

COMMENTS ON GAPS IN INTERNATIONAL ENVIRONMENTAL LAW AND ENVIRONMENT-RELATED INSTRUMENTS; TOWARDS A GLOBAL PACT FOR THE ENVIRONMENT

Chapter VI – Gaps relating to the implementation and effectiveness of international environmental law

This report reviews and analyses the corpus of international environmental law and environment-related instruments as well as the governance structure and implementation of international environmental law. It reveals gaps and deficiencies at multiple levels.

I would like to say, Gaps identification in the report related to Convention and Treaties in some of Sectors are acceptable.

Considering the report, there are some places which need to pay special attention. For example - the Protection of Atmosphere (page No.14/14) sub topic under the Section 111 which address the Gaps relating to existing Regimes. Being a developing country Sri Lanka has experience in reporting system where there are challenges in harmonisations due to difficulties in obtaining data from relevant institutions, obtaining financial facilities within the scheduled time frame etc.

In addition my delegation wishes to observe and recommend the following on Gaps relating to the Implementation and effectiveness of international environmental law

- Establish Synergies among similar environmental convention or treaties such as Convention on Biological Diversity (CBD) UNFCCC and UNCCD.

Some of the key challenges that exist for the progressive development of environmental law are the:

- Excessive time laps between scientific understanding of environmental issues and corresponding development of appropriate laws at the national, international and regional levels – eg practical issues raised in preparing IAS Act in Sri Lanka.

- Outdated or inadequate national legislation or international agreements to effectively address certain environmental issues;

- Lack of environmental laws to adequately preserve and protect natural resources and ecosystems, especially in developing countries;

- Insufficient capacity to implement environmental laws, especially in developing countries.

- Proper Resources mobilization mechanism for the implementation of Conservation and Treaties.
- Need more Awareness about the International Environmental Laws, Conventions and Treaties among all Stakeholders from Grass Root level to achieve obligations and implementation of International Laws successfully.

What kind of Steps have been taken by the Sri Lanka to minimize these challengers.

1. Updating existing Legislation –

The National Environmental Act No 47 of 1980 of Sri Lanka is the central instrument which the legislature has created to fulfil the constitutional duties stated in the Constitution with regard to the Environment. The significant feature of the Sri Lankan environmental law is based on the command and control philosophy. This section just imposes a fine and an imprisonment without calculating the environmental harm.

Therefore, the polluter is not actually liable for the real cost of harm which he or she committed. So, it is important to amend this provision to a state where fine based on the environmental harm.

Steps have been taken to amend several Sections of the Act to incorporate this Polluter Pays Principle, Prevention and Precaution Principles.

-Environmental Democracy

Sri Lanka's Right to Information Act was implemented on the 3rd of February this year. The Act enables any citizen of Sri Lanka to request any recorded information held by any public authority.

- Environment Justice

Sri Lanka has a large body of jurisprudence that has interpreted and innovated the specific rights contained in the Constitution, and this body of law can serve as the basis of further expansion into the area of environmental justice. Notwithstanding the limited scope of the fundamental rights provisions in the Constitution, over the years the Sri Lankan judiciary has creatively used them to develop a body of case law, which has defined social justice and human rights in the development process and in the context of environmental degradation.

Sri Lanka.

