently planning these storages and diversions to obtain this required water supply.

In parallel one trillion rupees have been allocated to extend the potable water network within the next 4 years by the NWSDB. Additionally, there are activities undertaken for water security, water resources development, trans basin diversion, and water governance and other. But the draft NEP has been prepared without looking at these current activities or the past actions which have been undertaken. The draft NEP should provide a way forward till 2030 or 2050 as actions plans have already been prepared for medium term till 2030 and long term till 2050 and these documents are available currently.

4.1.2. Environmentally sensitive land and water resources

4.1.2.1. Environmentally sensitive land and water resource assets in critical locations (e.g., upper watershed areas, reservoir/tank catchments, river reservations, lands above 1500 MSL, lands with > 60 % slope) will be earmarked for strict conservation with minimal developments allowed

It could be reworded to mention '*either strict conservation OR minimal development*' as much of the country's land masses are developed, currently under development or has planned developments. Level of minimum development allowed, identification mechanisms, restriction mechanisms, and other crucial elements which would provide basis for development of action plans is lacking in this section. Additionally the language of this section provides room to override conservation aspects.

In the country there are rivers and watersheds which are below the elevation mentioned in the draft NEP and which are also critical. Focusing only on the upper watershed only is not holistic as the critical watersheds where majority of population is located at should be considered as well.

4.1.2.3. Critical watersheds and other sensitive land and water resource systems will be classified according to the level of degradation and 'integrated land use and water resource management plans' will be prepared and implemented based on the type of classification of lands

This section should also consider restrictions and limitations to be demarcated and implemented depending on level of degradation of the watershed. Although 4.1.2.1 discusses the restriction on developments in watershed it mainly focuses only on the physical aspects of the watershed to depict the sensitivity of the watershed.

4.1.2.5. Rivers and associated systems of riverine resources will be brought under scientific management by developing river basin plans, establishing guidelines for minimum river flows, restoration of river banks and catchments, protection of sensitive ecosystems and by strengthening legal and regulatory provisions to control illegal interventions (e.g. construction in river banks, illegal mining) by setting up institutional arrangements for river basin and trans-basin management with necessary capacity building measures

This section should also mention implementation of restrictions of water pollution (single source and multiple sources specifically) tying in with the NEA. It should also mention conservation of point specific or region specific aquatic flora and fauna (it mentions sensitive ecosystems but classification isn't specified).

Additionally it should refer to, or reflect, what is mentioned under 4.4.2. Management of water pollution.

4.1.2.6. The existing system of managing ‘landslide prone areas’ to reduce the vulnerability to landslides will be strengthened further by undertaking scientifically designed actions to stabilize identified locations (especially in sloping areas), increasing the public awareness, establishing early warning systems, enhancing disaster preparedness, facilitating emergency evacuation and relocation of vulnerable groups including involuntary resettlement

This section should also consider increasing public awareness regarding not just the problem, but also on natural remedies for erosion control and slope stabilization which can be implemented at household level.

Lessons learnt from Mahaweli developmental programs, flood risk mapping projects, flood mitigation strategies should be addressed here.

4.1.2.7. Sustainable land and water management in age-old cascade and individual tank systems will be promoted to mitigate floods and droughts, provide ecosystem services for people and animals and to share resources equitably without conflicts

The wording should be amended as ‘*cascade tank systems and individual tanks*’.

Additionally the existing problems of landfilling, sedimentation, misuse, mismanagement, pollution and lack of maintenance should be addressed here.

4.1.2.8. Regulatory measures will be introduced to ensure sustainable management of scarce ground water resources together with guidelines for; (a) scientific assessment of aquifers, types and potential storage capacity, (b) monitoring their extraction levels to control overexploitation, and (c) optimal use of shallow groundwater in conjunction with surface water sources and rainfall

This section should also address prevention of groundwater pollution mechanisms, especially with regard to rural areas fecal coliform pollution, plastic pollution, and increasing communities’ awareness on groundwater pollution.

There is no control on groundwater extraction and pollution at the moment, and there is a lack of regulations on groundwater management which is a serious issue when considering extraction limits, quality of groundwater and similar aspects. The existing commercial extraction groundwater such as by the coca cola company and similar should be addressed. Additionally there are currently no regulations on bottled water industry as well.

4.1.2.9. Natural and artificial recharge of aquifers that augment groundwater storage will be promoted with a view: to mitigate floods and droughts; to provide water supply for domestic, irrigation and industrial sectors; to contribute to maintain minimum environmental flows in the rivers; and, to prevent salinity intrusion in the dry-seasons

Natural and artificial recharge of aquifers should be considered only after carrying out sufficient studies to ensure sustainability of the option. When considering current pollution levels, aquifer physio-chemical characteristics and the extraction of existing aquifers, this option will be unviable and detrimental unless carefully studied.

4.1.3. Participatory management of land and water resources

4.1.3.6. Regulatory mechanisms (e.g., permit systems and approvals) involved in extractive uses of land-based resources (e.g., sand, minerals) will be revisited and necessary amendments introduced for balancing the interests of commercial uses and needs of environmental conservation including mandatory conditions for restoration of sites after permit period in line with arrangements proposed for restoration proposed in 4.1.2.4

This section only discusses land based resource extraction regulations. As the topic mentions both land and water resources, marine and inland water resource extraction should be mentioned here, or reference should be given to the relevant areas of the document (such as 4.4.2.3).

Existing policies for permit issuance and approval systems are not mentioned in this section, nor the mechanism for changing these existing system nor the areas to be changed as per the proposal in draft NEP.

This section should also consider regulation and control of extraction of freshwater fauna for inland and international trade such as exotic fish trade. These elements are not mentioned in the policy document. Additionally consideration should be given for facilitation of scientific research, understanding baseline conditions and monitoring.

Community participatory approaches has been in motion since early 1990s, however wildlife department and forest department ordinances does not allow for communities to be truly engaged and legally in ideas such as co management and such, except in cases where the FD was willing to give leeway. Until these ordinances such as the Flora and Fauna Protection Ordinance (FFPO) and legal aspects are in place, it is difficult to engage the public properly in community management and engagement practices. The change in policy to allow proper community engagement process, should be mentioned in the draft NEP as well, where the community becomes a party to the process.

Although the forest ordinance will undergo changes to be less strict and more flexible as in the near future, the FFPO cannot be changed or amended as it would lead to other legal ramifications.

The coordinating body of the policy has been in place since 2003, and in the previous NEP it was highlighted. Sectoral management of water resources has been a crucial issue for a while, but this need is not reflected in the draft NEP.

4.2. Biodiversity and Ecosystems

The topics which are discussed in this section are activities and concepts which are already being implemented. Instead it should discuss how the existing concepts and processes can be strengthened, how these can be modified to suit the current environmental status, new directions which can be taken, how to meet global directives and community thinking and similar. As the topic discusses two separate themes the principle should be divided separately as well.

The draft NEP does not give due consideration to the key recommendations and actions as outlined in the 6th National Report 2019² to the Convention on Biodiversity vested in the Biodiversity Secretariat, MoE.

When it comes to the term of sustainable use of biodiversity resources and ecosystems, such an idea does not exist within the laws of the country. The FFPO does not allow for any such use, and recently the Wildlife department had given notice to the attorney general's office that the FFPO does not allow for commercialization of biological resources. In the case of the first element, draft NEP should at least consider the existing in situ protection of flora and fauna, identifying the problems of the present system, the next steps to be taken, and the action plan can be developed within these steps to be taken.

It is recommended that the draft NEP recognizes the importance of the promotion of citizen science approaches for generating important national biodiversity data sets that will enable wider and broader based decision making. The integration of citizen science is recommended within school curriculums.

Further, financing of research work relating to biodiversity and ecosystems is imperative, and is lagging nationally. The establishment of financing models is a suggested value addition to the policy.

4.2.1. In situ management of flora and fauna

This section only focuses on protected areas. It should also address protection of both flora and fauna outside the PAs. Management of flora and fauna is mandated by the FFPO and FO and applies island wide.

This section should evaluate the ecological coherence of the protected areas management plans.

4.2.1.2. Urgent action will be taken to enlist sizeable patches of undeclared natural habitats by demarcating boundaries and gazetting them under suitable categories of protected areas (PA) managed by Forest Department and Department of Wildlife Conservation

This is an absolute priority and needs to be evaluated urgently, the 6th National Report to the Convention on Biological Diversity² identified that Sri Lanka's rare and endemic fauna and flora are concentrated in the wet and montane zones that have the least percentage of protected areas. Since, recent government land circulars including MWFC/1/2020 directly threatens these critical habitats that do not fall within Sri Lanka's formal protected area network this is an urgent priority that needs to be actioned with available data and information in national data sets.

4.2.1.5. Measures will be taken to identify degraded areas of natural forests using modern surveillance technologies proposed in 4.2.1.3 and to reinstate them by applying ecosystem-based approaches; using the funding arrangements proposed in 4.1.2.4 where applicable

Classification of watersheds mentioned in item 4.1.2.1 should be considered during demarcation of undeclared natural habitats (4.2.1.2) and PA (4.2.1.3) and vice versa.

4.2.1.6. Small patches with unique biodiversity located outside the protected areas will be brought under the conservation with the participation of local communities through co-management and public-private partnership

This section should specify who will be the accountable government party for these unique hotspots. At a national level a structural framework is required to be developed for the co-management of these environmentally sensitive areas.

4.2.2. Conservation of wetlands

This section should consider provisions for protection of sensitive flora and fauna in wetlands.

It is worth considering the use of riparian zone as vegetation corridors and refuges for wildlife, and particularly in an urban setting. Visible demarcation of the wetland boundaries (inclusive of the seasonal fluctuations) to facilitate conservation should be addressed.

It is recommended that wetland management plans be developed for each unique wetland ecosystem - for the protection and sustainable utilization of these valuable ecosystems.

4.2.2.1. Wetlands management will be integrated by: • Organizing the management under participatory 'integrated land use and water resource management plans' in local areas, • Linking fragmented patches using vegetation corridors to protect biodiversity, • Restoring degraded wetlands with the support of local communities

This should also tie in with the watershed management (4.1.2.1) and undeclared natural habitat protection (4.2.1.2).

4.2.2.3. Disposal of solid waste into wetlands will be controlled by introducing new regulations to strengthen the conservation of wetlands and strictly implementing participatory management plans

This statement only mentions solid waste specifically. Unregistered and illegal liquid waste discharges should also be considered.

4.2.3. Regulating, controlling and monitoring of losses, threats and conflicts on biodiversity

4.2.3.4. Current strategy to minimize the human elephant conflict (HEC) by confining the elephant population within PAs will be revisited and an integrated approach for managing elephants in village areas as well as inside PAs will be explored with special focus on....

Recognizing that the current strategy to mitigate HEC needs to be “revisited and an integrated approach for managing elephants in village areas as well as inside PAs will be explored” is a positive as the current strategy is not working. It is imperative to implement policy and plans that are based on science and data based on a landscape approach including and use of the provisions under the FFPO to declare MERs.

The bullet points 5 that lists translocation as a mitigation measure for HEC, is against the established science on the translocation of elephants in Sri Lanka.

“Translocation caused wider propagation and intensification of HEC, and increased elephant mortality. We conclude that translocation defeats both HEC mitigation and elephant conservation goals.”¹³

Thus we firmly request for this mitigatory measure to be taken out from the draft NEP.

Management and regulation mechanisms for prohibited methods and techniques of fishing and illegal fishing inland waters should be elaborated as only a single paragraph mentions this aspect in the draft NEP.

4.2.3.5. The situation of economic damage from other fauna than elephants (e.g., purple faced langurs, macaques, porcupines, peacock, giant squirrels etc.) will be assessed through surveys and necessary measures will be taken to assist local communities in mitigating losses by organizing economic relief through risk management instruments such as insurance products

It is suggested that a comprehensive policy directive indicates an acceptable and unacceptable mitigation measure for dealing with HWC in Sri Lanka.

4.2.4. Sustainable use of biodiversity resources and ecosystems

4.2.4.1. Biodiversity resources of the country will be harnessed in a sustainable manner for eco-tourism and nature-based tourism under the well-designed protocols to prevent compromising the protection provided for critical habitats, ensuring a sustainable flow of income for local communities and the national economy

Sustainable tourism needs to be addressed in more detail in the draft NEP. This statement is vague and does not give directives on restrictions, limitations or protocols which should be introduced in the space of existing eco-tourism, agro-tourism and sustainable tourism currently in place in the country. This section should also tie in with 4.1.1 where zoning plans are to be developed as the placement of the tourism facilities should be considered as well.

4.2.4.2. Management of existing facilities for ex-situ conservation of biodiversity will be strengthened by enhancing the nexus between in-situ and ex-situ conservation facilities to achieve higher overall outcome of conservation of species and genetic diversity and establishing new facilities to support conservation, research and education, recreation for public and income generation

¹³ Fernando P, Leimgruber P, Prasad T, Pastorini J (2012) Problem-Elephant Translocation: Translocating the Problem and the Elephant? PLoS ONE 7(12): e50917. <https://doi.org/10.1371/journal.pone.0050917>

Promoting the cultivation of traditional/local food varieties, and securing of gene pools of local and endemic food species should be addressed in the draft NEP.

4.3. Coastal and Marine Resources

The concept of law of the sea is not mentioned anywhere in this draft NEP, and this document has coastal and marine resources elements mixed in without classification of the legal zones of the sea and Sri Lanka's rights on these zones- such as the coastal zone which is legally defined, internal waters which are also marine areas which is the areas close to the islands in the North, territorial sea which Sri Lanka has complete sovereignty over, the EEZ and the future projection for continental shelf mining and other resource use for which Sri Lanka will only have sovereignty over the natural resources.

This section is very lacking especially considering the legal aspects of marine waters; such in areas where sovereignty over natural resources are present then the country has the obligation to protect the resource which is specified in international and domestic laws. There are existing legislations regarding these aspects which needs to be developed as well. Mixing these elements with items such as mangroves and other elements creates a disarray and as such this whole section needs to be reorganized. This draft NEP should pave the way to future legislations, future regulations, be a basis for institutional cooperation and so on.

4.3.1. Conservation of coastal and marine ecosystems

4.3.1.1. Information on coastal and marine ecosystems including mangroves and coral reefs will systematically be collected and updated periodically to monitor, report and review the changes in systems so that better evidence-based decisions can be taken on the management of resources

Scientifically designed natural succession programmes to restore degraded patches of coastal and marine ecosystems should be organized with the participation of community organizations, private sector and civil society organizations with benefit sharing schemes for local communities in line with the financial mechanism proposed in 4.1.2.4 that assigns the burden to parties responsible for degradation.

4.3.2. Management of coastal erosion

4.3.2.3. Necessary amendments will be introduced to strengthen the existing legal and regulatory provisions to control drivers of coastal erosion such as sand mining to enhance the beach stability and control the process of shoreline retreat

In addition to legal and regulatory provisions, mechanisms for monitoring developments on the coastal areas (in connection to the existing Acts and other control mechanisms) should be addressed in this section.

Provision for increasing or amending regulations for sand mining (in coastal areas and also in rivers) should be referenced in this section.

4.3.3. Management of coastal and marine pollution

Pollution aspects actually applicable to this section is not listed out. Aspects of coral mining, dynamite fishing, illegal fishing techniques usage, and marine pollution such as oil pollution is also not given proper emphasis nor details.

4.4. Pollution Prevention, Control and Waste Management

Mechanisms for facing and mitigating man-made disasters and pollution such as was in the case of Xpress Pearl, along with mechanisms for tackling such problems should be included.

This section should also consider inventorization of existing pollution sources and levels.

4.4.1. Management of atmospheric pollution

4.4.1.1. Air quality status throughout the country will be monitored regularly by establishing an integrated network of air quality monitoring facilities in strategic locations. Information generated from these facilities will be made accessible to the public to create awareness on level and impacts of pollution

This section only addresses the monitoring of air quality status and making the information available to the public. It does not mention how this information will be utilized so as to ensure better air quality.

Open burning of solid waste including post-consumer plastics will be minimized by efficient implementation of relevant legal and regulatory instruments and supporting market-based mechanisms inclusive of extended producer responsibility (EPR) and 3R systems in collaboration with private sector and local authorities.

However, as long as these are voluntary schemes, these mechanisms are unlikely to be followed, as such it needs to be made mandatory.

With regard to atmospheric pollution there is no mention on transboundary pollution, considering that Sri Lanka is at risk of that.

4.4.1.2. Air pollution from stationary sources such as power generation plants, industrial facilities, waste management facilities will be minimized by promoting alternatives that include but limiting to cleaner production technologies, improving the energy efficiency, fuel switching and improving combustion efficiency, high-efficient end of the pipe treatment technologies and renewable sources of energy

This section has no mention of banning the use of fossil fuels. Although the technologies are mentioned, there are no details on implementation, accountability and other crucial details.

4.4.1.4. Indoor air pollution will be brought under the control by increasing public awareness on household level improvements including improved household cooking and heating technologies, less-polluting household fuels and better structural designs of household facilities (e.g., kitchen designs etc.)

‘Smart designing’ can be used as a term in this section. Additionally, setting energy efficiency standards for electrical equipment could be used as a strategy.

4.4.2. Management of water pollution

This entire section is too vague and does not provide actual solutions.

4.4.2.3. Intrusion of saltwater into rivers and other water sources in coastal areas will be brought under control by maintaining river flow levels through efficient flow management and nature-based solutions, controlling sand mining in areas near river mouths, strengthening monitoring systems, establishing essential infrastructure facilities (e.g., salinity barriers and gate systems) and building the institutional capacity of relevant organizations at national and sub-national levels

Nature Based Solutions is a broad concept and how it is applied here is not sufficiently described. Additionally river erosion is also discussed in 4.1.2.2, and reference to these relevant areas should be given as well.

It is recommended that discharge and effluent standards that are currently in place be amended with a long term goal of abolishing inland water discharges.

The draft NEP should facilitate actions which are striving for better environmental practices and more stringent environmental standards.

4.4.3. Sustainable management of solid waste

4.4.3.1. Holistic approach towards solid waste management (SWM) based on life cycle approach, sustainable production, and consumption, circular economy, and 3R and related principles will be mainstreamed at all levels of operation—household, local government, provincial and national

Instead of focusing on 3R, extended and further developed management mechanisms such as the 5 R's: Refuse, Reduce, Reuse, Repurpose, and Recycle, should be adapted instead.

Need to include policy statements to reduce generation of solid waste. Market-based regulations would be required (for example banning single use plastics, satchel packs, low-volume PET bottles, etc.). Banning of open burning and dumping into public lands should be addressed in this section as well.

4.4.3.2. An integrated national system of solid waste management will be established by adopting measures that include but not limiting to: ...

Integrated national system for solid waste management is very clearly described in a stepwise manner whereas 4.4.2.3 NBS is just mentioned as a concept. This is an example for showing the lack of consistency in the structure of the draft NEP.

The current strategic plans being developed for solid waste management are not adequately reflected in the draft NEP. This issue is common for other sectors as well. These activities and actions are not reflected in the draft NEP, as the objectives listed in this statement are similar to what the goals of the SWMP already in place.

There is no reference to existing acts and standards of CEA for solid waste management.

Even in other countries measures to handle plastic pollution had become problematic due to the pandemic and also increased use of plastics such as PPEs. In the country as well, management of solid waste is weak and was inadequate during the pandemic time. Aspects of managing waste during a disaster or during difficult times should be addressed as well.

However a crucial item missing is the regulatory enforcement of solid waste management, especially considering the non-success of CEA on that aspect.

4.4.3.3. The situation of managing hazardous waste that involve clinical waste from health facilities, various types of toxic industrial waste and persistent organic pollutants (POP) will be upgraded by introducing new technology, establishing required infrastructure, amending existing laws and regulations and enhancing institutional capacity for implementing programmes and strengthening the monitoring at local, provincial and national levels on regular basis

This statement is very vague, as it mentions that these aspects will be introduced. The specific method or mechanism for tackling this aspect, the current situation of illegal dumping into landfills, waterbodies and wetlands should be addressed in this section.

Currently there aren't any government facilities (except for one private facility) or practices for management of hazardous wastes in the country. These are crucial issues which should immediately be addressed, but which are not mentioned at all in the draft NEP but technically should provide ways forwards.

4.4.3.4. The existing laws and regulations will be strengthened to take swift action against international dumping of waste in the country and the institutional capacity of relevant organizations will be enhanced for efficient implementation

Disaster waste management planning, as well as mitigation and action planning for international pollution via sea and also via ships (such as was the case in Xpress pearl and plastic nurdles) should be addressed here in detail.

It is recommended that the management mechanisms of existing related issues of the pandemic be addressed in this draft NEP, especially considering that the policy will come into implementation during this period. The draft NEP should address management mechanisms for environmental consequences of the pandemic, pollution due to pandemic, and similar issues should be mentioned in the document. This current situation can be considered an environmental disaster and the policy should mention methods for facing and mitigation environmental disasters in addition to floods and droughts. There should be details on managing disaster induced environmental issues, environmental health, social challenges and such.

4.4.3.7. Public awareness will be raised to change attitudes towards waste such that ‘waste is a resource rather than nuisance’ by conducting awareness campaigns along with supportive measures for offering incentives to reuse and recycling of waste, extending the coverage of waste collection to all households, making necessary adjustments in legal and regulatory framework and strengthening institutional capacity to monitor actions of negligence

This statement should be reconsidered if there is an intention to reduce generation of waste as reduction is always better than reusing or recycling.

4.4.4. Managing other forms of pollution: noise, visual, thermal, light, and radioactive pollution

Pollution in scenic areas, conflicting developments and such should have more details, and should be included in this section. There is currently too much leeway given to hoardings and outdoor advertising without control which needs to be addressed strongly in the draft NEP as well.

4.5. Climate Change and Global Environmental Challenges

4.5.1. Climate change: adaptation, mitigation and loss and damage

4.5.1.6. Measures for reduction of GHG emissions will be selected so as to maximize co-benefits such as improvement of environmental quality, increased energy security, food security reduced dependency on imported fossil fuels and enhanced health benefits by promoting options that include but not limiting to;...

There is no mention of reducing the use of fossil fuels, and there is only a mention of energy efficiency and Renewable Energy. As per the international treaties which Sri Lanka is obligated to, as well as the SDGs which are within the national planning context, minimization and long term goal of banning GHGs should be addressed in this section.

4.5.1.8. Prospects for harnessing carbon pricing instruments (CPIs) represented by emission trading schemes and carbon taxes will be explored and necessary measures will be initiated to establish a globally integrated national carbon market for transacting carbon credits

A Cap and Trade system to control industrial carbon emission is recommended.

4.5.1.9 Measures will be initiated to introduce a ‘climate change impact assessment (CCIA)’ as a part of strategic environmental assessment (SEA) and environmental impacts assessment (EIA) procedures in evaluating investment plans and projects on which climate change is deemed to have significant implications for identifying and quantifying positive and negative contributions of projects to GHG emissions (mitigation impact) and positive and negative contributions to overcome critical impacts of climate change (adaptation impact)

This is an urgent requirement and will directly assist with Sri Lanka's obligations in meeting NDCs laid out as per the UNFCCC. It is recommended for this to be widened in scope and to be a prerequisite for all projects prior to commencement. In addition, projects/ businesses should be evaluated on their climate change impact on a 5 year basis, and accounting mechanisms should be established to hold parties accountable.

4.5.2. Other international environmental challenges

4.5.2.3. The government policy towards joining and ratifying MEAs will be streamlined by developing criteria for:....

Timely ratification of relevant international treaties and agreements are vital.

4.6. Built environment and green development

4.6.1. Green cities and townships: greening the built environment

4.6.1.1 In line with the policy on National Spatial Strategy (NSS) articulated in 4.1.1.2., green urban planning and designing concepts and practices will be made into optimal use with modern techniques of urban planning to ensure eco-friendly zoning, construction and maintenance of built environment

How this new concept of the National Spatial Strategy ties in with existing policies of national physical planning and land use planning, along with master plans and developmental plans for cities needs to be explored. It is best that existing plans are revised and gaps are addressed rather than making new strategies.

4.6.1.3. All forms of built environment will be designed to be climate-smart by mainstreaming climate resilient buildings and infrastructure, promoting nature-based solutions such as green shade around buildings, installing permeable brick pavements and cool roofs to cool the environment, and building the flood resilience by conserving and protecting the existing wetlands and creating artificial wetlands

Reuse of materials and using environmentally friendly materials for construction can also be considered.

There should be consideration given for inclusion of domestic rainwater harvesting, promoting urban agriculture and maintaining a suitable % of natural areas within an urban setting.

The green building association has been involved in developing the guidelines for roads and buildings sectors, and integrating these elements into the policy document should be carried out. However the mechanism for implementation of the guidelines is the critical item which can be developed.

Urban development regulation creates difficulties in allocating space on roads and buildings for tree planting. It is recommended to amend these regulations to provide the required space.

4.6.2. Green development and manufacturing

4.6.2.1 In line with the policy on National Spatial Strategy (NSS) articulated in 4.1.1.2., eco-industrial parks will be established in zones especially identified for industrial activities by the NSS with well-established safeguard facilities to minimize the environmental damage from industrial facilities

The main concept of eco-industrial parks is having the industries and the communities to engage in managing and maintaining the resources as well as waste. Methods for engagement of the community (apart from provision of jobs) has to be addressed; such as the legislative nature of engagement and the mechanism for engagement.

4.6.2.2. Use of resource efficient cleaner production (RCEP) technologies and green manufacturing practices will be encouraged to minimize industrial process emissions and to optimize the application

of preventive environmental measures thereby reducing the risk of air, water and soil pollution on human health and the environment

Preventative environmental measures is a very broad theme and the strategy for accomplishing this goal is not mentioned.

4.7. Cross-cutting Issues and Challenges

These challenges and issues should be integrated into the policy principles and the way forward should be addressed.

4.7.1. Institutional coordination

4.7.1.1 Appropriate mechanisms will be set up to ensure the coordination among multiple government agencies involved in environmental management, vertically (between national and subnational level agencies) and horizontally (among national or subnational agencies) whenever necessary according to needs of actions/programmes in operation

Specific mechanisms for inter-government and intra-governmental departments and ministries for communication and coordination of programs and projects have to be well thought of and practical. Existing issues and challenges have to be looked into and solutions and mechanisms for smooth progress of coordination should be detailed (such as having personnel dedicated specifically for coordination of projects and/ or a department).

4.7.1.2 Necessary institutional linkages will be established to enhance the cooperation between government institutions and non-state actors (private sector, NGOs, community organizations) so that strengths of respective stakeholders are harnessed to better overall outcomes of sustainable development

Communications between the governmental bodies and the CBOs/ public will be an essential link to ensure transparency as well continuity of the project benefits and functions. As such it is essential that dialog with the public is maintained in a specific manner. The specific details of how these 'linkages' will be set up should be mentioned.

4.7.1.3 The role of community-based organizations for management of environmental resources will be recognized and necessary measures to facilitate their cooperation in community-based management of common pool resources (CPR) and/or co-management of ecosystem services in partnership with the Government and non-state actors will be ensured and upheld

Although CBOs will be managing the environmental resource in a specific area, it is essential that continued monitoring along with supervision of a governmental body is kept to ensure sustainable use (only in case of the renewable resources). For non-renewable resources, effective strategies for sharing and allocation for future use must be considered.

4.7.2. Resource mobilization

4.7.2.2 Innovative schemes of funding for biodiversity conservation, climate change mitigation and adaptation, and disaster risk mitigation through instruments like biodiversity finance initiative (BIOFIN), emission trading schemes (ETS), reducing emissions from deforestation and degradation of forests (REDD+), index insurance schemes and schemes of payment-for-ecosystem services (PES) will be encouraged and facilitated with the partnership of private sector, international donors and civil society organizations

Proper educational and training programmes should be carried out to identified stakeholders regarding environmental-based income generation methods such as BIOFIN, REDD+ and carbon credit systems.

4.7.2.3 Prospects for introducing nature-based offset, compensation and investment mechanisms for conservation and restoration of affected ecosystems like conservation banking, mitigation banking, habitat banking and tree banking will be explored, and pilot schemes initiated to test the successful models for scaling-up

This aspect should be in line with details given under 4.1.2.4, 4.1.2.5, and 4.1.3.6. Consistency of the document should be maintained throughout the draft NEP.

4.7.3. Market-based instruments

4.7.3.1 Adoption of market-based instruments (MBIs) to find solutions for environmental challenges will be encouraged as a viable and legitimate alternative/complement for command and-control measures

Specific details on which governmental agency/ies will be in charge of promotion and adoption of MBIs should be considered, along with a mechanism for standardizing the MBIs across the country.

4.7.3.5 Adoption of green accounting systems and mainstreaming the use of economic values of ecosystem services in decisions on macroeconomic and sectoral policies in the country will be encouraged and vigorously promoted

Valuation of non-market ecosystems should be a standard for EIA/IEE and other environmental safeguards in place within the approval process of developmental projects. Involvement of CEA and Ministry of Environment for standardization as well as planning and management process should be considered.

4.7.4. Research and development

Consideration should be given for building on existing research and data on environmental and socio-economic elements which are already completed. The baseline data sets which are available can be built on by periodic monitoring and data collection mechanisms to ensure a thorough data set for policy planning and improved decision making.

4.7.4.3. All protected areas and conservation zones will be made available for research purposes to ensure creation of further knowledge and improve the management of respective resources using research findings

The wording and elements mentioned in this section are very vague. It should be reworded or removed from the draft NEP. Currently all academics who are involved with research carry out the process of going through official means with the relevant department for obtaining access to the PAs, as such this element is not required to be addressed in the policy.

4.7.5. Data and information for reporting, monitoring and evaluation

Priority should be given to improve existing monitoring mechanisms within governmental bodies such as DWC, FD and other institutions so as to ensure minimal disturbance to existing practices and habits of the officers and chain of communication. Additional monitoring via 3rd party organizations or university bodies should be considered for ensuring accuracy of the data set and also to identify better fit methods for data collection, recording and storage.

Mechanisms for data cleaning and verification should also be mentioned in this element.

Involvement of national data storage and management authorities such as ICTA for storage, management and display of data sets for public use should be considered.

4.7.5.3. Data generated using public funds on environment will be made accessible to the general public by developing guidelines to ensure open access to data and establishing user-friendly data retrieving facilities

It is recommended to develop a mechanism to obtain data generated through research, development projects, and other means (while crediting the source of information).

4.7.6. Traditional knowledge and practices

4.7.6.1 Traditional knowledge and practices relating to environmental management will be recognized for their contribution to conservation of ecosystem services and for upholding cultural, religious and social values

CBOs which are involved in environmental practices can be encouraged to keep a log or record of the particular area's knowledge and methods of environmental safeguarding and contributions. Mechanisms for recognizing the contributions made should be specified; whether public acknowledgement or awards are provided. This can be combined with 4.7.7.1 where consultations will be carried out- it can be planned as a joint exercise for obtaining knowledge, information dissemination and improvements discussions.

4.7.6.2. Necessary measures will be taken to adopt traditional knowledge/practices as a whole or in combination with modern science-based practices wherever it is found beneficial for sustainable management of land, water, air and biodiversity resources; adaptation to climate change impacts; and disaster mitigation

Record keeping would be optimal in ensuring continuity of the practice and also for improvement of practices to provide higher benefits for both the community and the environment. Mechanism for adoption of the traditional practices should be mentioned; whether it will be led by the governmental organizations such as CEA or Ministry of Environment, or individual departments or projects will obtain the practice/ knowledge and incorporate it to the relevant requirement.

Traditional knowledge, policy document for traditional knowledge and intellectual property law was prepared by national science foundation, and another document was prepared by the cabinet which isn't accessible by public. The content of these documents should be integrated into the draft NEP.

4.7.7. Community engagement, participatory management and empowerment of gender and youth

4.7.7.3 Community organizations will be mobilized to take an active role in conserving soil, water, air and biodiversity resources by developing their capacity through creating awareness, offering training and education and providing necessary supportive facilities

CBO involvement for resource management should be carried out in joint collaboration with ongoing projects for resource utilization as well. In terms of pollution management, projects such as waste-to-energy plants can utilize local involvement for collection and sorting of recyclable materials and et cetera. The role of NGOs, CSOs and INGOs currently involved in the environmental sector isn't properly addressed in this section.

In the environmental assessment process, as IEEs were kept out of public comment it is hard to gauge whether the project itself should have required an IEE or an EIA, and it is not clear whether it's a valid step in the process to approve IEEs without public engagement. IEEs should also undergo public engagement and comments process, same as an EIA as it is hard to monitor the IEE process itself. It is recommended that both EIAs and IEEs to be opened for public participation in a meaningful way for commenting and involvement into the approval process of these documents.

4.7.7.4 Enhanced female and youth participation and empowerment of gender and youth in environmental management will be given special attention in all forms of community and stakeholder engagement activities

Existing youth organizations involved in environmental safeguarding should be bolstered instead of creating new organizations as the interested group would be involved in these existing entities. Enhanced youth involvement can especially be increased via proper training and awareness programmes through schools.

4.7.8. Capacity building, training, education and awareness

4.7.8.1 Capacity of provincial and local government officers to handle environment related issues will be developed by providing well-designed training programmes to cater their needs

Along with capacity assessments, identification of mechanisms in place for problem solving within the organization should also be assessed. Challenges and issues of officers to handle issues should be recorded to identify structural or documentation bottlenecks within the organization.

5. Applicability and Scope

The rationale for the section of seven thematic areas identified for policy intervention is not clear. Therefore the applicability and scope identified in this section lacks justification. Further, the policy states that the policy interventions are broad enough to allow creative interpretation, such creative interpretation without how the interpretation would apply creates room for ambiguity, creating a dangerous precedent.

6. Policy Implementation

This section does not reflect the existing reality of interconnections between the institutions and agencies which are extremely complex. False simplicity is given to the interconnections of the ministries while it is more complex in actuality. The need to convene the importance of environmental aspects to other agencies and policies, which are not directly on environmental aspects, should be clearly shown in this section.

One of the glaring issues is that consequently lack of any reference to any statute, there is no statutory body identified as bearing responsibility for the implementation of the policy. The National Environmental Act No 47 of 1980 as amended and the Central Environmental Authority (CEA) are not invoked in implementing the policy. Therefore, the question arises as to the stance of the draft NEP regarding the role and function of the CEA and why it is excluded in the implementation mechanism.

Devolvement of power between agencies has been discussed before as well, and an example would be the involvement of the provincial council for resolving of environmental issues, as mentioned in the draft NEP; however, there is no policy statement as to what level the provincial councils can or should take up environmental issues. Currently there are issues in implementation between the NWP CEA and central CEA as there is no adequate definition or devolvement of powers between the central and provincial levels. One example of this issue was the Norochcholai coal power plant EIA, which was handled by the NWP CEA; however since it is a large scale project and regarding an environmentally sensitive case it should have been handled by the central CEA as the impacts will not only be felt by the NWP, it will impact other provinces as well.

The distribution of power between the central government and devolvement to other provincial governments is a major issue which should be addressed by this updated policy. Almost all the policy principles and statements of the draft NEP deals with obligations of the Ministry of Environment; however it should focus on emphasizing the importance of environmental aspects to other agencies

which are generally involved with environmental issues such as development oriented agencies and their environmental policies.

Figure 1: Implementation mechanism

The chart is overly simplistic and does not cover the existing institutional regulations and legislations clearly to show the existing complicated situation. The linkages of the figure are straightforward, however there is a steering committee in the figure but the permanency of this committee was not mentioned. Representatives, functions and mandate of this committee should be clearly mentioned. Additionally, it is to be noted that the committee is above additional secretaries, which raises issues on delegation of power.

Local Authorities and Provincial councils are missing from the implementation mechanism. Provincial council must be included since 13th amendment to the Constitution devolves power relating to the environment, and the North-Western Province operates under its own statute on the environment. Thus, non-inclusion of the provincial level mechanisms leaves room for mis-interpretation and mis-application of the policy. Local authorities are mentioned in the implementing authorities' area, however provincial councils are missing in that as well. The devolvement of power between the central and provincial government, local authorities, provincial councils and provincial environmental authorities were discussed in the 2003 NEP.

The essence and role should be mentioned instead of listing the Ministry name in the figure. Overall there should be a directive clearly mentioned, and this figure should have probably been mentioned in the beginning. The draft NEP principles could also mention the agencies involved in its implementation at the relevant sections, which would be more informative.

In the 2003 NEP it mentions how the policy is binding and those agencies which are involved in the environmental aspects are to be brought into one forum however even after 2 decades it was not implemented. As such having a timeline on the draft NEP will also be useful, such as ten years. In the 2003 NEP policy it was not mentioned, as such it was only updated 20 years later.

Glossary

The act name of the Coast Conservation Act should be updated to Coast Conservation and Coastal Resources Management Act at the end where legislations are mentioned.