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# Southern Transport Development Project Sri Lanka

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## Executive Summary

**A**DB's Environmental Policy requires the consideration of environmental problems in development decision making. The Environmental Impact Assessment is a document which analyzes the environmental impacts.

The Southern Transport Development Project is a construction of an expressway connecting Matara and Colombo by a 128 kilometer road. The road crosses through four river basins and many other wetlands. It also passes many villages and demolishes over 1,200 houses.

The EIA was done for a three-kilometer corridor and it was not a project specific EIA per se. It was subject to heavy criticism as it did not properly address the environmental and social impacts.

The project is covered under the Sri Lankan Environment Policy<sup>1</sup> and the Resettlement Policy<sup>2</sup> and is also subject to ADB policies and provisions such as the Involuntary Resettlement Policy, the Operations Manual (OM) Section 20 from 1997 on Environmental Considerations in ADB Operations, the Information Disclosure Policy and the Policy on Inspection.

The OM on Environmental Considerations has very few concrete safeguard provisions for environmen-

tal protection. One requirement is the completion of an Environmental Impact Assessment for Category A projects likely to have significant environmental impacts. STDP falls in this category. Even though an EIA was drafted for STDP, it is inadequate because it does not include all the geographical areas covered by the road trace, and secondly, does not take into consideration major environmental concerns, such as the fact that the road crosses four river basins, over one hundred wetlands and two thirds of trace is covered with paddy fields. Further there is no environmental monitoring for the project. Social impacts were prioritised due to the involvement of the affected communities but environmental issues were not properly addressed.

The main reasons include the

- lack of consideration of the environmental impacts by the road designers,
- lack of willingness to address the environmental issues due to the road being used by politicians for their own means
- inadequate law enforcement in settling disputes over the affected environment at local level,
- Insufficient human capacity and funds in the project monitoring and approving agencies such as Central Environmental Authority.

The local implementing agencies do not make it their priority to implement relevant ADB policies. This may be due to ignorance of the specific requirements in the policies. In some instances, the main implementing agency does not bind the contractors and subcontractors to environmental provisions required by ADB.

The main contractor in STDP seems to be concerned about following environmental requirements. However, it is impossible for the contractor to mitigate the environmental impacts due to design problems.

The project still faces controversies due to significant social impacts. Although there is a resettlement plan it was not released to the public. This lack of transparency is a major reason for the disputes. The road construction has started from one end even though some of the lands have not yet been officially acquired. This pressures the people and the agencies when taking decisions.

The approach of the ADB and the relevant government agency staff is not acceptable. But the lessons learned in this case show that people were empowered in some areas to fight against the wrong decisions. Democratic space has been improved for some communities due to the involvement of local and international NGOs. For example, people

in Galanigama, Akmeemana and Kahathuduwa used the ADB's inspection panel as well as the human rights commission to the Supreme Court to try to get redress. Also the process shows how government agencies and even the ADB abuse power in decision making. The affected people did not receive support from the general public in this campaign, but nevertheless, there was a lot of media attention.

This campaign also shows that the environmental concerns of the people were not properly highlighted since social issues such as resettlement was a major concern. Therefore the concerned institutions, i.e. IFIs, local agencies and civil society groups need to follow the environmental policies and regulations both on national and international level to make sure that the present generation protects the environment and nature for future generations.

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<sup>1</sup> Under the National Environmental Act (NEA) a project in thin magnitude needs to follow the Environmental Impact Assessment regulations and should be open for public comments for a 30 day period. In the STDP an EIA was done and two public hearings were held for obtaining oral comments.

<sup>2</sup> The Sri Lankan Resettlement policy was prepared in 2001 with the technical assistance of the ADB

# Introduction

## The Project in General

**T**he Southern Transport Development Project (STDP) which is locally known as Colombo-Matara Expressway is an infrastructure development project. The project is now jointly funded by the ADB (Asian Development Bank) and the Japanese Bank for International Corporation (JBIC). The total project cost is 27 billion rupees (approximately US \$ 600 million). The financial resources come as follows from different sources. JBIC contributes the stretch of Kottawa to Karadeniya which is 66.9 km and the ADB contributes funding for the rest of the highway i.e. from Karadeniya to Matara which is 59.5 km.

Under the ADB environmental categories, Loan No: 1711 SRI Southern Transport Development Project (2000-2005) comes under the category A projects with potential to have significant adverse environmental impacts for which an Environmental Impact Assessment (EIA) is required.

The consulting agencies involved in the design are Wilbur Smith Associates in association with Resource

Development Consultants (WSA & RDC) and the construction has been awarded to Kumagai Kumi, a Japanese company. The Environmental Impact Report (EIAR) report was conducted by consultants from the University of Moratuwa.

According to the EIA this project has been justified as a project for poverty alleviation and in that sense is in line with the poverty reduction strategy. However, this justification created local controversy. The EIA states

*“The proposed Expressway, by enabling speeding transport of produce, will have a positive influence on agriculture by way of expanding markets, reducing wastage during transportation, timely availability of inputs, quicker disposal of produce, etc. The outputs of agriculture and fisheries are highly perishable and large amounts of produce go waste during transportation of produce from southern areas of the country to large urban centres like Galle, Kalutara, and Colombo”<sup>1</sup>.*

The Road Development Authority (RDA) defines the objectives of the proposed Expressway project as follows:

*To provide the required accessibility and mobility for the future development of the southern Province and part of Western and Uva Provinces included in the Proposed Southern Development Plan.*

*To provide a highway to act as a catalyst in encouraging and attracting industries and services for the economic and social development of the Western and Southern provinces and beyond.*

*To provide a highway that will be part of a proposed access controlled highway network in Sri Lanka to improve inter-regional transportation.  
(EIAR, March 1999)*

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<sup>1</sup> Chapter 6 page 46 of the Environmental Impact Assessment report, Southern Expressway Development project, Main Text, 1999

## The Project in Terms of its Sectoral Context

**A**DB is a long-time donor in the Sri Lankan Road Sector. The following loans and Technical Assistance (TAs) have been provided by the ADB in the recent past.

However, the STDP was ADB's first road project in Sri Lanka that involved the actual construction of new roads rather than the mere widening of the existing roads.

37262-01	TA Loan for Road Project Preparatory Facility (previously TA Loan for Road Project Preparation)	LOAN	27 Nov 2003	10 Mar 2004
31280-01	Road Sector Development Project	LOAN	25 Apr 2002	27 Dec 2002
26522-01	Southern Transport Development	LOAN	1 Jun 1993	15 Mar 2000
28331-01	Roads Network Improvement	LOAN	1 May 1998	14 Oct 1999
36178-01	Expressway Public-Private Partnership	PPTA	19 May 2003	18 Sep 2003
31285-01	National Highways Development Project	PPTA	24 Apr 2002	21 Dec 2002

## History of the proposed Sri Lankan expressway network

Sri Lanka's first expressway was designed in 1991 to link Katunayake International Airport to Colombo city. The adverse impacts of this project, including involuntary resettlement raised vehement protest among the project affected people and a lawsuit was filed with the help of Environmental Foundation in 1993. As a result the project was changed. Project construction began in 2001 but stopped again in 2002 due to insufficient funds.

The second expressway is the Southern Transport Development Project. The third expressway in this nature was proposed in 1996 and is known as Outer Circular Road which was to be constructed around Colombo city. All other major expressways were also to be linked to this expressway. The third expressway was also stopped due to strong public protests.

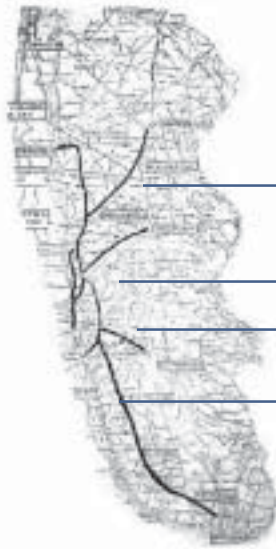
The fourth expressway was proposed to link the Outer Circular Road and city of Kandy which is the last kingdom located in the central province. This will be a 112 kilometer long road. At present, affected communities are voicing strong protest about this expressway.

The fifth proposal will link Colombo and Anuradhapura which is the first kingdom and the first capital of Sri Lanka. This is still at the designing stage.

During the last elections held in April 2004, the present opposition party (former governing regime) proposed 27 expressways including a 22 kilometre bridge to link Sri Lanka and India.

In all the cases the displacement of the people is a major problem. In addition, damage entailed in all these cases will not only cause harm to the environment but also result in serious adverse impacts for the inhabitants of the environment.

## MAJOR EXPRESSWAYS PROPOSED INITIALLY



Colombo-Anuradhapura

Colombo-Kandy

Outer Circular Road

STDP



**PROPOSED  
EXPRESSWAY  
NETWORK OF THE  
LAST REGIME**

## Project in Terms of its Country-specific Context

In 1992, the RDA decided to build a highway from Colombo to Galle to facilitate the development of the Southern region, which is referred to as the Southern Expressway. RDA's original design was called the Original Trace (OT), but it was then reviewed and a trace was drawn which included some part of the OT, but with modifications. This was called the Combined Trace (CT).

The ADB and JBIC agreed to fund the project. The required EIA and socio-impact studies were completed in 1996. The Central Environmental Authority (CEA) gave permission to carry out the project in 1999. But they requested that the route to be changed in some parts so that some of the wetlands in this part could be saved.

The RDA responded by drafting a new trace which is called the Final Trace (FT). No EIA was done for these changes. The people to be affected

were not consulted. They were merely informed and RDA simply went ahead with the new trace.

The final trace will be a 128 kilometers long, 80 meters wide roadway, jointly funded by the ADB (54 Kilometers) and the Japanese Bank for corporation (JBIC -74 Kilometers). The acquisition width for road construction will be 80 m and the road platform is designed for an A1 four lane highway, with provision for expansion to six lanes at a future date without any further acquisitions.

The proposed expressway is located in the southern part of Sri Lanka, in a corridor from Colombo to Matara lying approximately 5 - 11 km inland of the existing A2 Road. At the Colombo end the proposed highway starts from a point in Makumbura, at 21 km on the high level Road. At the Matara end the proposed trace ends at Hittatiya, about 4 kilometers from Nupe, on Matara- Akuressa Road.

The proposed trace traverses through the four districts of Colombo, Kalutara, Galle and Matara<sup>1</sup> and the following 17 Division Secretariat Divisions: Homagama, Horana, Bandaragama, Kalutara, Dodangoda, Matugama, Walallawita, Bentota, Elpitiya, Karadeniya, Baddegama, Bope- Poddala, Akmeemana, Habaraduwa, Welipitiya, Malimbada and Matara.

It crosses 4 major rivers in the South Western – Southern part of Sri Lanka, viz Kalu Ganga<sup>2</sup>, Bentara Ganga, Gin Ganga and Polwatta Ganga.

According to the Pre-feasibility Study Report (1993) it was proposed to have intermediate interchanges at Moonamalwatta( near CP 27) Navadagala( near CP 37) Narawala ( CP 62) and Dorape( near CP 70) with link roads to Aluthgama/ Bentota, Kosgoda. Ahungalla, Dadalle/ Galle and Koggala on the existing A2.

But the proposed combined trace will have interchanges in Polgasowita, Welmilla, Ramukkana, Wewita, Wadugama, Lewwanduwa, Nawadagala, Kurundugahahe- tekma, Baddegama, Thotagoda (Akmeemana) Padinnoruwa and Kokmaduwa.

The first kilometer from the Matara end has an elevation slightly below

mean sea level (MSL), but beyond that the ground level of the trace centre line is above MSL, with mostly mild undulations, varying between elevations 0.0 and 60.3 m above MSL.

<sup>1</sup> Colombo and Kalutara districts are within the Western province and Galle and Matara districts are within Southern province

<sup>2</sup> "Ganga" means a river

## MAP PROPOSED TRACE



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## Project Description

# 1. Origins to Status Quo

**A**ccording to Road Development Authority (RDA), the proposed highway is intended as a limited and controlled access road. RDA is the executing agency for this project. This proposed expressway will link Sri Lanka's capital, Colombo, with Matara on the Southern coast.

The concept of the Southern Expressway was introduced by RDA in late 1980's. The original trace was designed by RDA in 1992. The project was started in 1994 without the mandatory EIA. Therefore Environmental Foundation Ltd (EFL)<sup>1</sup> Organisation of the Safeguard of Life and Environment (OSLEN)<sup>2</sup> with other NGOs and community groups were able to stop the work. However, with the funding assistance of the ADB and the Japanese Bank for International Corporation (JBIC) RDA again initiated this highway project in 1996.

In 1996, the consultant appointed by the ADB came up with an alternative design to the original RDA trace which is known as the ADB trace. However, at the EIA stage, both RDA and the ADB trace were combined and the new trace is known as the combined trace. The EIA was submitted to the authorities in 1997.

The EIA was opened for public comments in 1999 and two public hearings were held. The project was approved under the EIA procedure in 1999.

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<sup>1</sup> Environmental Foundation Ltd., is an environmental NGO which provide legal assistance for the public to protect their environmental and social rights

<sup>2</sup> OSLEN was a very active environmental and consumer network around this period. They organized the people around the highway and educated them of the components of the road.

# Change Model



## Project Diary

Year	Activity
1992	Project was started without an EIA- EFL wrote to the Road Development Authority on the violation of the local laws and able to stop the project
1994	Project was again started and 6 foundation stones were laid and one and half kilometre was filled- This was again stopped by EFL threatening a lawsuit if not follow the EIA process
1999	EIA was done and opened for the public comments. EIA was approved
2000	Route was changed
2001	Affected people filed human rights cases
2001	Affected People filed an inspection complain at the ADB Inspection Panel
2002	Inspection cases were rejected
2002	Affected people attended the ADB AGM
2002	Three cases were filed by the affected people against the changes of the approved trace
2003	Three Supreme Court cases were filed
2004	Supreme Court order was issued in January 2004 and ordered that the human rights have been violated

## Concerns

**T**he public consultation procedure was questioned by the public as bad procedure. Many people who will be affected were not consulted. From the beginning there were some controversial issues among the affected communities and the implementing agency.

The main controversies were weak public participation/ consultation process; inadequate information disclosure; inadequate resettlement, changes in project design, lack of alternate options assessment and faulty evaluations, weak environmental standards and adverse social impacts.

### **Weak Public Participation**

At the beginning of the project, the government officers in Divisional Secretariats and RDA failed to give information about the Resettlement Plan and project details, to the communities, saying that they also were not aware of these things or they did not allow the issuance of some documents (even the road map) to the general public. ADB's Involuntary Re-

settlement Policy says that the affected people should be fully informed and closely consulted on resettlement and compensation options. But the consultations did not include any discussion, consultation, or information about where and how the affected people were going to be resettled.

The current approved design of the road has not been given to the public and this amply exhibits the inefficiency of the implementing agencies of the project that have not been accountable and transparent in their approaches. RDA has not designed a comprehensive drainage plan.

There is a lack of information dissemination to the general public about the project and the Resettlement Plan. RDA has held only one public meeting in the divisions although they claim that they had several meetings. RDA officers invited the local level government officer, Grama Niladhari, and the Samurdhi Officer instead of affected people to these meetings.

When some people protested the surveying of their lands, RDA brought the police and terrorized villages such as Akmeemana and Galanigama. In one case, police arrested a woman in Akmeemana area who opposed the surveying of her land. She was arrested while her child was along at home. She was the only parent for her child.

### **Inadequate Information Disclosure**

Other than the EIA document, people did not have access to any other documents. The EIA was opened to the public for a 30 day commenting period in 1999. It was not easy to obtain the Resettlement Plan which should be available to everybody. It was very hard to obtain project related documents from the ADB Resident Mission and from the RDA and even from the ADB headquarters.

### **Inadequate Resettlement**

After the implementation of the Mahawali Project in 1985, STDP was the second project to create huge problems through resettlement. Total lands of 8745(951.17 ha) are planned to be crossed by the highway. According to the resettlement plan<sup>1</sup>

***“Current estimate show that 5683 households of all categories***

***will be affected. Moreover 1488 structures, which include 1315 homesteads and 151 commercial establishments, will be affected. Of these 214 house holds are considered vulnerable.”***

From that number only 865 house owners will receive alternate lands from the project.

However, the original estimate was only 622 structures under the combined trace and 938 structures under the Original RDA trace.<sup>2</sup> Therefore the selection of the Final Trace which includes more resettlement and destruction cannot be justified. Estimated resettlement cost is Rs 2,861,503,350 with 10% contingency which is the equivalent to USD 29.75 million.

Land acquisition started in July 2000 and is continuing to date. RDA's time frame for the implementation of the resettlement was from March 2001 to December 2003. The government acquired the land for this project under the section 2 of the Land Acquisition Act.

In some cases, the displaced people said that they were not informed earlier and that they did not receive or see the Section 2 notices. People were not aware about the land acquisition and the resettlement.

ment procedures. Earlier on, RDA did not take any step to initiate public participation and raise public awareness. Hence the affected people protested against this situation and ten different communities sent complaints to the ADB's Inspection Committee.

After the protest in September 2001, RDA opened four offices in Galanigama, Mathugama, Galle and Kurundugaha-hathakma. RDA appointed resettlement officers and resettlement assistants to work with the affected people. Then they tried to collect the information of the affected people and to identify the resettlement sites. But all this process was dependent on the personal views of the respective resettlement officers as some officers saw the road as a major step toward over-all development, while others were sympathetic to the situation of the affected people. Neither the ADB nor the government took efforts to improve the resettlement monitoring system. The one consultant hired under ADB to perform the monitoring, does not represent a sufficient attempt at adequate monitoring.

In 1999, the Sri Lankan Government put into effect a National Resettlement Policy with the assistance of the ADB consultants. The dis-

placed people from the STDP project were to be resettled according to the above policy, which was very similar to the ADB Resettlement Policy. However, the way the resettlement happened shows that the RDA did not follow this policy.

For example the policy states that

***“Affected people should be fully involved in the selection of relocation sites, livelihood compensation and development options at the earliest opportunity.”***

It also states

***“To assist those affected to be economically and socially integrated into the host communities; participatory measures should be designed and implemented.”***

The above descriptions of the consultation process demonstrate that these provisions were not implemented in STDP.

Because of the inspection complaints and the other letters of the affected people, RDA was asked to submit a Resettlement Action Plan before the loan was made effective. RDA submitted the Resettlement Action Plan to ADB in November 2002 and the loan became effective.

RDA valued the properties of the affected people of the Colombo Matara Highway under section 17 of the Land Acquisition Act, but these evaluations were not high enough. RDA then initiated the Land Acquisition and Resettlement Committee (LARC). This committee consisted of five members including the division secretary (chairman), resettlement officer, and the affected person. There were separate LARC committees for each family. The head of the family is the member in the committee. The purpose of the LARC was that each affected person could set his/her price for compensation.<sup>3</sup>

The success of this set-up depends on the bargaining power and the social status of the respective affected person. Also in some cases it depends on the personal attitudes of the divisional Secretary. RDA acquired the lands in 1996 at the Southern end (Sulthanagoda Godagama and Akurugoda area). Therefore the LARC committee has valued this land to the market value of the year 1996.

### Changes in Project Design

The Sri Lankan Government selected two alternative traces for the development of a Southern Expressway called the Original RDA trace and

the Combined Trace. The fact that the trace used throughout the documents and studies is not the one that the Road Development Authority is implementing constitutes a violation of ADB and National policies. The Central Environmental Authority (CEA) in its approval has given recommendations to closely follow the original trace as the combined trace involves a lot of environmental impacts.

The lack of an on-site monitoring system meant that the executing agencies failed to take responsibility for the resettlement activities in the project. In most of the reported cases, we found that political pressure was applied to influence the direction of the original trace. For example, at one point the trace in Akmeemana area was changed by a politician in the area so that the road would no longer cross through his electorate.

The EIAR indicated that 622 houses were to be demolished by the Road. But the resettlement plan states that this number is 5683. This number is much higher than the number of affected houses under the combined trace which would have affected 938 houses. However, we learnt that RDA also does not have accurate knowledge or assessment of the actual situation.

### **Lack of Alternate Options Assessment and Faulty Evaluations**

Affected people and the NGOs who sent comments on the EIA during the public commenting period and during the public hearings proposed a number of primary alternatives for this project. These included expansion of the existing highway, construction of an electrified railway line, use of sea connections, construction of a 4 lane highway instead of the proposed six lane highway and major alternatives.

Furthermore, a number of secondary alternatives were proposed for some sections of the highway. For example, some groups proposed an elevated highway for the section where flooding is a serious problem.

According to the feasibility study a six-lane highway is necessary for the section from Colombo to Kalutara which is about 20 kilometres. The remaining section only needs a 4 lane highway. However, none of these options were positively evaluated by the feasibility study or the EIA.

### **Weak Environmental Standards**

This project was started in 1992 and an Environmental Impact Assessment Report (EIAR) was pro-

duced in 1994 showing various traces. A trace was chosen and the EIAR was updated in 1996. However it was not issued for comments. After the funds were made available, consultants were called in and RDA agreed on a better trace. The EIAR was then amended for the data on the new trace and it was published in 1999. The base data is now 7 years out of date and is consequently not accurate.

The road trace which goes through Akmeemana is not included in the approved EIAR. The EIAR refers to the combined trace going through Poddala, Meepawala, Labuduwa, Totagoda, Madinoruwa, Kokmaduwa and Godagama. But now the road is going through Poddala, Narawala, Walawaththa, Thalgasyaya, Niyagama, Ihalagoda, Godamuna, Pinnaduwa, Godawatta and Ankokkawala. Some of these areas are not included in the original EIAR.

When the Central Environmental Authority gave approval to this project, they imposed certain terms and conditions on RDA. The approval imposed 58 conditions under 11 sections including a monitoring program.

According to the conditions under the monitoring program, RDA

should prepare a monitoring plan which should be approved by the monitoring committee. A monitoring program should be implemented as soon as the approval is granted. According to those conditions, the CEA can question the RDA if there are any violations.

The implementation of STDP became very controversial due to the wide-spread displacement of local communities. In addition, the 40 % of the proposed trace traverses across flood retention areas such as wetlands and paddy fields. Therefore many hydrological impacts are anticipated.

### **Adverse Social Impacts**

Most of the adverse social impacts relate to the resettlement of the affected people. The design of the road construction does not take into account access to health care, education and related services of the affected communities.

For example, in the case of school children being displaced, RDA officers gave letters to the school principals which stated the child's preferred choice of school. However when children applied to their schools of choice, the school principals did not always respect these letters.

The residents of the villages along the proposed trace are from families that have been there for several centuries. The area is self sufficient and also relatively crime-free. What will happen to these traditional family ties? For the villagers this social network is the most important asset that they have. There was no attempt from RDA or ADB to mitigate this aspect.

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1 Page vi section 3 Executive Summary of the Resettlement Implementation Plan. A copy was received from the ADB Resident Mission for a request made by Heather Mundy, of Galanigama. However RDA did not open this document to the general public

2 Chapter 6 page 48 of the EIA

## Activities Taken by Affected People & NGOs

**U**ntil 1996, no united movement existed among the affected people.. Due to the involvement of Environmental Foundation Ltd (EFL), Organization for the Safeguard of Life and Environment (OSLEN) and the Green movement of Sri Lanka(GMSL), the affected people were informed on the impacts and possible actions.

As a result, in 1998, the NGOs involved succeeded in organizing a solidarity movement of the affected people from the expressway. As a first step, village level committees were organized. Already established committees and the new committees then joined together and formed a mass movement.

This movement periodically organized campaigns along the road way and in the major cities to protest against the expressway, to educate politicians and the bureaucrats on the impacts and to get the media publicity.

The protest movement was at its height at the time the EIA was opened for public comments in 1999. Affected people and the NGOs involved jointly attended the public hearings and the environmental organizations succeeded in educating the public on the EIA and the negative impacts. This helped improve the public commenting. Both Green Movement of Sri Lanka and the Sri Lankan Working Group on ADB were very active during this period. As a result, RDA organized a meeting to explain the compensation package and the road design.

After this meeting the road design was changed in some sectors and new people become affected. The people who had been affected by the old design left the campaign at this stage. The environmental organizations worked with the newly affected people in the same fashion. A mass demonstration was held in front of the ADB resident mission in 2001 and a petition was handed over to

the Resident representative. Although there were several meetings after this, no major changes have taken place.

### Filing of Human Rights Case

Three communities along the highway decided to file human rights action before the National Human Rights Commission, claiming that RDA and the Government of Sri Lanka disregarded human rights in designing the expressway. 97 persons from Galanigama and 457 from Akmeemana joined this petition.

Public Interest Law Foundation (PILF) later assisted them with these human rights cases. Of the three human rights cases, one came from Galanigama, one from Akmeemana and one from another affected household. Heather and Cyril Mundy filed the third case. However, the cases were delayed in the commission for various reasons and the people decided to file three writ applications in the Court of Appeal.

The Court of Appeal appointed a judiciary committee to study the traces. According to the report of the committee, these areas had already been covered in the EIA that was prepared before 1999. The Court of Appeal observed:

**“It is true that at the time the EIAR was prepared, the Final Trace was not envisaged. However ... the Final Trace was not an alteration that would come under Regulation 17(i)(a) and section 23EE [of the Act].”<sup>1</sup>**

The Court dismissed the writ applications, in the exercise of its discretionary powers, holding that:

**“ [When balancing the competing interests] the conclusion necessarily has to be made in favor of the larger interests of the community who would benefit immensely by the construction of the proposed expressway ... the adoption of the Combined Trace would undoubtedly result in irreversible damage to the eco-system in the Bolgoda Wetland area. Therefore the only option is to adopt the Final Trace which ... will result only in the displacement of affected people in that area ... the obligation to the society as a whole must predominate over the obligation to a group of individuals, who are so unfortunately affected by the construction of the expressway.”<sup>2</sup>**

## Inspection Process

At the same time the Sri Lankan Working Group on ADB (SLWG) educated the affected people on the availability of the Inspection Committee of the ADB. As a result, ten different communities filed complaints with the Inspection Committee of ADB in 2001. They believed that the policies such as Resettlement Policy and Information Policy of ADB have been violated.

There were three separate complaints from Galanigama, Akmeemana, and Kahathuduwa and a joint complaint came from other seven community groups. In the procedure of the Inspection on STDP Galanigama and Akmeemana were in forefront. Galanigama and Akmeemana were in the 9th stage according to the Diagram in the ADB Inspection Policy.

In the conclusion concerning the authorization of an Inspection, the Bank Inspection Committee rejected the point about the alignment actually selected for the road construction when formulating the Report and Recommendation for the President, saying that alignment considered in the RRP consisted of 3-4 km wide corridor in which the final alignment was expected to be located and which includes the requested area.

According to Sri Lankan law, section 48 of the 1980 of the National Environmental Act (as amended section 56 of 1988) requires a site specific EIA for a new development project. But the EIA for this project is not a site specific EIA as it covers a corridor of 3-4 kilometres.

From the point of view of the involved NGOs, the argument of the corridor is not seen as valid, and in addition to that, several affected households in the Galanigama area fall outside of this 3-4 km. The communities failed to receive justice from the domestic law of the country. Therefore they complained to the recourse mechanism of the Bank although it failed to give them justice. The Board Inspection Committee concluded that an inspection of the STDP was not warranted based insufficient evidence. The Board Inspection Committee stated that:

**“22. In deciding whether to recommend to the Board that the Board authorize an inspection of the Project, the Committee has given careful consideration to the Request and the Response thereto and to other relevant documents. On the basis of the documents presented to it the Committee has, based on the reasons given above, maintained that the Request is not clearly ineligible nor clearly frivolous.**

**23. It has, however, also come to the conclusion that the very detailed and thorough analysis made by Management in its response to the substantive allegations of non-compliance with policies made by the Requester appears to establish convincingly that the allegations of non-compliance were unfounded in all cases.”<sup>3</sup>**

The Bank Inspection Committee rejected the Akmeemana request on the same grounds. Regarding the rejection of the other seven complaints, and the Kahathuduwa complaint the committee stated;

***“In accordance with paragraph 35-37 of the Inspection Procedure, the committee has carefully considered the requests and in the light other documents. It has concluded that the Requests has not presented reasonable evidence that the community groups’ rights and interest have been or are likely to be directly, materially and adversely affected by an action or omission of ADB as a result of ADB’s failure to follow its operation policies and procedures. The Committee has therefore determined that at this stage in time Requests clearly ineligible and no written response to the Requesters by ADB ’ management is required.”<sup>4</sup>***

However, communities feel that the above statement is false. The ADB reviewed its Inspection Function in 2003, recognizing that the design and prescribed inspection process had so far been a failure. On June 8, 2004, the affected communities of STDP filed a new Inspection Request under ADB’s revised Inspection Function.

### **Appeal to the Supreme Court**

When the Court of Appeal decision was against the opinion of the public, the claimants decided to go to the Supreme Court and asked for a revision. Judgement was delivered in February 2004 and according to the plaintiffs” We both won and lost”

The Court found that the deviations in Bandaragama and Akmeemana “were alterations requiring CEA approval after compliance with the prescribed procedures and the principals of natural justice.” It confirmed that the discretion to refuse relief by the Court of Appeal was justified, but that the Appellants ought to have been compensated for the infringement of their rights under Article 12(1) and the principles of natural justice.

The Supreme Court ordered Rs.75,000 to be paid to each of the petitioners in addition to the amount due under the Land Acquisition Act.

The court also ordered costs of Rs.50,000 for each of the three cases plus the reimbursement of the Judicial Committee costs of Rs.100,000. Because there are some 47 petitioners in the South that means that total cost to the state is nearly Rs.4 million.

The Court also ruled that the appellants were adversely affected by the deviations and were therefore entitled to a hearing, under the audi alteram partem rule as well as Article 12(1).Judgment also says that

**“If it is permissible in the exercise of a judicial discretion to require a humble villager to forego his right to a fair proce-**

**dure before he is compelled to sacrifice a modest plot of land and a little hut because they are of “extremely negligible” value in relation to a multi-billion rupee national project, it is nevertheless not equitable to disregard totally the infringement of his rights: the smaller the value of his property, the greater his right to compensation”.**<sup>5</sup>

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- 1 Appeal Court order
  - 2 Excerpts from the Supreme Court Order
  - 3 Management response to Gama Surakeema Sanvidhanaya
  - 4 ADB management response to the villagers of Kahathuduwa.
  - 5 Supreme Court decision

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# Project Monitoring

## Monitoring Schedule

Following visits were done for the monitoring.

Period	Event
9-16th May 2002	Attended ADB AGM
15 June 2002	First Community meeting - assisted the people to establish a joint organization
26- 27 June 2002	Fist site visit
7th July 2002	Second Community Meeting
12-13 July 2002	Second Site visit
October 2002	Third site visit
20-21st November 2003	Fourt h Site visit
21-25th April 2004	Fift h site visit

# Monitoring Plan

**A**lthough the NGOs involved tried to obtain a copy of the Monitoring Plan government agencies refused to disclose the plan, although it is a public document. Therefore, the NGOs involved resorted to preparing their own monitoring plan based comprehensive

studies of the EIA report.

The objective of the monitoring was to determine whether the construction of STDP poses an unacceptable risk to the environment, society and economy of the area. The major concerns related to the sociological and hydrological aspects.

Therefore following types of monitoring were identified for the monitoring programme.

- Blasting and drilling activities
- Exploitation of construction material
- Transportation of material
- Noise
- Soil erosion
- Surface water quality
- Surface water quantity
- Ground water quantity
- Air Quality
- Displacement and resettlement of people

# Monitoring Against National and ADB Environmental Provisions

## The project in the context of National Environmental Act

**T**he project was started in 1992 without ADB or JBIC involvements. ADB came to the scene in around 1996. By then Sri Lanka had its own EIA regulations. 1994 RDA started filling the road without any EIA or even a proper feasibility study. This is a violation of the local environmental laws. However, ADB does not take responsibility for the violation of local laws.

But a local EIA was done in 1999 and it was opened for public for 30 days under the national EIA process. Two oral public hearings were held just after the end of the 30 day commenting period.

However the public hearings were neither adequate nor adequately publicized. The decision of the hearings was not adequately transparent.

According to the ADB environmental categorization projects in this nature comes under the category A which require a detailed EIA. In this case they have prepared the right document both at country levels and ADB level.

However this Environmental Assessment was done for the combined trace which is the amalgamated trace of original RDA Trace and the ADB trace.

This trace was not fully approved by the Central Environmental Au-

thority. The combined trace was supposed to cross through Bolgoda wetland in the western Province and Koggala wetland in the Southern province.

Both these wetlands are very important. On that basis, the combined trace was not approved in Bolgoda area. Alternatively they asked that the road be moved inland.

The RDA moved the road within 3 kilometre corridor to the right end of the corridor. However some of these villages were not even studied in the EIA. The Issue in Galanigama came in this way which is became a reason for the inspection case and also for the human right complaint and then before the Supreme Court.

There was similar incident in Akmeemana area. According to the residents in the area the road was moved to their village to protect two age old abandoned tea factories. Some people think a politician was behind this move. However this matter was also ended in the inspection case and Supreme Court.

### **The Project in the Context of ADB Environment Policy**

The 1997 OM is very weak on concrete provisions for environmental protection and none of the other provisions are relevant to the STDP case. However, the preceding description of the environmental impacts and the following section clearly demonstrate the violation of environmental standards in this project.

# Monitoring Against Desirable Environmental Standards

## Document Completeness

According to widely accepted and practiced standards an Environmental Impact Assessment should include the following components:<sup>1</sup>,

Plan	Availability and details
Environmental management Plan,	Chapter 10 of the EIAR deals with Institutional Requirements and environmental monitoring program.
Project monitoring and evaluation plan and schedule	Chapter 10 referred to the issues to monitor at all stages and it has recommended the agencies which should involve in the monitoring committee. (BUT SO FAR NO PLAN)
monitoring team Organization Plan	No such plan to the knowledge of the communities
Environmental Guarantee fund plan	No such plan
The monitoring fund plan	No such fund plan
The community development fund	No such fund
Contingency plan and fund	No such plan and fund

<sup>1</sup> (Unfortunately, the new Environment Policy does not yet apply to STDP. We have to look at OM Section 1997, and the Environmental Assessment Guidelines of 1998).

## Document Completeness

Document	
Project appraisal document	No access to this document
Feasibility study (ADB's possession)	No access
The detailed engineering plan( with the respective burrowing government) Information disclosure rules	No access
Initial environmental examination (ADB's possession)	Only EIA done under local law available
Any economic appraisal document available (vary but a uniformity in the operation)	Do not know

### Shelf life of the EIA document

The data used in this EIA is reasonably new. The data is taken from documents mostly published in the last decade. Also some of the data used has been taken from the Southern Corridor project, Draft final Report, Interim Report, Draft Initial Social Impact assessment and from the Initial environmental examination published in 1998. Therefore the data set used for the EIA can still be considered applicable.

### Review of other similar projects

A similar project was done in Sri Lanka in 1994 which is Colombo Katunayake Expressway. This project also created a lot of controversy. As a result of a case filed by the Environmental Foundation on behalf of the affected people the original trace was abandoned and a fresh EIA was prepared to minimize the social and environmental impacts. However, the project still had several problems such as political influence,

displacement and adverse impacts on fishermen due to the crossing of a lagoon. RDA did not draw lessons from this negative experience when it designed STDP.

### **Respect for standards, associate laws and treaties, local, national and international**

The final order of the Supreme Court case shows that it violates human rights. This cannot be taken as a project that promotes sustainable development.

### **Access to environmental information, environmental decision making environmental justice**

Access to information in this case is far from adequate. Due to the lack of information and political influences, there was no justice in environmental decision making.

### **Consistency with the Country's Overall Development Strategy**

#### Alignment with country development strategy by the ADB

The government's underlying strategy for the country strategy is to "develop today and conserve tomorrow". Government plans are made to increase the GDP and to

keep the growth rate above 8%. The government believes that only good infrastructure can bring about this growth rate. Therefore the government concentrates more on expressways and the power generation sector. This is mostly because of the domination of ADB, World Bank and IMF macroeconomic policies. However these macroeconomic policies do not give benefit to the poor. In this case the project aligns with the Government strategy. But the majority of Sri Lankans oppose the present development strategy of the country.

#### Alignment with local plans

Local plans are normally prepared by the governing regime. Therefore STDP is compatible with the local plans, too.

#### Capacity of consultants

The EIA was done by local consultants from the University of Moratuwa. They had experience in such assignments.

#### Stakeholders

Simplified stakeholder analysis was not undertaken as part of the EIA. However, public hearings and a social survey for the social impact assessment were conducted.

The process of this development shows that RDA and the ADB are playing the dominant role. Only very few people living along the road actively participated in the process. The majority of the villages have no access to decision making process. They were and are being left out in policy dialogue, discussion and decision-making.

Participation is mostly happening through the local EIA process. There was no empowerment from the government, ADB or the RDA. But civil society groups such as Sri Lankan Working Group on ADB, Green Movement of Sri Lanka and the EFL took a role in involving the affected people.

People actively participated in the public commenting period and in the oral hearings. Some villages in Galanigama, Kahatuduwa, and Akmeemana organized themselves and filed court cases and even an Inspection Panel case.

The most active stakeholders were the RDA and the ADB. Some politicians also took an active role in influencing the process to their ends. The public which is the main stakeholder in this case very rarely participated in the process as they were not informed and not empowered. Only few who are knowledgeable participated in the process.

### Project Stakeholders and their Interests

Below is a list of the project stakeholders and their interests:

Government: Infrastructure development in the country and overall national development

Ministry of Transport and Highways: Project approval and development of the road network

RDA: Easy access to other cities

Central Environmental Authority: Approval & monitoring, adherence to environmental standards

Consultant: Project design and preparation of impact assessment

NGOs: Good Governance, justice & equity, protect environment

Affected People: Social concerns, environmental concerns, resettlement

ADB: Moving of funds, assisting DMCs for requested developments; provide access to corporations and private sector involvement.

Local politicians: Development commission, sub contracts, jobs for supporters, gaining authority and, securing votes.

**Table for Stakeholder Analysis (Importance and Influence)**

Stakeholder Analysis		Level of Importance for Project Success	
		Low	High
Level of Influence in Decision-Making	High	<ul style="list-style-type: none"> <li>• Media</li> <li>• NGOs,</li> <li>• INGOs (NGO Forum, BIC, ELAW, FOEI, CIEL, OCAA, FOEI Japan, JACES)</li> <li>• Academia</li> <li>• Individuals</li> </ul>	<ul style="list-style-type: none"> <li>• ADB</li> <li>• GOSL and Ministry of Transport</li> <li>• RDA</li> <li>• CEA</li> <li>• EIA Review Committee</li> <li>• Local politicians (decision makers)</li> <li>• Judiciary</li> </ul>
	Low	<ul style="list-style-type: none"> <li>• Public at large</li> <li>• Other Government agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Project affected people (vulnerable group)</li> <li>• Local environmental NGOs</li> </ul>

# Monitoring Against Other ADB Policies

**T**his case is a very good example for monitoring the ADBs Resettlement Policy. The basic principles of the policy state that

**“Involuntary resettlement should be avoided where feasible, where population displacement is unavoidable; it should be minimized by exploring all viable project options”<sup>1</sup>**

The proposed option of the road trace did not meet this requirement and the present trace has the highest number of resettlement. The second principle states

**“If individuals or a community must lose their land, means of livelihood, social support systems, or way of life in order that a project might proceed, they should be compensated and assisted so that their economic and social future will generally be at least as favourable with the**

**project as without it. Appropriate land, housing, infrastructure, and other compensation, comparable to the without project situation, should be provided to the adversely affected population, including indigenous groups, ethnic Minorities, and pastoralists who may have usufructs or customary rights to the land or other resources taken for the project.”**

This principle was grossly violated and no support was given to the re-located households other than providing compensation in cash. They were not advised on how to use money, identifying new lands and build new houses.

The third Principle states that

**“Any involuntary resettlement should, as far as possible, be conceived and executed as a part of a development project or program and resettlement plans should be prepared with**

**appropriate time bound actions and budgets. Resettlers should be provided sufficient resources and opportunities to re-establish their homes and livelihoods as soon as possible.”**

This did not happen in STDP and only certain persons got adequate compensation but the majority were not provided adequate compensation. Originally they were provided the market rate but later a gazette notification was published that affected people will get government value plus 25% extra.

The fourth principle states

**“The affected people should be fully informed and closely consulted on resettlement and compensation options. Where adversely affected people are particularly vulnerable, resettlement and compensation decisions should be preceded by a social preparation phase to build up the capacity of the vulnerable people to deal with the issues.”**

This provision was also grossly violated. The resettlement plan is still not available for the affected people while half of the acquisition is already done.

The next principle states

**“Appropriate patterns of social organization should be promoted, and existing social and cultural institutions of resettlers and their hosts should be supported and used to the greatest extent possible. Resettlers should be integrated economically and socially into host communities so that adverse impacts on host communities are minimized. One of the effective ways of achieving this integration may be by extending development benefits to host communities.”**

There was no awareness of existing social and cultural institutions and there was no program to integrate affected people into the host communities.

Although the resettlement was started in 2000 the Resettlement plan was done in October 2002. This is a clear violation of the policy.

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<sup>1</sup> Involuntary Resettlement Policy of the ADB, August 1995

## Conclusion

This project created controversies from the early planning stages to the construction phase. The problem aspects include ADB policy violations, disregard of national laws and regulations and disregard of the social and environment rights.

Affected people have used all possible actions time and again to obtain redress. While some people benefited from these actions, there is still a large number of affected people who have yet to receive justice.

Recourse could not be achieved through administrative practises, political influence, local judiciaries or through the ADBs accountability mechanism. Some success was achieved however, when the Supreme Court accepted that the human rights of affected communities have been violated.

This is a good case to prove that the ADB has violated its policies. ADB's Involuntary Resettlement Policy, its Environment Policy and Public Disclosure Policy have been grossly violated. The case also shows that inspection mechanism is merely lip service.

If the bank policies need to be applied in local cases the Bank has to play a major role by familiarising the implementing agencies and other stakeholders with its policies. The ADB needs to make sure that their DMCs and local implementing agencies respect the Banks policies. At the same time the Bank should understand and respect the vision of the local people and the Bank should be accountable to the people.

In particular, the ADB's Environment Policy was violated. In this case The Supreme Court found that NO EIA had been conducted for the stretches of the road which were changed, which is in violation of Environment Policy. This shows that the affected people were denied the opportunity to participate in decision making. Further, there is no environmental management plan and no active environmental monitoring committee.

Our investigations revealed that there are no adequate mitigation in place to address the environmental problems at the construction sites. Therefore the Bank has the immediate responsibility to make sure that project follows the Bank's Environment Policy at least at the construction stage.

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## Reference

- 1 Operation Manual section 21 issued on 1 December 1992 - Asian development Bank.
- 2 Proposal for the Monitoring and Evaluating the Implementation of the ADBs Environmental Policy by PRRM, February 2003
- 3 Environmental Impact Assessment report, Southern Expressway development Project Main Text University of Moratuwa, Sri Lanka March 1999.
- 4 Handbook on Resettlement A guide book to good practice, Asian development ,1998
- 5 Resettlement Implementation Plan Volume 1, October 2002, Road Development Authority
- 6 OM Section 1997, and the Environmental Assessment Guidelines of 1998).