

**THE LEGAL RESPONSE TO ILLEGAL UTILIZATION OF WETLANDS IN  
SRI LANKA -A CASE STUDY OF MUTHURAJAWELA MARSH – NEGOMBO  
ESTUARY**

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**ABSTRACT**

This research is a case study of Muthurajawela sanctuary in Gampaha District. In background of the fundamental rights case filed by the people of Muthurajawela area and the order issued by court banning the complained illegal activities, the researchers have been encouraged to study on the level of protection of wetlands in Sri Lanka. The objectives of research are identifying the causes, forms and impacts of illegal utilization of wetlands, examining the lacunas in existing laws and propose appropriate reforms to laws and policies. The research involves qualitative method including observation in the vicinity of Muthurajawela sanctuary, interviews with affected people, environmentalists, lawyers, government and non-governmental institutions, and analysis of constitutional provisions, legislations, case laws, books, scholarly research publications, journal articles etc. This research highlights the weakness regarding protection/management of wetlands in Sri Lanka despite the existence of number of laws and policies. The research identifies the lacunas in legal framework and reasons for non-effective implementation of laws. There is no separate legal mechanism for wetland management in Sri Lanka however number of existing laws and policies adequately cover the matters relating to wetland management, National Environmental Act covers the environmental quality and management. The laws and policies could not provide a better solution for the threats faced by wetlands; National Environmental Act could not alone take on wetland conservation. A separate updated legal framework is to be introduced and operationalized in Sri Lanka.

**Keywords:** *Environmental Impact, Human Impact, Illegal Utilization, Wetlands*

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## 1 INTRODUCTION

### 1.1 BACKGROUND

Wetlands are dynamic ecosystems, and any form of utilization or management will affect their natural balance in some way. The loss of wetlands in world-wide is largely a consequence of human interventions. Most of the wetlands are threatened by activities like hydrological alteration, urbanization, industrialization, agriculture, timber harvesting, land-filling, garbage dumping and mining. Because of the development process a less attention is paying towards the positive functions of wetlands, like services such as water purification and flood protection. Many developing countries like Sri Lanka still depend heavily on their natural resources. Action programs to save wetlands from over-exploitation for commercial, agricultural, residential and industrial use, and increasingly as dumping grounds for waste are considered necessary. If no actions are taken, many critical ecosystems would be damaged beyond repair in the near future and the people who depend on them will suffer along with other species.

Illegal utilization of wetlands is a major environmental issue in Gampaha District. The Muthurajawela Marsh –Negombo estuary is the mostly affected area which; was made as a protected wetland under Flora and Fauna Protection Act by a Gazette notification in 1996. Recently people in Muthurajawela area had filed a fundamental rights violation case<sup>1</sup> for illegal constructions, land-filling, garbage dumping, and sand filling within sanctuary. Then the Supreme Court issued an order banning garbage dumping and other illegal activities within Muthurajawela sanctuary. However due to the continuance of these illegal activities still people of this area are affecting by floods, several infections, endemic diseases, and many other environmental matters and destruct the ecosystem of that area also. It violates the right to life of these people including quality of life and right to clean and healthy environment.

The implementation and enforcement of the laws relating to the protection of nature and environment responding to the constitutional dictates enshrined in the Chapter on Directive Principles of state policy and fundamental duties in the Constitution of Sri Lanka. The fundamental duty is imposed on every person by **Article 28(f)**<sup>2</sup> of the constitution. The National Environmental

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<sup>1</sup>SC. FR. No .176/2017

<sup>2</sup> The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly is the duty of every person in Sri Lanka to protect nature and conserve its riches.

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Authority of Sri Lanka<sup>3</sup> gives powers and duties to Central Environmental Authority to deal with any factor relating to the protection and management of environment, to do research in relation to any aspect of environmental degradation, to specify the standards for maintaining the quality of the environment, to publish reports of any aspects of management of environment. Further, Sri Lanka has ratified and recognized many international standards. Article 3 of UDHR declares that everyone has the right to life; it can also mean that victims from destruction of wetlands have the right to life. Article 21(c) of the World Charter for Nature declares that States shall implement the applicable international legal provisions for conservation of nature and protection of environment.

The Ramsar Convention is an intergovernmental treaty, which sets the framework for national action and international co-operation for the conservation and wise use of wetlands and their resources. The 'wise use' of wetlands has become the central concern for member states, as many people depend on wetlands for their livelihood and for recreation. With its influence Sri Lanka created the National Policy on wetlands in 2005. The main objectives of this policy are protecting and conserving wetland ecosystems, preventing illegal utilization of wetlands, maintaining the biological diversity and productivity of wetlands, enhancing ecosystem services from wetland habitats and to assuring sustainable use of wetlands and traditional practices while protecting human rights of people.

This study has endeavored to identify modes of threats available to the protection of wetlands in Gampaha District especially with regarding the Muthurajawela issue. Though there are many laws of environmental management; unfortunately, improper implementation of these laws could not provide a better solution yet. Although a number of legislations and policies impact on wetland management, a separate policy framework is desirable in view of specific threats; which these ecosystems face recently and for their sustainable management. Therefore, through this research activity the paper intends to identify deficiencies in the existing legal mechanism for wetlands protection of Sri Lanka and to make recommendations to bring reforms to the legal mechanisms.

## **1.2 RESEARCH PROBLEM**

Why the illegal utilization of wetlands is rapidly increasing despite the existing laws and guarantees and why the implementation of such laws remains weak?

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<sup>3</sup> Section 10(1), National Environmental Act No. 47 of 1980

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### 1.3 OBJECTIVES OF THE STUDY

- Identify the environmental and human impact of the illegal utilization of wetlands.
- Identify causes for difference between written law and practice on wetland protection.
- Examine the lacunas of existing law pertaining to safeguard of the environmental justice.
- Examine the international standards in relation to the wetland protection and environmental justice.
- Propose appropriate reforms relation to laws and policies that authorities must urgently adopt for protection of wetlands in Sri Lanka.

### 1.4 RESEARCH QUESTIONS

- What is the importance of wetlands and what is the Muthurajawela Marsh –Negombo estuary wetland?
- What are the threats faced by Muthurajawela and what is the current situation?
- What are the adverse impacts on environment in this area?
- What is the legal framework relating to the wetland protection in Sri Lanka? And how Sri Lankan judiciary and administrative bodies have structured to address these issues?
- Are there any weaknesses in the implementation of laws?
- How far have weaknesses of implementation of such laws affected rights of people and environmental justice in Sri Lanka?
- What lessons can be learnt from the comprehensive analysis with other jurisdictions?
- What are the recommendations that can be proposed to modify the laws?

## 2 LITERATURE REVIEW

In "APPLICATION OF GEOSPATIAL TOOLS TO MONITOR CHANGE IN A MICRO-TIDAL ESTUARY FOR THE PURPOSE OF MANAGEMENT PLANNING" written by N. Nagabhatla, C. M. Finlayson, S. Seneratna Sellamuttu and A. Gunawardena<sup>4</sup> concerned over the increasing impact of human activities on

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<sup>4</sup>N. Nagabhatla, C. M. Finlayson, S. Seneratna Sellamuttu and A. Gunawardena; APPLICATION OF GEOSPATIAL TOOLS TO MONITOR CHANGE IN A MICRO-TIDAL ESTUARY FOR THE PURPOSE OF MANAGEMENT PLANNING; International Water Management Institute (IWMI), P O Box 2075, Colombo, Sri Lanka ,Central Environmental Authority (CEA), No.104, Denzil Kobbekaduwa Mawatha, "Parisara Piyasa",Battaramulla, Sri Lanka. Accepted 13 May 2008.

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environmental systems has received more global attention and motivated multi-disciplinary assessments in order to address the multiple pressures that often interact synergistically or cumulatively Coastal wetlands in many tropical countries are amongst the many ecosystems that are under increasing pressure from rapidly growing human populations and development. Further they emphasized that it is the case in western Sri Lanka where coastal wetlands are under pressure from increasing commercial and industrial activities, population growth, natural disasters, and the over-exploitation of natural resources.

In "WETLAND CONSERVATION AND MANAGEMENT IN SRI LANKA: A STATUS PAPER" prepared for IUCN - The World Conservation Union by J. C. J. Van Zon emphasizes that wetlands play a significant role in the economy of Sri Lanka and categorizes Wetlands as natural and man-made. Further the author examines that many of the wetland sites in Sri Lanka are today being recognized as important, both regionally and globally and two have been declared as wetlands of international importance under the Ramsar Convention. Furthermore, the author pointed out that at present, a majority of the wetlands in Sri Lanka is adversely affected by human activities, including reclamation, waste disposal, pollution due to effluent discharge, clearing of natural vegetation in and around wetlands and the spread of invasive exotic species. Especially the author focuses about the link among wise use of wetlands, economic and environmental sustainability and further analyses the existing laws and policies pertaining to the protection of wetlands and provides some recommendations how the law should be reformed and enforced.

"An Overview of the Wetlands of Sri Lanka and their Conservation Significance" by S. W. Kotagama<sup>5</sup> and C. N. B. Bambaradeniya<sup>6</sup> examines the history of the conservation of wetlands in Sri Lanka. According to his view the Fauna and Flora Protection Ordinance of 1937 can be considered as a major step in wetland conservation. Using this legislation, wetlands of importance to birds have been declared by the Department of Wildlife Conservation as sanctuaries and other protected areas. After the ratification of the RAMSAR Convention; interest in the development of the Muthurajawela Marsh was a major activity; which led to a comprehensive study of the marsh and the preparation of an

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<sup>5</sup>Bambaradeniya CNB (2002) The Status and Implications of Invasive Alien Species in Sri Lanka, *Zoos' Print Journal*, 17 (11): 930-935.

<sup>6</sup>Bambaradeniya CNB (2004) Freshwater Wetlands in Sri Lanka: Their Conservation Significance and Status In: IUCN Sri Lanka 2004, Proceedings of the National Symposium on Wetland Conservation and Management, Pages19-24.

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ecological profile and a management plan. This was the first ever attempt to develop any wetland on the basis of “wise use” criteria under this Convention.

In "The Link between Right for Development, Right for Clean and Healthy Environment; and Essentiality of Including These Rights in National Constitution"; by M.L.S.M. Perera<sup>7</sup> examines the necessity of inclusion of the right to a clean and healthy environment and the right to sustainable development into the constitution as a strong remedy for the environmental management and human rights violation issues.

In "Study on the Legal System of Wetland Protection" written by Qing-Yuan SUN<sup>8</sup> emphasizes that with the increasing awareness of wetlands, how to make reasonable use of wetland resources and maintain the sustainable development of wetlands has been widely concerned by the international community and describes the international law on Wetland Protection and its principles.

### 3 METHODOLOGY

Qualitative methodology

- Primary sources: Interviews with the affected people of the particular area, environmentalists, lawyers, visiting particular area and observing, Interviews with government and non-governmental institutions (Central Environmental Authority, Environmental Foundation Limited, Divisional Secretary offices...), Constitution, Legislations, Case Laws
- Secondary sources: Books, Journal articles, Reliable newspapers and magazines

The Scope of this study is limited to the wetland issues in Gampaha District especially in Muthurajawela Marsh –Negombo estuary area. Therefore, within the area the issues are discussed deeply. The study is further limited to the legal analysis.

### 4 DISCUSSION

Wetlands, both natural and man-made, were the centers of Sri Lanka’s ancient hydraulic civilization, which thrived in the island for over 2000 years and

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<sup>7</sup>M.L.S.M Perera, The Link between Right for Development, Right for Clean and Healthy Environment; and Essentiality of Including These Rights in National Constitution, *Proceedings of 8th International Research Conference, KDU, Published November 2015, Faculty of Humanities and Social Sciences, University of Sri Jayewardenepura, Nugegoda, Sri Lanka*

<sup>8</sup>Qing-Yuan SUN, Study on the legal system of Wetland Protection, North China Electric Power University, Beijing, China

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formed the hub of its cultural, economic and social evolution. <sup>9</sup> They are playing an important role serving as flood retention areas; as filters for sediments, nutrients, and pollutants released to the environment. With the advancements in the scientific field we have now realized that wetlands possess not only ecological significance but biological economic as well.<sup>10</sup>

However, at present a majority of the wetlands in Sri Lanka are adversely affected by human activities such as unauthorized filling, waste disposal, pollution due to effluent discharge, clearing of natural vegetation in and around wetlands, spread of invasive exotic species etc. Muthurajawela is a most important wetland sanctuary in Gampaha District. Recently people in Muthurajawela area had filed a fundamental rights violation case for illegal constructions, land-filling and garbage dumping within the sanctuary and court issued an order banning those illegal activities.<sup>11</sup>

When Sri Lanka signed the Ramsar Convention the country committed itself to preserve ecological values and functions of wetlands. With its influence Sri Lanka created the National Policy on wetlands in 2005. The main objectives of this policy are protecting and conserving wetland ecosystems, preventing illegal utilization of wetlands, maintaining the biological diversity and productivity of wetlands, enhancing ecosystem services from wetland habitats and to assuring sustainable use of wetlands and traditional practices while protecting the human rights.

When National Wetland Policy & Strategies were prepared, the CEA was identified as the main state agency that should coordinate all wetland related activities. Accordingly, the Wetland Management Unit was established in CEA with the consent of other relevant stakeholders in 2005. Implementation of wetland policy places a responsibility on all sectors of development to incorporate wetland strategies into their development programmes. Accordingly, wetland strategies relevant to the different sectors have been included likewise the strategic approach for ensuring sound management of the wetland resources has been presented. And the role of civil society in maintaining the integrity of the environment has been emphasized. It is of utmost importance that the provincial administration be actively involved in implementing the National Wetland Policy.

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<sup>9</sup>NATIONAL WETLAND POLICY AND STRATEGY, MINISTRY OF ENVIRONMENT and CENTRAL ENVIRONMENTAL AUTHORITY, 2006 October

<sup>10</sup> Chapter two in this research activity, 'introduction'

<sup>11</sup> Ibid

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### *Existing Legal Framework*

When examining the existing legal system of the protection and management of wetlands; some major points can be highlighted as follows. Sri Lankan Environmental Management Policy originates from the Constitution. In the wake of the Stockholm Conference in 1972, Sri Lanka strengthened its Constitution by enshrining provisions that protect the environment. There are two major provisions in the Sri Lankan Constitution relating to the environment: **Article 27**<sup>12</sup>; which makes it the duty of the State to protect, preserve and improve the environment for the benefit of the community; and **Article 28**<sup>13</sup>; which enshrines the fundamental duty of every person to protect nature and conserve its riches.

Accordingly, this is the responsibility of the state institutions to work towards the justice regarding the protection of environment and other natural resources. Under that these state institutions have a responsibility to conserve wetland systems and their natural riches. And in the same manner the citizens in this country have to act according to the directive principles of state policy and fundamental duties in order to prevent and minimize environmental destructive works in Sri Lanka; because most of the people have been suffering from the environmental pollution in various manners.

Further, in Sri Lanka, appeals for redress for violation of any constitutionally enshrined right can be brought before Supreme Court.<sup>14</sup> The Constitution guarantees the right of every person to apply to the Supreme Court for remedy in respect of an infringement or imminent infringement of fundamental right by executive or administrative action within one month.<sup>15</sup> However these provisions regarding the protection of environment are not set out in the Chapter on fundamental rights: they are to be found in the Chapter entitled 'Directive Principles of State Policy and fundamental duties' and are not enforceable in a Court of Law in terms of **Article 29**<sup>16</sup> of the Constitution.

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<sup>12</sup> Article 27(14) of 1978 Constitution; "The State shall protect, preserve and improve the environment for the benefit of the community."

<sup>13</sup> Article 28 of 1978 Constitution; "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,

- a) To uphold and defend the constitution and the law;
- b) To preserve and protect public property and to combat misuse and waste of public property;
- c) To protect nature and conserve its riches.

<sup>14</sup>The Constitution of Democratic Socialist Republic of Sri Lanka 1978, Article 126

<sup>15</sup>The Constitution of Democratic Socialist Republic of Sri Lanka 1978, Article 17(1)

<sup>16</sup>The Constitution of Democratic Socialist Republic of Sri Lanka 1978, Article 29: "The provisions of this chapter do not confer or impose legal rights or obligations, and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal."

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Therefore, as an effective remedy, this mechanism is limited. The way of affected people from environmental law violations may go before judiciary for remedy is **Article 12(1), (2) and 14**<sup>17</sup> of constitution. Since all persons are treated as equal before law and have equal protection of law under article 12, definitely victims of environmental matters also should come under this part and no one shall be discriminated on any grounds.

The Constitutional pledge for the management of the environment was further strengthened by the **13<sup>th</sup> Amendment**, which dealt with the devolution of power and administrative responsibility in a number of areas including environment. The 13<sup>th</sup> Amendment states that the protection of environment within the province to the extent permitted by or under any law made by parliament is the responsibility of the Provincial Council<sup>18</sup>. In addition to this, the 13<sup>th</sup> Amendment; Constitution lists the following areas related to environment as devolved subjects: such as environmental health; establishment and maintenance of herbaria etc.<sup>19</sup>**Article 140** also provides protection to the environment by providing for various writs from the Court of Appeal against administrative acts or omissions.

Ambiguously, some important environmental subjects are listed under the concurrent list; hence both Provincial and Central Government had to agree on the implementation these powers; which were held concurrently. Such subjects are soil erosion, social forestry, protection of wild animals and birds and protection of the environment.

However, another major lacuna in Sri Lankan legal system is; there is no expressly guaranteed fundamental rights provision regarding the right to life and right to clean and healthy environment in the constitution.

When considering about the National laws, policies, and action plans for wetland protection in Sri Lanka; there is no separate legal framework in order to govern the wetland management. But prevailing environmental legislations are covering the matters relating to the wetland management.

**National Environmental Act No. 47 of 1980** is the basic legislation in Sri Lanka shelters all the matters relating to the elements of environment. Therefore, it is considered as the umbrella legislation in environmental law. According to the long title; this act establishes a CEA, provides powers,

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<sup>17</sup>Article 14 of 1978 Constitution of Sri Lanka says that every citizen is entitled to freedom of speech, assembly, association, occupation, movements etc.

<sup>18</sup> Ninth schedule, List 1 section 37 f 13<sup>th</sup> Amendment of 1978 Constitution

<sup>19</sup> Some functions of land use and land improvement; preservation, protection and improvement of stock and prevention of animal diseases; regulation of mines and mineral development; fees under the fauna and flora protection ordinance and land development ordinance.

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functions and duties to that authority and makes provisions for the protection and management of the environment and for the matters connected therewith. **Section 33** of the act provides a broader interpretation to the term “environment” as follows.

“The physical factors of the surroundings of human beings including the land, soil, water, atmosphere, climate, sound, odours, tastes and the biological factors of animals and plants of every description.”

As well as this act defines the terms “beneficial use” and “pollution.”

“Beneficial use” means a use of the environment or any portion of the environment that is conducive to public benefit, welfare, safety, or health and which requires protection from the effects of waste, discharges, emissions and deposits.”

“Pollution” means; any direct or indirect alternation of physical, thermal, chemical, biological, or radioactive properties of any part of the environment by discharge, emission, or the deposit of wastes so as to affect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety, or welfare, or to animals, birds, wildlife, aquatic life, or to plants of every description.”

Accordingly, this act provides an institutional framework by the establishment of CEA.<sup>20</sup> Under that an Environmental Council was established<sup>21</sup> with the advising powers<sup>22</sup>. According to the **section 10 (1)**; the CEA has the power to recommend to the minister regarding the national environmental policy and criteria for the protection of any portion of environment and to specify standards, norms and criteria for the protection of beneficial uses for maintain the quality of the environment. The special thing is that the CEA in consultation with the council and with the assistance of the relevant ministries has the power to recommend , formulate the basic policies regarding the environmental management including land use management<sup>23</sup>, conservation of natural resources<sup>24</sup>, fisheries and aquatic resources<sup>25</sup>, wildlife<sup>26</sup>, forestries and soil conservation<sup>27</sup> in order to obtain the optimum benefits there from, to preserve for the future generations and to reduce the exploitation of such

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<sup>20</sup> Section 2 (1) of National Environmental Act No. 47 of 1980

<sup>21</sup>Section 7 (1) of National Environmental Act No. 47 of 1980

<sup>22</sup>Section 7 (3) of National Environmental Act No. 47 of 1980

<sup>23</sup> Section 15 of National Environmental Act No. 47 of 1980

<sup>24</sup> Section 17 of National Environmental Act No. 47 of 1980

<sup>25</sup> Section 18 of National Environmental Act No. 47 of 1980

<sup>26</sup> Section 20 of National Environmental Act No. 47 of 1980

<sup>27</sup> Section 22 of National Environmental Act No. 47 of 1980

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resources. This act is amended by the Act No. 56 of 1988 and by the Act No. 53 of 2000. The amendment acts reflect changing forest management priorities. And highlight the rational exploitation of wildlife and forest resources, regulating the marketing of threatened forest resources, conserving threatened floral species and promoting efforts on reforestation, timber stand improvement, forest protection, land classification, forest occupancy management, industrial tree plantation, parks & wildlife management, multiple use forest, timber management and forest research. Further this act calls for a rational scheme for the use and conservation of land resources including land inventory and classification and determination of present land uses.

Specially this act also has clauses related to obtaining environmental approval of investment projects. According to the **Section 23 A (1)** of this act minister has the discretionary power to determine by order published in Gazette to determine the activities which a license is required to be obtained under this act being activities which involve or result in discharging, depositing or emitting waste into the environment causing pollution. According to this section an EIA report should have been compiled before initiating any waste management project in over one hectare of land, whether the filling happens in wetlands or in a forestland. The Basic EIA report should contain the permission of environment officers for the project to be approved. Otherwise legal action can be taken under the **section 24 B** of the act. However, in Muthurajawela, both rules were broken by not doing an EIA even though there is a waste management project within the sanctuary.

As well as this act provides the provisions regarding the preservation of quality of the environment through the Part IV B. According to that discharging or emitting waste into the inland waters<sup>28</sup>, atmosphere<sup>29</sup>, soil <sup>30</sup> which render them unclean, noxious, poisonous, impure, detrimental to the health and welfare is considered as prohibited activities. According to that it is clear that all the illegal activities doing in the Muthurajawela sanctuary are causing damages to the quality of the environment.

Under **Section 23 S**; when the authority is of opinion that any litter<sup>31</sup> deposited in any place, whether public or private, is or is likely to become detrimental to the health, safety or welfare of members of the public, unduly offensive to the

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<sup>28</sup> Section 23 G (1), H (Amendment) of National Environmental Act No. 56 of 1988

<sup>29</sup> Section 23 J, K (Amendment) of National Environmental Act No. 56 of 1988

<sup>30</sup> Section 23 M, N (Amendment) of National Environmental Act No. 56 of 1988

<sup>31</sup> For the purposes of this section "litter" means unwanted waste material whether a byproduct which has arisen during a manufacturing process or a product which has passed its useful working life and has been discarded. Section 23 S (Amendment) of National Environmental Act No. 56 of 1998

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senses of human beings or a hazard to the environment; then authority has the power to direct the person or any public authority who is responsible to dispose of or remove such litter, to remove or dispose of such litter as prescribed in the notice. However, because of the failure of authorities to adhere with these requirements; a fundamental rights case was filed by the affected people against these authorities.

**National Environmental (Protection and Quality) Regulations, No. 1 of 2008** is a gazette notification passed by the Democratic Socialist Republic of Sri Lanka regarding the National Environmental Act. Through that a regulation made by the Minister under **Section 32** read with **Section 23A** and **23B** of the National Environmental Act. According to that no person shall discharge, deposit or emit waste into the environment or carry on any prescribed activity determined which cause or are likely to cause pollution, or noise pollution, otherwise than under the Authority of a license issued by the CEA and in accordance with the standards and criteria specified in the Schedule 1.<sup>32</sup> Further it empowers the CEA to impose more stringent standards and criteria than those specified in Schedule 1 in respect of any prescribed activity, to protect the environment.<sup>33</sup>

**Fisheries and Aquatic Resources Act No.2 of 1996**<sup>34</sup> provides for the management, regulation and development of fisheries and aquatic resources in Sri Lanka. According to the **Section 27 (3)** of this act placing, depositing or dumping any poisonous, explosive or stupefying substance or other harmful material which; causes harms to the fisheries and aquatic resources is considering as a punishable offence. The releasing of polluted water into the wetland spreads it all over and pollutes the wetland. Dead fish is proof that the wetland is already polluted. Therefore, if the lives of aquatic species are threatened Fisheries and Aquatic Resources Department should take action for the impact made on these resources.

**Fauna and Flora protection Ordinance No.2 of 1937**<sup>35</sup> is the ordinance; which provides the protection and conservation of the Fauna and Flora of Sri Lanka and their habitats, prevention of misuse of such fauna, flora and habitats and conservation of the biodiversity of Sri Lanka. Under this ordinance Minister has the power to declare any specified area as national reserves or sanctuaries by an order published in the Gazette.<sup>36</sup> Accordingly Muthurajawela

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<sup>32</sup> Section 2, National Environmental (Protection and Quality) Regulations, No. 1 of 2008

<sup>33</sup> Section 3, National Environmental (Protection and Quality) Regulations, No. 1 of 2008

<sup>34</sup> As amended No.4 of 2004, No.22 of 2006, No.5 of 2013, No.2 of 2015, No.2 of 2016, No.11 of 2017

<sup>35</sup> Amended as Flora and Fauna Protection Act (Amendment) No.22 of 2009

<sup>36</sup>Section 2 (1), Fauna and Flora protection Ordinance No.2 of 1937:The minister may by Order published in the Gazette declare that any specified area of Crown land shall for the purposes of this Ordinance be a

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Marsh-Negombo estuary was made as a protected wetland under Flora and Fauna Protection Act by a Gazette notification in 1996. And the Director General has the power to administer, control and manage the facilities or services; which are to be provided within any National Reserve.<sup>37</sup>And prior to giving effect to any activity under management plan he has the power to require an assessment of the impact of such activity on the fauna flora and their habitant to be made.<sup>38</sup>

According to the **Section 7 (1) C**; any person except in accordance with the regulations shall not clear or break up any land for cultivation, mining or for any other purposes, dispose or cause the dispose of any garbage therein; or engage in the filling of or cause the filling of any land; or discharge or cause the discharge of waste. And especially Minister has the power to make regulations restricting the carrying out of any specified activity or activities in any Sanctuary or in any prescribed Sanctuary where he deems such restriction is necessary or essential taking into consideration the prevailing circumstances.

But according to the findings; in Muthurajawela unfortunately the issue is ministers are misusing their powers and taking decisions solely based on the economic factors while not paying a major concern regarding the environmental impacts.<sup>39</sup>

**Agrarian Development Act No.46 of 2000** is also a major act regarding the wetland management. In order to govern the matters relating to the utilization of agricultural lands in accordance with agricultural policies and to impose restrictions on persons using agricultural land for non-agricultural purposes in order to ensure maximum utilization of agricultural land for agricultural production this act was enacted. According to this anyone can not fill any extent of a paddy land and erect any structure on any paddy land without written permissin of the Commissioner-General.<sup>40</sup> In the same manner no person shall fill any extent of a paddy land other than a purpose of cultivation except with the written permission of the Commissioner-General. <sup>41</sup>But in

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National Reserve and may by that Order or by any Order subsequently published in the Gazette declare that the whole or any specified part of any such National Reserve shall be- (a) a Strict Natural Reserve ; or (b) a National Park ; or (c) a Nature Reserve ; or (d) a Jungle Corridor; or (e) a Refuge; or (f) a Marine Reserve ; or (g) a Buffer Zone.

<sup>37</sup>Section 2 A, Fauna and Flora protection Ordinance No.2 of 1937

<sup>38</sup>Section 2B (1), Fauna and Flora protection Ordinance No.2 of 1937

<sup>39</sup>Janaka Wijegunatillake, 'Political influence in destruction of Muthurajawela wetlands', The Sunday Leader (Sri Lanka), August 01.2018

<sup>40</sup> Section 33 (1) of Agrarian Development Act No.46 of 2000

<sup>41</sup> Section 34 (1) of Agrarian Development Act No.46 of 2000

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Muthurajawela the matter is there are many illegal land filling activities without any written permission but with the influence of politicians.<sup>42</sup>

**Municipal Councils Ordinance No.29 of 1947, Urban Councils Ordinance No. 61 of 1939 and Pradeshiya Sabha Act No. 15 of 1987** are the key which legislations empower the local authorities to take the responsibility as the general administrative authorities for the purpose of promoting and securing the public health within the particular area.<sup>43</sup>For that purpose the local authorities are entitled to exercise all the powers under the Nuisance ordinance, Housing and Town Improvement Ordinance and every there time being in force written laws. Further these legislations specify that the relevant local authorities have to take necessary measures as reasonably practicable for the proper disposal of all street refuse, house refuse and night-soil.<sup>44</sup> And the garbage collected in the particular area should be disposed of in a way that does not disturb the public.<sup>45</sup>Further according to them it shall be the duty of these local authorities to conduct inspections of nuisance within the relevant area from time to time.<sup>46</sup>

After the ratification of the Ramsar Convention; which is an intergovernmental treaty sets the framework for national action and international co-operation for the conservation and wise use of wetlands and their resources; the 'wise use' of wetlands has become the central concern for member states. The first-ever national level dialogue on Wetland Conservation and Management in Sri Lanka was organized jointly by IUCN - The World Conservation Union and the Integrated Resource Management Project (IRMP) of the Central Environmental Authority. The symposium was held on June 2003 at the Bandaranaike Memorial International Conference Hall (BMICH). The participants included researchers and high-level decision-makers from state agencies and NGO's, the donor community and multilateral financial agencies.

The event provided an opportunity to share lessons learnt, over the past years, in wetland conservation and management at the national level. It also brought together stakeholders working on wetland related issues in the country in order to examine the current trends in wetland management and to devise

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<sup>42</sup>Janaka Wijegunatillake, 'Political influence in destruction of Muthurajawela wetlands', The Sunday Leader (Sri Lanka), August 01.2018

<sup>43</sup> Section 96 of Municipal Councils Ordinance No.29 of 1947, Section 103 of Urban Councils Ordinance No. 61 of 1939,Section 78 of Pradeshiya Sabha Act No. 15 of 1987

<sup>44</sup> Section 129 of Municipal Councils Ordinance No.29 of 1947, Section 118 of Urban Councils Ordinance No. 61 of 1939, Section 93 of Pradeshiya Sabha Act No. 15 of 1987

<sup>45</sup> Section 130 & 131 of Municipal Councils Ordinance No.29 of 1947, Section 119 & 120 of Urban Councils Ordinance No. 61 of 1939, Section 94 & 95 of Pradeshiya Sabha Act No. 15 of 1987

<sup>46</sup> Section 132 of Municipal Councils Ordinance No.29 of 1947Section 126 of Urban Councils Ordinance No. 61 of 1939, Section 100 of Pradeshiya Sabha Act No. 15 of 1987

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more effective measures for the future. As a result, greater attention has been directed, at the policy level, towards the conservation of wetlands. The National Wetlands Steering Committee was reviewed in 2003 by the Ministry of Environment and Natural Resources and a national policy on wetlands has since been drafted and approved to strengthen the institutional and legal framework for wetland conservation in the country.

Because of those influences in 2004, the Ministry of Environment and Natural Resources of Sri Lanka prepared the **National Wetland Policy in 2005** identifying six main objectives. Those objectives are: to protect and conserve wetland ecosystems, to prevent illegal utilization of wetlands, to restore and maintain the biological diversity and productivity of wetlands, to enhance ecosystem services from wetlands habitats, to assure sustainable use of wetlands and traditional practices by local communities; and to meet national commitments as a signatory to the Ramsar Convention.

When move towards to the international standards; **International Convention of Wetlands (Ramsar Convention)** can be identified as the basic international convention with regarding to the wetland management. The Convention of Wetlands (Ramsar, Iran 1971) provides the global, intergovernmental framework for wetland conservation and management. By September 2001 there were 128 Contracting Parties (including Sri Lanka, since 22 June 1990) from all regions of the world. The Ramsar mission is “the conservation and wise use of wetlands by national action and international cooperation as a means to achieving sustainable development throughout the world.” Contracting Parties have to accept obligations to promote ‘wise use’ of all wetlands in their territory and to take special conservation measures for sites they designate for inclusion in the Ramsar List of Wetlands of International Importance (Ramsar sites). To assist Contracting Parties with management implementation the Convention Bureau has published a series of Guidelines. Some of these guidelines are as follows:

- Implementation of the wise use concept
- Management planning for Ramsar sites and other wetlands
- Developing and implementing National Wetlands Policies (a key mechanism for delivering wise use)
- International cooperation under the Ramsar Convention
- Reviewing laws and institutions to promote the conservation and wise use of wetlands
- Integrating wetland conservation and wise use into river basin management
- Wetland Risk Assessment Framework.

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The Ramsar Convention cooperates closely with other international agreements, including the Convention on Biological Diversity (CBD), the Bonn Convention on Migratory Species, and the Africa Eurasia Water bird Agreement and the Framework Convention on Climate Change. In partnership with CBD, Ramsar has recently established the River Basin Initiative on integrating biological diversity with wetland and river basin management. In addition, the World Water Council, organizers of the 3<sup>rd</sup> World Water Forum, and UNESCO, convener of the World Water Assessment Programme, are useful information focal points. International instruments are also an essential resource and enabling framework for wetland actions, for example the World Bank Environmental Strategy and the Poverty Reduction Strategy Papers.

Several decades ago, public international law was not much concerned with environmental protection. Later, the **Stockholm Declaration of 1972** and subsequent international instruments have enriched the international community on the subject. The term ‘Sustainable Development’; which includes inter-generational equity was brought into common use by the Brundtland Commission Report in 1987. The **Rio Declaration of 1992**; which refers to the right to sustainable development seeks to bridge the gap between environmental protection and economic development. According to that in case of wetland conservation and right to sustainable development there is a conflict between them. As discussed in previously due to the urbanization the garbage disposal, developing infrastructure facilities are becoming serious issues. For that the authorities have identify the wetlands as the easy solution. Because of that reason only currently most of the wetlands in Sri Lanka including Muthurajawela are subjected to various threats.

**Article 27(15)** of Directive Principles of Sri Lankan Constitution provides obligation to State to respect for International law.<sup>47</sup>As Sri Lanka is a country; which adopts dualism approach, principles and guidelines in international instruments have to be incorporated into Sri Lankan legal system by enabling legislations. However, Sri Lanka can adopt principles and guidelines in above discussed international conventions through superior courts though it is a mere soft law. In **Eppawela case**,<sup>48</sup>Amarasinghe J stated that,

*“Principles set out in the Stockholm and Rio declarations are not legally binding. They are mere soft laws. But they would be binding if they have either expressly enacted or become a part of domestic law by adoption by superior courts in their decisions.”*

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<sup>47</sup> Article 27(15), Chapter VI, Directive Principles of State Policy and Fundamental Duties, 1978 Constitution

<sup>48</sup>Bulankulama v Minister of Industrial Development (2000) vol 7(2)

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However, in Sri Lanka there is no specific legislation for the wetland management. But the existing environmental legislations are almost covering all the matter relating to the wetland management. Although a number of legislative and policy instruments impact on wetland management, a separate policy framework is desirable in view of the specific threats these ecosystems face and their potentials for sustainable management. It is found in the research work that the objectives of this policy have not been effectively achieved and the implementation of such laws is remaining weak and people and environment are often affected in practice from the illegal utilization of wetlands and improper uses of them.

However, certain gaps are there in the law relating to wetland management and in practice in the Sri Lankan context. Therefore, it is important to compare the Sri Lankan position with certain other jurisdictions in order to find out the pros and cons our legal system with regard to this. When considering about the India and Australia they are giving more legal priority to wetland management and having well-organized system of implementation mechanisms Accordingly, researcher's findings through this comparison is that less priority is given by Sri Lanka to wetland management when comparing with other two. Because, both these countries are giving considerable statutory and regulatory protection for the wetland management while India is providing a better implementation and monitoring mechanism. And the significant feature is the role of the judiciary in India in case of conservation of wetlands. Therefore, researchers have identified that the laws, rules and practices of these countries are somehow better than Sri Lanka. Further, it is useful to say that Sri Lanka could refer and use effectiveness of laws and practices relating to wetland management in those countries when enact new laws, policies or amend the existing laws in the country.

Specially, wetland management and sustainable development have been created severe problems in Sri Lanka where law and authorities have grown used to cutting procedural corners. Whatever theoretical guarantees may be in force are not observed in practice as illustrated in the cases that are discussed in this study. According to the findings of the research the main reason for that is the political influence. Such improper wetland management and weaknesses of its laws have all too often been accompanied by other human rights violations, in particular right to life and healthy environment of victims for a long period of time. Irrespective of steps to mitigate the illegal utilization of wetlands, preservation of ecological, biological values and end violations of rights of people, the authorities must urgently take measures to root out these violations too.

When considering about the international framework and comparing with other jurisdictions it can be clearly identified that there are several guidelines, principles and examples in the world for the wetland management. As the

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major international convention Ramsar Convention introduced the concept of “wise use” of wetlands. Based on that, most of the countries have formulated their legal framework for the wetland management.

However, the Sri Lankan situation in the present context indicates very clearly, there are inadequacies and weaknesses in the implementation of laws. According to that, there is need in the society to identify and implement measures that the authorities must urgently adopt to eliminate the improper management of wetlands and protect the victims of environmental related matter and destruction of ecological and biological values.

## **5 CONCLUSION & CONTRIBUTIONS**

According to all the facts discussed in this dissertation as the concluding remark it can be suggested that; either a separate legislation should be drafted for the wetland management as a solution for the threats faced by them recently or the National Environmental Act should address this matter in a considerable manner.

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### **ABBREVIATIONS**

CEA	Central Environmental Authority
UDHR	Universal Declaration of Human Rights
IWMI	International Water Management Institution
CMC	Colombo Municipal Council
NGO	Non-Governmental Organization
EFL	Environmental Foundation Limited
GS	Grama Sevaka
LNG	Liquefied Natural Gas
NEA	National Environmental Act
EIA	Environmental Impact Assessment
CBD	Convention on Biological Diversity
NWP	National Wetland Policy
EPBCA	Environment Protection and Biodiversity Conservation Act