

Governance Performance in Integrated Coastal Management

Sri Lanka Country Report

Sanjiv de Silva, Sonali Senaratna Sellamuttu, D.C. Kodituwakku and Sithara Atapattu



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As a component of the preparatory programmes of work of the Mangroves for the Future (MFF) Initiative, IUCN Regional Environmental Law Programme Asia led an assessment of national institutional mechanisms and programmes for Integrated Coastal Management (ICM) to identify and operationalise appropriate, inclusive and sustainable governance mechanisms in the MFF Countries in 2008. The main purpose of the assessment was to identify the most effective elements of the institutional component of ICM governance in MFF countries.

The assessment included developing a conceptual framework and criteria for assessing institutional mechanisms and programmes for ICM in Indian Ocean countries, and producing national assessments and case studies of the institutional mechanisms and programmes for ICM.

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While the assessment was conducted in 2008, the names of Ministries and Departments have been updated in footnotes where applicable as of the date of printing.

Acronyms and Abbreviations

ADB	Asian Development Bank
AGA	Assistant Government Agent
ATBAHH	Association of Tourist Board Approved Hoteliers of Hikkaduwa
CBO	Community-Based Organisation
CCA	Coast Conservation Act
CCAC	Coast Conservation Advisory Council
CCC	Community Co-ordinating Committee
CCD	Coast Conservation Department
CEA	Central Environmental Authority
CEPOM	Committee on Environmental Policy and Management
CERM	Coastal Environment and Resource Management
CFA	Coastal Fragile Area
CRMP	Coastal Resources Management Project
CZ	Coastal Zone
CZMP	Coastal Zone Management Plan
DWC	Department of Wildlife Conservation
EMC	Environmental Mediation Center
EPL	Environmental Protection License
FARA	Fisheries and Aquatic Resources Act
FD	Forest Department
FFPO	Fauna and Flora Protection Ordinance
FMA	Fisheries Management Area
FO	Forest Ordinance
FPIU	Field Project Implementing Unit
GND	Gramasevaka Niladhari Division
HGBBA	Hikkaduwa Glass Bottom Boat Owners' Association
ICM	Integrated Coastal Management
ID	Irrigation Department
IEER	Initial Environmental Examination Report
IMCC	Inter-Ministerial Co-ordinating Committee

IEE	Initial Environmental Examination
IPID	Institute for Participatory Interaction in Development
IRMP	Integrated Resources Management Project
LST	Law and Society Trust
MARPOL	International Convention for the Prevention of Pollution From Ships
MFF	Mangroves for the Future
MFOR	Ministry of Fisheries and Aquatic Resources.
MP	Member of Parliament
MPPA	Marine Pollution and Prevention Authority
NAQDA	National Aquatic Development Agency
NARA	National Aquatic Research Agency
NEA	National Environmental Act
NEAP	National Environmental Action Plan
NGO	Non-Governmental Organisation
NPPD	National Physical Planning Department
PA	Protected Area
PILF	Public Interest Law Foundation
PLFMA	Rekawa Lagoon Fisherman's Association
PRA	Participatory Rural Appraisal
PS	Pradeshiya Sabha
RDF	Rekawa Development Foundation
RSAMCC	Rekawa SAM Co-ordinating Committee
SAM	Special Area Management Sites
SLLRDC	Sri Lanka Land Reclamation and Development Corporation
SWOT	Strengths, Weaknesses, Opportunities and Threats
UDA	Urban Development Authority
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
USAID	United States Agency for International Development
WCP	Wetlands Conservation Project

Introduction

This report seeks to present a review of the current status of coastal governance with regard to its compatibility with Integrated Coastal Management (ICM) in Sri Lanka. The purpose of this review is to support the preparatory programme of work of the Mangroves For the Future (MFF) initiative, and as such represents one of several studies commissioned that are to feed into this planning process for each participating country. To this end, it is envisaged the report will provide a resource for ICM practitioners and policy planners who may be involved with the MFF process both at the national and regional levels.

The contents of this report are guided by a definition of governance as specific indicators developed for this study (see Methodology for details). These indicators are applied in Chapters 1 -3 (with respect to Laws and other norms, Institutions and Processes respectively) to provide an overview of the governance situation in the country and as it applies to the coastal zone. Examples such as details of case law are used wherever available to support the findings with regard to each indicator. Broadly, these chapters cover issues such as policy and legal frameworks and mandates with regard to the coastal zone, particularly in relation to identifying the distribution of jurisdictions and responsibilities amongst government agencies and challenges therein; rights granted to civil society that promote their active participation in decision making and their ability to enforce such rights; broader statutory and case law relating to aspects of governance, and the institutional processes and capacities that also shape the nature of governance generally and specifically in the coastal zone.

The focus in Chapter 4 shifts to a closer analysis of governance process at the local level through the use of four case studies of four initiatives that represent examples of attempts to implement ICM-type approaches in the coastal zone. Of particular interest is the quality and impacts of the local governance institutions that the Special Area Management (SAM) processes seek to establish, the factors that have influenced the shape and performance of these structures and the participation of local stakeholders in them. It is suggested that the lessons arising from this analysis provides access to a critical element of an ICM which is the interplay of the socio-political, historical, cultural and economic dynamics that influence institution formation and governance process at the local level, and this constitute a key learning element in this report.

The conclusions of this study are detailed in Chapter 5 where findings are summarised and the national level and local level information are brought together. Recommendations for dealing with specific issues are provided where possible. Finally, some background or context information is provided in three Annexes.

Methodology

The definition of governance and governance indicators that guide this study were developed and adopted collectively by the parties conducting the governance study in each country with facilitation by IUCN's Regional Law Programme, Asia. This definition which incorporates elements of governance identified by the ADB, IUCN, UNDP and the World Bank states that:

"Governance in the context of integrated coastal management includes laws and other norms, institutions and processes through which all components of a society exercise powers and responsibilities to make and implement decisions affecting the social, cultural, natural, technical, financial and other economic resources."¹

The governance indicators are:

- Transparency
- Accountability
- Predictability (Rule of law)
- Public Participation
- Access to Justice

These were applied at three levels: laws and other norms, institutions and processes.

Information for the study was sourced through a literature review for information on coastal management practices and experiences in Sri Lanka, including each of the case studies; review of project documents and interviews to obtain experiences and perspectives to complement the literature review. The interviews included representatives of government agencies; legal practitioners; a donor representative; individuals involved in ICM implementation; community members of one Community Co-ordinating Committee (CCC) and individuals from a local community who were not part of the SAM Co-ordinating Committee. It is proposed that this selection of interviewees can provide a range of perspectives on the case studies as well as the overall governance status.

1. Developed at the Governance Methodology Workshop, 18-19 July 2007, Imperial Queen's Park Hotel, Bangkok, Thailand.

List of interviewees

Name	Location	Organisational Affiliation	Stakeholder type
Mr. Indra Ranasinghe	CRMP Office, Colombo 12.	Director, CRMP	Project implementer and government official
Mrs. Panchali Fernando	CCD, Maligawatte, Colombo 12	Legal Officer, CCD	Government official and legal practitioner
Dr. Jayampathi Samarakoon	Dehiwala	Freelance Consultant	Coastal resource management expert with broad experience in SAM implementation
Mr. Anandalal Nanayakkara	Adams Avenue, Dehiwala	Attorney-at-Law	Legal practitioner
Dr. M. Thiruchelvam	Colombo	Project Implementation Officer Sri Lanka Resident Mission Asian Development Bank	Donor representative
Mr. K. Sebastian Fernando	Negombo	Treasurer, Negombo Lagoon Management Authority and member of the Negombo SAM Community Coordinating Committee	CBO

Laws and other norms

1.1. Overview of existing laws and norms on management of coastal resources

The Coast Conservation Act No. 57 of 1981 (CCA) and its 1988 amendment provide the legal foundation for activities in the Coastal Zone. Further amendments to the CCA are currently in draft form (details provided in following sections where applicable). The rules set out by the CCA and regulations made under it are complemented and built upon by the Coastal Zone Management Plan (CZMP) required by the CCA to be developed and periodically updated by the Coast Conservation Department (CCD). This is the main instrument that influences the identification of issues and articulation of management policy and implementing strategies in the Coastal Zone. According to the CCA the Minister (in charge of the subject of coast conservation) may on the recommendation of the Coast Conservation Advisory Council (CCAC) make regulations to give effect to any provisions of the CZMP, including those, which regulate use of the foreshore² by the general public.

Nevertheless, given the sector-based administrative system in Sri Lanka, many other statutes outside the purview of the CCD regulates a range of activities within the coastal zone. These include environmental protection through the creation of protected areas, protection of species and control of land and ocean (vessel)-based pollution; land use planning and land allocation; housing and other infrastructure development; management of urban areas, and industrial activities. Law enforcement for the sustainable management of coastal resources has thus far not been fully effective primarily due to limitations in the management tools afforded by the legal framework and the significant challenge of coordinating and harmonizing the priorities and operations of a diverse group of state and other actors. These aspects are discussed in more detail in 1.3.1 below.

2. Defined in the CCA as "that area of the shore of the sea between the Mean High Water and the Mean Low Water [mark]".

1.2. Transparency

1.2.1. Are there clearly established rules and procedures for access to information?

There is no legislation which provides for “Freedom of Information”. There is neither a Freedom of Information Act nor any other legislation guaranteeing access to official information. The same can be said of the existence of procedures.

In November 1996, the Law Commission of Sri Lanka completed a report that prepared the basis for an Access to Official Information Bill, together with a set of Recommendations on the right to information.³ No further progress has however been made for its adoption as law (See Annex II for details). Nevertheless, the Commission’s assessment of the existing status quo was clear when it pointed out that, “the current administrative policy appears to be that all information in the possession of the government is secret unless there is good reason to allow public access.”⁴

In the absence of explicit legal provisions, Article 14 (1) (a) of the Constitution⁵ has been the focus of considerable discussion and interpretation in the courts of law where the Supreme Court of Sri Lanka has held that the Constitution does guarantee a right to information. In *Visuvalingam and Others v. Liyanage and Others* the Court was challenged to imply a right to information as part of the guarantee of freedom of expression.⁶ It was also argued that freedom of expression cannot become operational if the right to receive information is not recognised. The Court agreed with this reasoning and recognized the petitioners’ *locus standi* (Gomez, not dated).

The interpretation of Article 14 (1) (a) with respect to the right to information was also considered by *Fernando v. The Sri Lanka Broadcasting Corporation and Others*.⁷ Justice Mark Fernando, delivering the judgment, refused to recognise “a right to free information *simpliciter*” despite accepting that freedom of information was important to the effective exercise of the right to free expression. However, the Court also held that the “right to information *simpliciter*”, though not included in the right to freedom of expression, is included in Article 10 of the Constitution, which guarantees freedom of thought. One consequence of the view that the right to information is derived from freedom of thought rather than freedom of expression is that since freedom of thought is an absolute right, subject to no constitutionally recognised restrictions, the right to information should be similarly absolutely protected (Gomez, not dated).

3. Report on Freedom of Information. Law Commission of Sri Lanka, 20 November 1996.

4. Recommendation 1 of the Law Commission Report on Freedom of Information

5. Every citizen is entitled to the freedom of speech and expression including publication

6. (1984) 2 Sri L.R. 123.

7. (1996) 1 Sri L.R. 157.

However, subsequent case-law appears to restore the interpretation in favour of recognizing the right to information. In 1999, seven residents of Eppawala filed a fundamental rights application in the Supreme Court challenging the legality of a contract between the government and a private company for the mining and sale of phosphate in the Eppawala area.⁸ The petitioners argued that their constitutionally guaranteed rights to freedom of movement and residence, to occupation, and to equality before the law had been violated. They further argued that their right to information and to public participation had been violated, as the agreement between the government and company had not been disclosed and no environmental impact assessment (EIA) carried out, although such an assessment was required by law. In a landmark judgment on 2 June 2000, the Supreme Court ruled in favour of the petitioners.⁹ The court ordered the government to release the agreement with the company and to desist from entering into any agreement relating to the Eppawala phosphate deposit without first carrying out and publishing a comprehensive study on the subject.

Moreover, in the Galle Face Green lease case pertaining to a fundamental rights violation plea, the Court held that the government authority denied the right to information of the petitioner (the Environmental Foundation Limited or EFL) to unequal treatment.¹⁰ EFL maintained (FR 47/2004) that its fundamental rights under Articles 12 (1), 14(1)(a) and 14(1)(g) of the Constitution, relating respectively to the right to equality before the law; to the freedom of expression including the right to information and to the freedom to carry out a lawful occupation, profession or trade, were infringed by the refusal by the Urban Development Authority (UDA) to release these documents. In the course of argument, counsel for the petitioner requested Court to set aside the agreement in the exercise of the Court's inherent jurisdiction under Article 126 (4), as the agreement was clearly ultra vires the Urban Development Authority law and contrary to the public interest. The Supreme Court ruled that the Galle Face Green should be maintained as a public utility, in continuance of the dedication made by Sir Henry Ward and that the Government of Sri Lanka as the successor to the Colonial Government, should honour this pledge and allocate adequate resources to for its maintenance. The Court set aside the agreement and declared that the fundamental rights of EFL had been violated and ordered Rs. 50,000 as costs against the UDA¹¹.

8. S.C. Application No 884/99.

9. 2000 SAELR Vol. 7(2) 1.

10. Jeyaraj, D. B. S. The people get their Galle Face green back. Posted on the Lanka Library Forum Nov 30, 2005 online at <http://www.lankalibrary.com/phpBB/viewtopic.php?t=1336>

11. BiosphereEFL Magazine Volume 21(4) Oct-Dec 2005 website at [http://www.efl.lk/pdf/Biosphere%20Vol.%2021%20\(4\)%20-%20December%202005.pdf](http://www.efl.lk/pdf/Biosphere%20Vol.%2021%20(4)%20-%20December%202005.pdf)

1.2.2. Are there legal requirements for providing clear justification if information is withheld?

No such requirements exist (see 1.2.1 above)

1.2.3. Are people aware of their legal rights to access information?

No. Awareness is poor and the importance of participation is not well recognized.

Based on experiences of legal aid organizations such as EFL,¹² awareness of their legal rights and mechanisms available to them to obtain legal redress are low amongst the general public. For example, when there is a notice of a proposed development project and the availability of an EIA for public comment, citizens normally are unaware of their right to participate in the consultative process by sending written comments. Furthermore, the general public have not been made aware that whilst a person aggrieved by the grant of an environmental licence or approval has no corresponding right of appeal, such persons often can seek redress in courts and seek relief.

The role of legal aid organizations acting on behalf of aggrieved persons has thus assumed a significant role over the past 25 years. A number of Environmental Protection Licences (EPLs) as well as EIAs that were approved have been challenged on behalf of the public by public interest litigation organizations. Examples include the Bomuruella Mini Hydro Power Project Case filed before the Court of Appeal by challenging the decision of the Central Environmental Authority's (CEA) Technical Evaluation Committee (TEC) to grant a licence to operate on the grounds that the relevant authorities had given permission without giving due consideration to the adverse environmental impacts. The first respondent in this case (the CEA) acting in terms of Section 23(B)(B) 4 of National Environmental Act No 47 of 1980 as amended, had made a final decision based on the Initial Environmental Examination Report (IEER) to grant approval for the establishment of the said project, subject to certain specified terms and conditions. In this case the Petitioner sought a Writ of Certiorari to quash the approval given for the project and the permit granted to the Project Proponent (the 4th Respondent). In this case the Court had to consider how far the CEA as the Project Approving Agency had complied with the legislation. It was decided by the Technical Evaluation Committee (TEC) of the CEA that the IEER was required prior to granting of any approval and that there was no need to call for an EIA. However considering this decision of the TEC, the Court upheld that where a statute requires the power to be exercised in a certain form, the neglect of that form renders the exercise of that power ultra vires. In this case the Court pointed out that TEC had no jurisdiction under the Act to decide whether a prescribed project required an IEE or an EIA. The Court further stated that the CEA had

12. Ms. D. C. Kodithuwakku was Lead Scientist for EFL

failed to exercise its discretion reasonably and in good faith in discharging of its public duty. Finally the court issued a Writ of Certiorari quashing the approval given for the said project by CEA and the petitioner (EFL) was entitled for costs amounting to Rs. 10,000 payable by CEA.

Interviews with CCD officials and local stakeholders (Negombo) involved in Special Area Management (SAM) programmes appear to support the inference above. It was perceived that the general public did not understand the importance of actively participating in planning processes when such opportunities arose (e.g. under EIA and CRMP review processes explained elsewhere in this report), and in other instances, were not sufficiently aware of legal grounds (e.g. fundamental rights, law of nuisance) under which government agencies and political figures may be made accountable if other governance conditions are supportive of the rule of law. This lack of awareness is attributed to the failure to include an element on civil duties in school curricula (Ranasinghe, pers com).¹³

1.2.4. Is information on the places where information can be accessed and the processes by which this can be done publicly available?

Although locations where information is available is provided in certain instances this tends to be related to specific pieces of information. The process for reviewing draft Coastal Zone Management Plans and EIAs for example specify when and from where these documents can be accessed. This however is not the practice in terms of new or amendments to legal enactments and regulations that need to be accessed directly from the government printer based in Colombo, something few people are aware of.

In general however, information on repositories of information within the government service is poor making it quite a daunting and potentially expensive task for a lay person. However, it is worth noting that greater investments in communications infrastructure prompted by a relatively early deregulation of this sector and government policies to increase public and especially rural access to the internet; a trend in the government sector of upgraded and more informative ministerial and departmental websites can be observed. However, the impact of improving access to such technology is limited by the fact that most 'soft' copies of such documents are in English. Moreover, the information available, on the Coast Conservation Department website as of 15th November 2008 is patchy. Although permit guidelines and the application form are available, other key documents such as the Coast Conservation Act and Coastal Zone Management Plan (2004) are missing. There is also no information with regard to past, ongoing or planned projects such as those used as case studies in this report.

13. As other legal, procedural and anthropological impediments to participation are highlighted in this report, the lack of awareness constitutes one of many causes of poor participation and access to justice.

1.3. Accountability

1.3.1. Is there a clear legal mandate/mission for coastal management and/or ICM?

Overall, when viewed from a functional perspective, there appears to be a mismatch between the CCD's mission for coastal management and the multiplicity of jurisdictions upon which the CCD is dependant to carry out this mandate and other jurisdictions that act contrary to it.

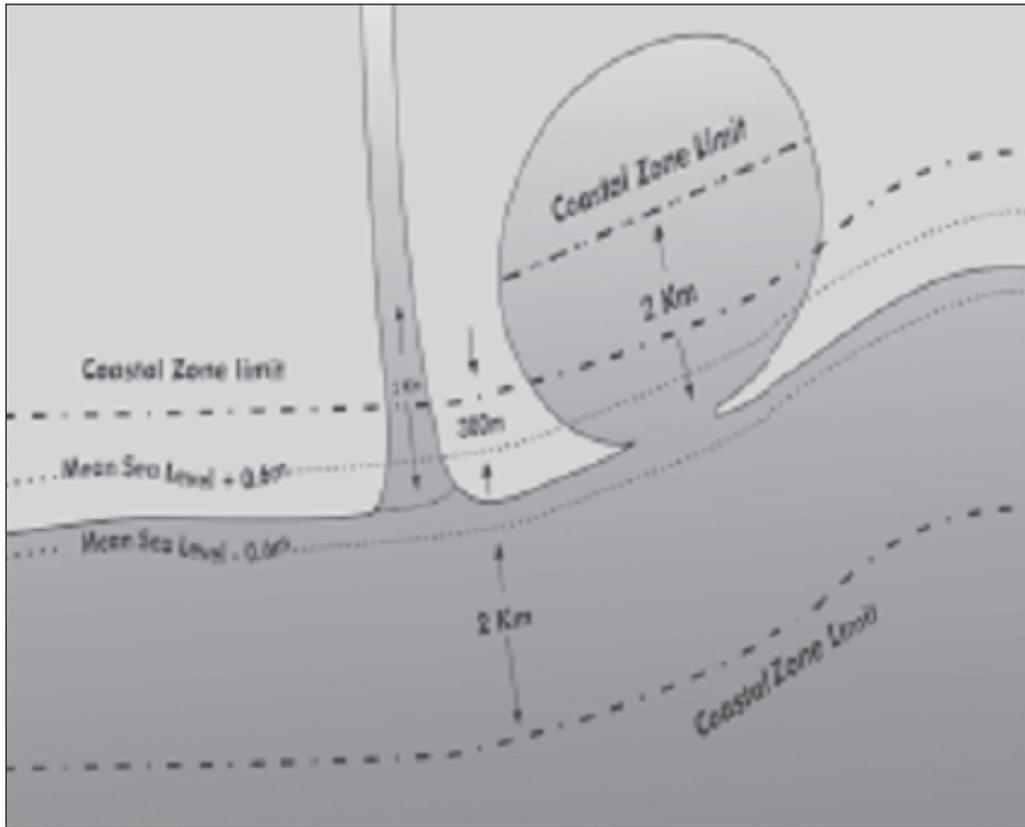
The Coast Conservation Act No. 57 of 1981¹⁴ (CCA) recognizes the CCD as the primary government agency responsible for management of the Coastal Zone (CZ). The CZ is defined by the CCA as the area lying within 300m landward of the Mean High Water Line, and up to 2km seawards. Where another water body is permanently or seasonally connected to the sea, the landward limit is extended to 2km as measured perpendicularly to the straight baseline drawn between the natural entrance points¹⁵ (Figure 1.1). In its long title, the CCA indicates it is bestowing upon the CCD, the mandate to regulate development activities and the planning and implementation of activities for coast conservation. The draft amendments to the CAA to be placed before Parliament shortly extends the long title by including "and Coastal Resource Management".¹⁶ This may be interpreted as a reflection of the broadening focus of the CCD from one dominated by ensuring the physical integrity of the coastline (especially erosion management which has dominated the agenda from the CCD's inception) to a broader management perspective that implies the integration of conservation with resource use (i.e. sustainable management). In view of the approximately 15 year history of ICM-oriented projects since the early 1990s (see Chapter 4), this particular amendment updates the legislation to retrospectively reflect at least the stated policy (see 1.4.1 below) if not quite the practice.

14. Amended by Act No 47 of 1980, Act No 56 of 1988 and Act No 53 of 2000.

15. See Definitions section, Coast Conservation Act No. 57 of 1981

16. L.D. O 47/99

Figure 1.1: The Coastal Zone as defined in the Coast Conservation Act



Source: Coastal Resources Management Plan, 2004

As a basis for planning, the CCA requires the coastal zone to be surveyed and a Coastal Zone Management Plan (CZMP) to be developed based on the survey results.¹⁷ The CZMP is to include guidelines for determining the suitability of development activities in the CZ. The draft amendments to the CCA envisage the nature of these guidelines changing to deal with the management of coastal resources for sustainable development, and supported by a comprehensive programme for the same purpose.¹⁸ This programme is to include proposals for co-ordinating with other sectoral activities such as land use planning, agriculture and industry, transport, tourism, mining and infrastructure development for maintaining scenic and other natural resources. The draft amendments seek to include coastal erosion and water quality management and zoning of water usage.¹⁹ Zoning is

17. The impending amendments to the CCA renames the Coastal Zone Management Plan as the Coastal Zone and Coastal Resource Management Plan (S. 9 (1) (a) of the draft amendment).

18. S. 9 (1) (a) of the draft amendment

19. Although the proposed amendment removes express reference to tourism and infrastructure in particular, it may be argued that the empowerment of the Director General of CCD to include any other matter that is in his/her opinion relevant for coastal resource management provides for these to be included, although it is now discretionary.

also to be used for land and water use planning including the restriction or prohibition of certain activities in specified areas.²⁰ Interestingly, the Act also requires the CCD to include programmes for providing alternate employment for people displaced as a result of coastal zone regulation.²¹

Although the CCD has the overall and widest management mandate with regard to the coastal zone, and despite the fact that the impending amendments to the CAA will further broaden its scope, the fact remains that it is by no means the only agency with a mandate over the management of both natural resources as well as human activities in the coastal zone. This is inevitable in the context of the sector-based legal and institutional framework that operates in the country as a whole. Other agencies with jurisdiction in the CZ are listed below along with a brief description of their roles and implications for ICM.

Ecosystem and species management

Department of Wildlife Conservation (DWC)

Protection of wildlife through designation and administration of Protected Areas (PAs) including Marine Protected Areas (MPAs) and protection of species, both effected under the Fauna and Flora Protection Ordinance, No. 02 of 1937²² (FFPO). Species conservation applies to the protection of any terrestrial or marine fauna and flora species through the use of species Schedules²³. Protection applies whether inside or outside a PA, and this applies in the CZ as well. In areas designated as a PA in the CZ, overall jurisdiction will pass from the CCD to the DWC. Although it is expected that the management of these areas may require the involvement of the CCD and other agencies, the provisions pertaining to PAs and protected species in the FFPO, by excluding people, do not support the participatory resource management approach eschewed by the CZMPs. The resulting lack of access to productive resources can have significant impacts on local livelihoods (Clemette *et al.* 2004), and the call for alternative livelihoods to facilitate enforcement on the ban on coral mining by the CZMP 1997 is recognition of this. There are frequent reports of encroachment and illicit activities within protected areas and there have been violent attacks on officials of the DWC by politicians and policemen and these have been the subjects of at least two fundamental rights applications to the Supreme Court.²⁴

The 1993 amendment to the Fauna and Flora (Protection) Ordinance addresses the issue of EIA. Under this enactment, prior written approval from the Director of Wildlife is necessary

20. S. 12 (1) (c), CCA

21. S. 12 (1) (d), CCA

22. Amended by Acts Nos 44 of 1964, 1 of 1970 and 49 of 1993

23. Schedules for some taxonomic groups utilize a 'positive' list where species listed are protected, while Schedules for other taxa employ a 'negative' list whereby all species in these taxa are protected other than those listed in the Schedules.

24. Mohamed Faiz Vs Attorney General, SAELR 62; Weragama vs Indran, SAELR 7

for any development activity within one mile (1.6 km) of the boundary of any National Reserve and mandates that such projects undergo the EIA process in terms of the National Environmental Act.

Forest Department (FD)

Responsible for the management of all forests and their resources under the Forest Ordinance, No 2 of 1907 (FO) The Forest Ordinance No. 16 of 1907 and its subsequent amendments. The FD's relevance from an ICM standpoint stems from the inclusion of mangroves in the definition of forests, whereby any ICM activity involving mangroves will require this Department. Watershed management is another powerful reason for close links with the FD where coastal wetlands are fed by fresh water flows from beyond the CZ.

Ministry of Fisheries and Ocean Resources (Fisheries Ministry)²⁵

Management of the fisheries sector including fisheries in the coastal zone is the jurisdiction of the Fisheries Ministry under the Fisheries and Aquatic Resources Act, No. 2 of 1996 (FARA) which is administered by the Fisheries Department. On paper, FARA contains dedicated sections for resource conservation through open-closed seasons; Fisheries Reserves (a protected area category), and Fisheries Management Areas (FMAs) which together provide for management at both the species and ecosystem/habitat scales. The other main regulatory methods provided for are the licensing of fishing boats and other equipment and the regulation of the use of specific equipment both in terms of type and location.

In practice however, the species-level and Fisheries Reserve provisions remain under-utilized for purposes of conservation, although marine mammals and turtles are prohibited from being caught, landed, transported or sold.²⁶ Regulation of fishing methods represents the most prominent form of management with a direct bearing on coastal and marine biodiversity and habitats, with a number of net types as well as substances (e.g. poisons, explosives, etc) being banned due to their adverse impacts on habitat or specific species. Such restrictions apply throughout the coastal and maritime zones. Although the registration of boats is another means of restricting pressure on both habitats and species, this has been used predominantly as a source of government revenue, and caps on boat licences are rare, except in the few FMAs (see below).

Potential for participatory resource management exists through the creation of Fisheries Management Areas (FMAs) and its management by locally elected Fisheries Committees under Section 31 of FARA and related Fisheries Management Area Regulations. Such areas are to be designated by the Minister in charge of the subject of fisheries. Several FMAs have been designated, including the Negombo Lagoon FMA declared in July 1998; the

25. Now the Ministry of Fisheries and Aquatic Resources

26. Fishing Operations Regulations of 1996, Gazette Extraordinary, 1996.11.07

Rekawa Lagoon FMA declared in February 1999; the Bolgoda Lake Lagoon FMA declared in July 2001; the Batticaloa Lagoon FMA declared in January 2001. In such areas, regulation includes not just the types of fisheries and equipment allowed, but also the number of fishermen per fishery type as well as the locations and times when various fisheries types are permitted. Administration of FMAs is based on the right granted to registered fishermen of any area to form and register a Fisheries Committee, and thereafter develop a fisheries programme for the area and undertake community improvement activities.²⁷ Where a FMA is declared, the Fisheries Committee is designated the fisheries management authority for the FMA. However, the fact that the role of such authorities is limited to an advisory capacity (regulation of equipment types, establishment of closed seasons), their influence on decision making is limited, and is likely to depend upon the relationship between each Committee and the Minister. Nevertheless, the right of association provides a basis for representation of fisheries communities in multi-stakeholder planning processes.

Although the Fisheries Department shares the same Ministry with the CCD, its orientation, despite the foregoing paragraphs, is significantly at variance with the sustainable use approaches increasingly promoted by CCD policy. The Fisheries Department continues to associate its existence with foreign currency generation and job creation to serve both economic and political ends. Conservation and in deed sustainable use have thus had a limited influence on the management of fisheries activities, and this is reflected by the absence of a Division within the Department of Fisheries dedicated not only to fish stock management but the conservation and management of coastal and marine species and their habitats.²⁸ The fact that the export of ornamental marine reef fish and other organisms (e.g. sea cucumber) are regulated by the Fisheries Department more than the DWC with minimal supervision, is a significant challenge with regard to both species as well as habitat management in near shore coral reefs. The increasing use of dynamite as a method of fishing is another cause for concern.

Marine Pollution Prevention Authority (MPPA)²⁹

The MPPA was established by the Marine Pollution Prevention Act No.59 of 1981 to specifically address the problem of marine pollution, and to give effect to international conventions to which Sri Lanka is a signatory. As such the MPPA addresses actions to be taken under international conventions such as UNCLOS (United Nations Convention on the Law of the Sea, ratified by Sri Lanka in 1994). Similarly some functions under the Basel Convention on Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the MARPOL Convention (for the Prevention of pollution from ships) have

27. S. 32, FARA

28. See <http://www.fisheriesdept.gov.lk/> for the Department structure

29. Now renamed the Marine Environmental Protection Agency (MEPA)

to be carried out by the MPPA. Given Sri Lanka's proximity to international shipping routes, the MPPA's mandate complements that of the CCD and interests of ICM by focussing on risks posed by vessel-based pollution to the coastal zone. However, the fact that the MPPA is under the Ports Authority and not Fisheries Ministry makes institutional co-ordination an important condition.

National Aquatic Resources Research and Development Agency (NARA)

The National Aquatic Resources Research and Development Agency was established under the National Aquatic Resource Research and Development Act No. 54 of 1981³⁰ for research and research application on all living and non-living aquatic resources for the development and management of the fisheries and ocean resources sector. Activities expected from NARA include fish stock assessments, habitat monitoring, and the development and transfer of aquaculture techniques. The potential complementarity with ICM objectives is thus clear.

National Aquaculture Development Authority (NAQDA)

Established by the National Aquaculture Development Authority Act, No. 53 of 1998, NAQDA is required for development of inland aquatic resources and aquaculture, to increase fish production and to create employment opportunities. Although the inclusion of Fisheries Department, NAQDA and CCD under the Fisheries Ministry was expected to support cooperation between departments, NAQDA's organizational focus is driven by production as is clear from the conversion of mangrove and other natural land uses for prawn culture in the North-West Province. This sector remains a significant challenge for ICM in several sections of the Coastal Zone in view of the industry's recovery and the potential for its spread to other coastal areas.

Physical Planning & Regulation of Development Activities

National Physical Planning Department (NPPD)

This Department located in the Ministry of Urban Development & Sacred Area Development, administers the Town and Country Planning Ordinance, No. 13 of 1946.³¹ In keeping with this Ordinance,³² the Department is mandated to formulate a National Physical Planning Policy and Plan, and to ensure and monitor the implementation of such national policies and plans through regional and local plans with the object of promoting and regulating integrated planning of economic, social, physical and environmental aspects of land and territorial waters of Sri Lanka.

30. Amended by Act No. 49 of 1993

31. Amended by Acts Nos 09 of 1950, 29 of 1953, 22 of 1955 and 55 of 1991.

32. Section 5A(a)

The relevance of this Department to any ICM strategy is thus clear, and co-ordination between the NPPD and the CCD and other agencies is provided for by section 4A (2) of the Town and Country Planning (Amendment) Act No.49 of 2000 which requires all plans and strategies to be reviewed by a Inter-Ministerial Coordinating Committee (IMCC) that includes both the CCD and the Ministry of Environment in its membership.

It is also noteworthy that the draft National Physical Planning Policy and Plan for 2006 - 2030 recognizes the entire coast as a Fragile Area. Criteria for the demarcation of such areas include the protection of watersheds; areas with rare and unique ecosystems of exceptional diversity including high concentrations of threatened species; and important aesthetic, cultural, historic and recreational areas.³³ Furthermore, Principle 1.2.2 of the Plan states that development in the Coastal Fragile Area must be in accordance with the guidelines in the Coastal Zone Management Plan 2004. Plan implementation is to be effected through the preparation of Regional, District and Local plans based on the national level Plan by the Department's decentralized cadre along with other local authority and other line agency personnel. How the Coastal Fragile Area (CFA) corresponds to the legal definition of the Coastal Zone under the CCA is however unclear due to the absence of a definition of the CFA.

Central Environment Authority (CEA)

The CEA was established by the National Environmental Act, No. 47 of 1980 (NEA). Originally the CEA was constituted to function as a policy formulation and co-ordinating body for environmental management. With the 1988 amendment to the NEA, it was awarded regulatory authority with legal provisions to control environmental pollution and to mitigate the adverse impacts of development activities primarily through Environmental Impact Assessment (EIA) procedures and an Environmental Protection License (EPL) scheme. Since pollution is a significant threat to the Coastal Zone, and often originates outside of the CZ, the CEA's effectiveness in controlling upstream pollution will be a critical element of ICM. As such, these regulatory processes warrant a more detailed description.

Its EIA procedures have been used in relation to activities that are adjacent to the coastal zone as legally defined, but which in practical terms are strongly linked to the natural, economic and social systems that operate within the coastal zone. As the primary regulator of inland water (and air) pollution, it also provides a significant service to coastal ecosystems, which are linked to natural inland water bodies. An Environmental Protection Licence (EPL) is mandatory for low, medium or high polluting industries deemed as "prescribed activities"³⁴. This has to be obtained from the CEA to ensure that environmental pollution through

33. Draft National Physical Planning Policy and Plan of 2001, p. 9

34. National Environment (Amendment) Act No.53 of 2000

industrial activity remain within acceptable levels set by regulations. The CEA issues EPLs to medium and high polluting industries, while the issue of licenses to some of the low polluting industries (identified by the 2000 amendment to the National Environmental (Protection and Quality) Regulations) is delegated to the relevant Local Authorities. Delegation of this power first occurred in 1994 in respect of 15 low polluting industries. Provisions on the EPL scheme is contained in Part IVA of the NEA and National Environmental (Protection and Quality) Regulations.³⁵ The CEA is also the regulatory authority for standard setting (ambient water standards, ambient air quality standards, mobile source emission standards, industrial emission standards, etc.).

Sri Lanka Land Reclamation and Development Corporation (SLLRDC)

The SLLRDC succeeded the Colombo District Low-Lying Areas Reclamation and Development Board (established in 1968 by Act No.15 of 1968).³⁶ Its function is to “reclaim and develop marshy and low-lying areas” declared under Section 2 of the Act. To this end, the SLLRDC is empowered to acquire, hold or take on lease any property or mortgage, pledge, sell or otherwise dispose of any property. As per the amendment Act No. 35 of 2006, the SLLRDC may declare any area of land other than an area declared to be a Reclamation and Development Area under section 2, as a low lying marshy, waste or swampy area. This notion appears to have evolved whereby the SLLRDC now recognises Sri Lanka’s lower lying areas as flood retention areas. Recognizing the significance of this power to the objectives of coastal management, the proposed amendments to the Coast Conservation Act will insert a new subsection to Section 2 of the Act disallowing the Minister in charge of land reclamation from declaring any area in the CZ to be a “Reclamation and Development Area”.³⁷

The amendments of 2006 to the SLLRDC also authorizes the Corporation to take legal action against unauthorised reclamation activities and pollution of water bodies without the written approval of the Corporation. It is noteworthy that according to the National Environment Act, the filling of more than 4ha, is a prescribed project in need of an environmental impact assessment, and suggests the possibility of these provisions being mutually supportive so long as there exists a common understanding of what low lying areas.

State Lands Ordinance, No. 08 of 1947 (SLO)

This empowers the President to authorize several activities within the foreshore including the construction of quays, jetties and other public works along or out from the foreshore or sea bed; dredging of the seabed and the reclamation of any part of the foreshore or seabed

35. Gazette Extraordinary 595/16 of 2.2.90 as amended by Gazette Extraordinary I 159/22 of 22.11.2000

36. Under the amending Act No.52 of 1982

37. Schedule, Draft Amendments to the Coast Conservation Act, No. 57 of 1981, L. D. O 47/99.

and the construction of structures on this reclaimed land.³⁸ The SLO also grants powers to the District Secretary (previously the Government Agent) to permit the occupation of the foreshore or seabed for a period of one year³⁹ whilst the CAA empowers the CCD to regulate the occupation of any part of the foreshore or seabed lying within the coastal zone through the permit mechanism.⁴⁰ Whether this apparent jurisdictional overlap is addressed by Section 36(1) of the CCA requiring provisions in other enactments to be exercised in the CZ in consultation with the Minister in charge of the subject of coast conservation is unclear, in the absence of a test case.

Geological Survey and Mines Bureau (GSMB)

Established under the Mines and Minerals Act, No. 33 of 1992, and a line agency under the Ministry of Environment, the GSMB is charged with administering a licensing scheme for the mining, transport, processing and trade of minerals. The CCD has a functional overlap with the GSMB with regard to the issuing of sand mining permits within the area defined as the coastal zone. Although the CCD has been issuing sand-mining permits within the coastal zone thus defined, the GSMB can also issue permits for sand-mining and other forms of extraction within the coastal zone. While the obligation placed on the GSMB under the Mines and Minerals Act to obtain the prior consent of the Director General of the CCD before granting any permit in the CZ provides some safeguards, the proposed amendments to the Coast Conservation Act seeks to empower the Director⁴¹ CCD to include conditions to any consent he/she may grant as deemed necessary to safeguard the objectives of the CCD.⁴²

Sri Lanka Tourist Board

The Ceylon Tourist Board Act, No. 10 of 1966 gives the Tourist Board powers to acquire and alienate lands for tourist development purposes. A potential overlap with the Coast Conservation Act may arise through S. 28(1)(c)(i) of the Act which authorizes the Tourist Board to regulate activities including the building and running of tourist infrastructure. Here too, as with the State Lands Ordinance, whether S. 36(1) of the CCA will prevail is unclear. This is particularly so in this case, consequent to S.102 of the Ceylon Tourist Board Act which gives precedence in its provisions over other laws. What is clear is that in view of existing tourist infrastructure and activities in the coastal zone, and the potential for further developments especially if the country's political climate becomes more conducive, the tourist sector will be a key stakeholder in ICM initiatives as is demonstrated especially in the Hikkaduwa SAP planning case study presented in Chapter 4 of this report.

38. S. 60, SLO

39. S. 62, SLO

40. When granted, the permit in terms of this provision will be valid for up to three years.

41. Now Director General

42. S. 18, Draft Amendments to the Coast Conservation Act, No. 57 of 1981, L. D. O 47/99.

Urban Development Authority (UDA) and Urban Councils

After the recent Tsunami that hit Sri Lanka in late December 2004 the CCD has also experienced functional overlap with the UDA which is governed by the Urban Development Authority Law, No. 41 of 1978.⁴³ The UDA is a line agency of the Ministry of Urban Development and Water Supply. The UDA also has jurisdiction over 1 km landwards from the mean high water line by gazette 223/16 of 17th December 1982. The CCD affirms that they have the responsibility of defining setback standards for development activities giving attention to both environmental and economic considerations. However, it was the UDA, which declared the 100m 'no build zone' along the coastline, and not the CCD. And, the UDA also has the power to engage in environmental improvement and development planning in areas coming under its purview.

The Urban Development Authority Law No. 37 of 1978 also provides for the development of environmental standards & schemes for environmental improvement in areas identified and gazetted as UDA areas. The UDA is responsible for the overall planning but is empowered to delegate its powers of granting development permits to Urban Councils (a local government authority). Under section 8A(1) of the UDA Law, the authority draws up a development plan for each development area. After approval by the Minister, the plan is made available to the public for inspection. The plan provides direction on land use zoning, infrastructural development, building specifications, pollution control and environmental quality. Under this law no development activity may be carried out without a permit.⁴⁴

Confusion over the definition of and authority over the coastal zone was created in December 1982 when the then Minister of Urban Development issued a gazette notice under Section 3 of the UDA Law declaring the "Coastal Zone of the Republic of Sri Lanka" to be an "urban development area". This coastal zone is defined in the gazette as "the area lying within the limits of 1 kilometre landwards of the Mean High Water line of the sea."⁴⁵ Thus there were two coastal zones having different bounds, and falling under the jurisdiction of two different public bodies. Hence the UDA at the time appeared to have been seized by a takeover mentality to impose the 100 and 200 metre setback limits on the strength of the 1982 gazette. However, since a gazette notice cannot override the substantive provisions of an Act of Parliament, namely the Coast Conservation Act of 1981 under which the coastal zone is defined, this is the definition that prevails. Nevertheless, this illustrates the importance of strong coordination and institutional arrangements especially between agencies with either overlapping or contradictory functions and powers.

43. Amended by Acts Nos. 9 of 1950, 29 of 1953, 22 of 1955 and 57 of 1991

44. Section 8K of the Law as amended. After carrying out any such permitted activity the person concerned is required to apply for a certificate of conformity

45. The Sunday Islands Newspaper article by Ruana Rajapakse titled "Two authorities, two coastal zones, more trauma for the displaced" 27/03/2005

Municipal Councils

An important power given to the municipal councils under Section 40 of the Municipal Council Ordinance is the authority to demolish unauthorized buildings. Municipal councils provide public infrastructure services and are authorized to acquire lands for public purposes.

The impact of devolution

The devolution of authority through the Provincial Council (PC) system established under the Thirteenth Amendment to The Constitution in 1987 has been considered as a key departure, at least in principle, from the centralised administrative structure followed hitherto. It transferred both legislative and administrative powers, and added an administrative layer between Central Government and local authorities, namely the Pradeshiya Sabhas and Gramodaya Mandalas. Although the existing local level administrative organs retain their powers of supervision, they are themselves to be supervised by the PCs. Consequently, the Pradeshiya Sabhas now operate as the operational arm of the PCs (Gunewardena. 1991).

The Thirteenth Amendment to the Constitution of 1987 has special relevance to power sharing between the central government and other levels of government within the system of republican governance. Under these amendments, subjects and functions in the purview of central and provincial governments have been identified in three scheduled lists: those of the central government, those of the provincial government and powers concurrent among central and provincial governments. The central government can set national policies on all subjects and functions and has the power to approve legislation on the concurrent list of subject areas that have been listed as provincial subjects in the scheduled list.

One of the main objectives of establishing local authorities is to give the public more opportunities to participate in the decision making process regarding the management and development of their respective council areas.

The provincial Governor of each province is responsible for the execution of policies and statutes made by the provincial council on devolved subjects, through the Board of Provincial Ministers. A provincial public service has been constituted for each province to support the executive. Except for the policies on the form, structure and constitution of local authorities and the national policy making related to local government, all other activities inclusive of operations, supervision of management, including the power to dissolve a local authority, come under the purview of a provincial council.

Out of the three electoral memberships (i.e. Parliament, Provincial Council and Local Authority), the first is the most powerful. Due to this situation there is competition to climb the political ladder, and consequently the elected members at all levels consider

the one below as a political competitor. This mindset leads members of Parliament to undertake development efforts in their electorate (i.e. district), often without consulting local authorities and thereby creating disharmony in planning processes and obstructing the participatory processes the local authority hierarchy is meant to facilitate (see Annex II).

The observed functions of the local authorities focus more on environmental management and social services. Roads, thoroughfares, sanitation, health, water supply, solid waste management, sewerage and so on are the main de jure functions of local authorities since their very inception.

The legislative powers conferred on PCs allows them to enact legislation in relation to devolved subjects, and precludes the operation of existing laws pertaining to the same. In the case of concurrent subjects, provincial legislation may only be after consultation with the Parliament. It is important to note however, that devolution applies only to planning and implementation, whilst national policy making on all subjects is reserved for central government. In practice however, it may be argued that the attempt to divide powers between the centre and provinces has resulted in confusion with regard to decision making over natural resources, despite the three Schedules in the Thirteenth Amendment listing centrally controlled, devolved and concurrent subjects respectively.

Provincial Councils

Provincial councils are the apex administrative body in each province according to the Thirteenth Amendment as explained above. However, this devolution and demarcation of authority to the provincial councils although clear, appears to be undermined by the Municipal Council Ordinance (Section 11), Urban Council Ordinance (Section 10) and the *Pradeshiya Sabhas* Act (Section 5), whereby the Minister in charge of the subject of local government is authorized to curtail or extend the term of office of the members of these local authorities by one year. Furthermore, under the Constitution, the President appoints the Governor and the Chief Secretary of each Province. Most key officials such as secretaries of Provincial Ministries and Provincial Commissioners are seconded from the centre to the provincial public service. Thus, provincial councils and other local authorities heavily depend on decisions made and resources provided by the centre (UN ESCAP, undated).

Pradeshiya Sabhas

These bodies enjoy powers similar to municipal and urban councils with regards to administration of non-urban areas, under the *Pradeshiya Sabhas* Act, No. 15 of 1987.

1.3.2. Are there regulatory provisions requiring that institutions hold their officials responsible for their behaviour and decisions?

Although there do not appear to be provisions within institutions, the Constitution and the Bribery or Corruption Act provide legal grounds for individuals to hold public servants accountable. Under Article 126 (1) and (2) of the Constitution, a claim of infringement or imminent infringement of fundamental rights by executive or administrative action may be challenged in the Supreme Court, but such a claim must be filed within one month of the alleged or imminent infringement. The Supreme Court has treated the one month period strictly, refusing to extend it.⁴⁶ The Bribery or Corruption Act Nos. 19 of 1994 and No. 20 of 1994 which amended Act Nos. 38 of 1974 and Act No. 9 of 1980 also provide a legal basis for holding public servants accountable for the abuse of power, violation of procedure and corruption.

1.3.3. Are the mandates of formal and informal institutions for coastal management and/or ICM clearly defined?

While the CCD is recognized by the CCA as having overall jurisdiction within the CZM, section 1.3.1 above illustrates that the mandates of several other state agencies and local government authorities operate in the CZ resulting in a confusing and complex situation. While some of these mandates such as those of other conservation and regulatory agencies are potentially complementary to the CCD's objectives, two overall challenges arise from this situation: addressing potentially contradictory sectoral legal mandates and the need for effective institutional co-ordination not only to minimize the impacts of contrary jurisdictions but also to harness the complementarities of supportive mandates. The implications for ICM are thus clear, with the danger of any integrated approach becoming an unwieldy exercise due to the sheer number of sectoral agendas to be reconciled. This will be particularly the case with the more revenue-oriented sectors such as fisheries, minerals and sand, and tourism and other developmental ones such as urban development and industry.

46. See *Edirisuriya v. Navaratnam* (1985) 1 Sri L.R. 100; *Gamethige v. Siriwardene* (1988) 1 Sri L.R. 38; cf. *Siriwardene v. Rodrigo* (1986) 1 Sri L.R. 384 and *Namasivayam v. Gunawardene* (1989) 1 Sri L.R. 394.

1.4. Rule of Law

1.4.1. Is there a framework policy or law governing coastal management and/or ICM?

As the framework law is addressed under 1.3.1 above, this section will focus on the policy framework.

The CCA requires the CCD to develop and periodically revise a Coastal Zone Management Plan (CZMP) to provide policy direction and identify key strategies for dealing with priority management issues.⁴⁷ (see details of the planning process under 1.3.1). The first CZMP was approved by Cabinet in 1990, and was revised in 1997⁴⁸ and in 2004.⁴⁹ The CZMP and its revisions are to be informed by research to understand problems and explore the feasibility of remedial options.

In addition to the CZMPs, the CCD published the *Coastal 2000: A resource Management Strategy for Sri Lanka's Coastal Region* in 1992. This two-volume policy document provided an evaluation of ICM (primarily SAM planning) experiences in the country (Volume I) and detailed modifications required to CZM policy and strategies based on constraints identified in the original approaches promoted in the CZMP of 1990 (Volume II).⁵⁰ These constraints included single agency approaches to deal with multi-sectoral problems (e.g. water pollution and habitat degradation); the narrow definition of the coastal zone that does not recognize the links between broader ecosystems and the coastal zone, and insufficient involvement of local stakeholders in planning and implementation. (Clemette *et al.* 2004. Also see Chapter 4.1). Coastal 2000 thus called for a broader, more holistic and inclusive approach as applied to management objectives, geographic area covered and government and other actors, including provincial, district and local government bodies and research and other NGOs. Overall, the document adopted a sustainable development approach whereby development objectives are to be balanced with resource conservation to maintain options for future generations.⁵¹

To operationalize these recommendations, Coastal 2000 envisaged collaboration between the CCD and Provincial Councils in preparing provincial CZMPs. All the Assistant Government Agent (AGA) divisions⁵² falling within the coastal zone were to be involved

47. CCA, Part II

48. Revised Coastal Zone Management Plan Sri Lanka 1997

49. S. 12(5) of the CCA, No. 57 of 1981 requires its revision every 4 years from the date it comes into operation.

50. The constraints were identified through a study by the CCD and University of Rhode Island Coastal Resources Centre under the Natural Resources and Environmental Policy Project (NAREPP) (Clemett *et al.* 2004)

51. Coastal 2000, Section 5, p. 7,

52. The AGA divisions are sub-divisions in each of Sri Lanka's 25 Districts. These sub-divisions are now administered by the Divisional Secretary (DS) and are known as DS Divisions.

in the case of each province. These provincial CZMPs would utilize a zoning system to demarcate areas suitable for various development activities and infrastructure, including areas where such developments are to be prohibited.⁵³ Once endorsed by the CCD and approved by the district environmental agencies, the provincial CZMPs were to be used to guide the regulation of development, through the devolution of CCD's permit process to Divisional Secretariat is except where an EIA is required.

Coastal 2000 also supports the continued adoption of the Special Area Management (SAM) planning process as the primary tool to focus integrated planning and management efforts in geographically distinct areas. It further recognized that this more holistic, devolved and participatory approach will require significant investments in capacity building of provincial and local government bodies that have hitherto been only peripherally involved in mainstream CZ management. The Coastal Zone Management Plan of 1997 incorporated recommendations of Coastal 2000 and ushered in a second phase of SAM planning which was meant to reflect the broader management perspectives and greater attention to local government and local community participation and responsibility. Twenty-one sites were identified by the Plan as SAM sites.

As was emphasized in 1.3.3 above with regard to the legal framework, while the CZMPs set out a comprehensive policy for coastal management, the policies of other agencies with jurisdiction over areas or activities in the coastal zone (see 1.4.2 below) has and will influence the degree to which policy implementation will be successful. Thus the CCD's ability to co-ordinate the diverse policy and legal mandates of the many agencies with interests in the coastal zone presents a real challenge.

1.4.2. Where there is no framework policy or law governing coastal management and/or ICM, are there sectoral policies and/or laws regulating, e.g., aquaculture development, tourism, mangrove protection, land use planning, etc.?

See 1.3.1 above.

1.4.3. Do people perceive that rules are equally and fairly applied to all actors?

No. Stakeholder perceptions in Negombo in relation to the SAM planning process under the Coastal Resources Management Project (CRMP) suggest that perceptions vary depending on who gained and who did not from a specific intervention. The predominant reason cited was the pervasive influence of local political interference through the threat or resort to violence by local Ministers and the alliances formed between them and some community groups and individuals (Mr. Sebastian, pers com).

53. Coastal 2000, Vol. II, p. 11

1.5. Participation

1.5.1. Is there a constitutional provision guaranteeing equity/fairness?

Article 12(1) of the Constitution of Sri Lanka on non-discrimination states that “All persons are equal before the law and are entitled to the equal protection of the law”.

In 1999, a petition by the Chairman of a people’s organisation concerned on conservation and sustainable management of marshes claimed before the Supreme court that he had been assaulted and prevented from speaking at a meeting to which he had been invited thus violating his fundamental rights of freedom of speech, peaceful assembly and association under Article 14(1) (a) (b) (c) of the Constitution. The judgment in this particular instance pointed out that the respondents violated the petitioners fundamental rights granted by the constitution and emphasised the importance of free exchange of ideas which is representative of democracy.

1.5.2. Are there legally-binding provisions requiring/mandating public participation and particularly community participation in decision-making?

There are some such provisions, but these are limited to specific aspects of natural resource planning as described below. Moreover, these relate more to public participation in review processes and not to community participation in decision-making at the local level. Furthermore, the description of these processes provided below indicate that the procedural rules relating to time periods for providing comments and the treatment of such comments received leaves very little scope in practice for an effective public voice in decision making.

The provisions that mandate public participation in planning processes that apply to the coastal zone relate to the review of the Coastal Zone Management Plan and the Environmental Impact Assessment procedures for reviewing applications to commence developmental activities in the CZ and elsewhere. In terms of the CZMP, the draft Plan is first reviewed by the Coast Conservation Advisory Council (the Council) after which an amended draft is to be made available by the Minister in charge of the subject of Fisheries⁵⁴ for public scrutiny and comment within a 60 day period.⁵⁵ How the public is to be informed of the draft’s existence however is not stipulated. The Act is also silent on the languages in which the draft should be made available and where it can be obtained (e.g. whether

54. The CCD was under the Ministry of Fisheries and Ocean Resources in 2008, and since 2010 is under the Ministry of Defence

55. S. 12 (3), CCA

from the Department or its regional offices and/or other agencies such as Divisional Secretariats). In practice facilities are not provided for stakeholders to take away copies of the draft. Instead, as was the case with the latest revision of the CZMP in 2004, the CCD held community workshops in each District of the country to explain the contents of each chapter of the draft and elicit participants' responses. This process was combined with written submissions made by individuals who viewed the documents at the main CCD office in Colombo (Ranasinghe, pers com).

While recognizing the value of taking the dialogue process from the centre to the provincial level, thereby making both the document and CCD officials more accessible to local stakeholders, the quantitative and qualitative aspects of participation through workshops is likely to be subject to several variables such as the availability of key groups and individuals to attend the workshop and the time available to meaningfully cover, digest and respond to the details of such a document. Moreover, although written submissions from the public are to be considered by the Minister, the fact that a written response from the Minister or further consultation based on the submissions is not provided for; means that the impact of public comments on the final version is left to the discretion of the Minister. This begs the question of the utility of the process beyond the provision of public views regarding planned coastal zone policy and activities and the legitimization of the Plan through this so-called consultation. It also brings into question how the notion of participation should be understood if it is to afford the public a truly effective avenue to influence government policy and plans in this sector.

With regard to the review of development projects, the main mechanism is the IEE/EIA⁵⁶ process linked to the issuance of permits to operate. Project evaluation processes are provided under the Coast Conservation Act; the National Environmental Act and the Fauna and Flora Protection Ordinance; and the law applicable depends on the location of the proposed development activity. If in the coastal zone, all proposed development activities require a permit from the CCD under the CCA.⁵⁷ This requires an assessment (amounting to an IEE) with regard to a proposed project's compatibility with the CZMP and the CAA and related regulations that stipulate other evaluation criteria.⁵⁸ These criteria are also concerned with adverse impacts to the coastal zone and those that are situated in or close to protected areas. Potential impacts on people are not expressly stated as criteria. Here the absence of a provision for public consultation may be understood in view of the unworkable administrative burden that would be involved given the number of licences issued. Whether a proposed activity requires an EIA is left to the discretion of the Director General of the CCD based on his/her assessment of the severity of actual and potential impacts. Outside

56. Whether a project undergoes an IEE or EIA will depend on the significance of the anticipated impacts

57. S. 14(1)

58. Gazette No. 260/22 of 2 September 1983

the coastal zone, the NEA will apply in most other instances unless the proposed activity is within 1 mile of any Nature Reserve or within 100m from the boundary of a Sanctuary, where the FFPO will apply. The procedure under the FFPO is the same as under the NEA. In practice however, most IEEs and EIAs have been conducted under the NEA due to the narrowness of the coastal zone, an issue which represents a major weakness in the CCD's ability to regulate activities that affect the coastal zone. An example is the EIA conducted for the Muthurajawela sand fill which, being outside the coastal zone, occurred under the NEA.

The IEE/EIA process under the NEA and FFPO applies only to "Prescribed Projects" which have been specified by the Minister in charge of Environment⁵⁹ and is implemented through designated Project Approving Agencies (PAAs) as stipulated by the Minister.⁶⁰ This is in contrast to the discretion granted to the Director-General of the CCD in deciding which projects should undergo an EIA. According to regulations⁶¹ and an Order⁶² made under Part IV, C of the NEA, public consultation must be facilitated at two stages in the process. The first arises during project scoping where in order to determine whether an IEE or EIA is required, the PPA is required to take into consideration, the views of the government agencies and the public.⁶³ Although the process for doing this is not set out in the regulations, the practice has been for the PAA to seek advice from the relevant Pradeshiya Sabah with regard to possible impacts to people in the local context. Thus the affected people themselves may not be directly involved as the Pradeshiya Sabah is expected to act on their behalf. This information is to be included when the PAA decides whether it is an IEE or EIA that is required, and the Terms of Reference (ToR) for the study are determined. Since the ToR will define the scope of the IEE or EIA, it becomes clear that the process of consultation at this point is critical to the representation of the public's concerns in the evaluation. Given that whether a Pradeshiya Sabah advises the PAA based on prior consultation with the local people is unclear, and is most likely to vary considerably in practice, the consultation process appears subject to the whims of the state agencies involved.

Public participation is also required by law once an EIA report is submitted to the PAA by the project proponent. On receipt of the report, the PAA is bound to notify the public by notice published in the Gazette and in one national newspaper published daily in the Sinhala, Tamil and English languages. The notice must invite the public to make written comments to the

59. Prescribed projects are those of low, medium or high polluting industries as deemed by the NEA (Amendment) Act No.53 of 2000. Low polluting industries are those projects and undertakings listed at items xx to xx in the list of Prescribed Projects, while high polluting industries are those listed as Items 20 to 30.

60. Evaluation of environmental impact is delegated to various government agencies as determined by the Minister. Eighteen such agencies have been designated to date (Gazette Extraordinary No 859/14), and which becomes the PAA in each case will depend on the nature of the project and its location.

61. Gazettes extraordinary No 772/22 of 24th June 1993 and No 859/14 of 23rd February 1995

62. Under Section 23Z of the NEA

63. Section 6(ii), National Environmental (Procedure for approval of projects) Regulations, No. 1 of 1993, Gazettes extraordinary No 772/22 of 24th June 1993

PAA within 30 days of when the notice is published, and indicate time and places where the report will be available.⁶⁴ This came into affect as a result of a supreme court proceeding where the Road Development Authority made the EIA relating the Colombo Katunayake expressway available for public comment for a period of 30 days, however the full report was published only in English with brief summaries in Sinhala and Tamil⁶⁵. In practice, however, the EIAs have appeared first in English with some delay in making the versions in Sinhala and Tamil available. It is believed this reflects the time taken to accurately translate from English (the language of the original report) to the other two languages.

Comments received from the public are to be forward by the PAA to the project proponent who must respond to the PAA in writing. Although the regulations then require the PAA to make a determination as to whether approval will be granted or denied, Section BB (3) of the NEA also provides for hearings with those responsible for the public comments, although whether such hearing are to be granted is left to the discretion of the PAA. Although an EIA/IEE is to be available in all three languages, the practice has been for only the English version to be available first, with the local language copies to follow after two weeks of the notice.

The same duty to consult the public applied to IEE reports under the NEA until this requirement was repealed in 2000.⁶⁶ This and the suspension of the NEA relating to public nuisance are seen by Kodituwakku (2004a) as serious violations of public rights, and suggests these actions reflect a perception of the EIA process as an obstacle to development amongst both industry and some government agencies. Significant variance in the practice of the EIA process have also been experienced. For instance, only a few EIA reports have been published in all three national languages; most are only in English (Kodituwakku. 2004a). Moreover, the time period provided for comments (30 days) is too short given that lay people have to access, read and understand highly technical information most often in an unfamiliar language even before identifying the issues and formulating and communicating their concerns in writing.

It is also worth noting that while stakeholder participation lies at the centre of the SAM concept, no legal basis for implementing the SAM planning process and the legal legitimacy of the resulting SAM Plan currently exists (though it does so in policy – CZMP 1997 and 2004). This is set to change if the draft amendments to the CCA are passed by Parliament whereby a newly added PART III C will provide the CCD the basis to declare Special Management Areas⁶⁷ in any area within or adjacent to the CZ. The objective of this

64. Gazette Extraordinary No. 772/22 of 24th June 1993, S. 11(i)

65. The South Asian Environmental Law Reporter .1994. Environmental Foundation Ltd

66. National Environmental (Amendment) Act, No. 53 of 2000

67. Part IIIC, Draft Amendments to the Coast Conservation Act, No. 57 of 1981, L. D. O 47/99.

category is the promotion of collaborative resource management within the designated area, and thus appears to relate closely to the SAM approach. This inference appears to be further supported by the fact that such a status can be bestowed only for areas identified by the CZMP as requiring such a management approach which appears to correlate with the current practice of identifying SAM sites. However, while these provisions will provide the SAM process a legal footing, their content fall well short of clearly identifying the procedural aspects of the SAM process, a need highlighted in Chapter 4. Whether these details will be spelled out through regulations remains to be seen, but in the very least, these developments appear to present an opportunity to articulate some key features of the SAM process, including standards and mechanisms for stakeholder participation and transparent and equitable decision-making within the process. This opportunity is particularly valuable since although the CZMP 2004 sets out some guidelines for the SAM process, they too fall well short of setting standards with regard to the actual nature of participation expected and the procedures to be followed to facilitate it.⁶⁸

1.5.3. Are there legally-binding provisions guaranteeing equity/fairness?

There are none.

1.6. Access to justice

1.6.1. Is standing to sue enabled by constitution or by statute for communities, civil society organizations, and individuals acting in the public interest?

Standing to sue was established through case law and not through the Constitution. The notion of standing seems also to be included as a Directive Principle of State Policy of the Constitution, Article 27(4) requires that the "State shall strengthen and broaden the democratic structure of government and the democratic rights of the People by decentralizing the administration and by affording all possible opportunities to the People to participate at every level in national life and in government."

68. See Section 6.3.2 of the CZMP 2004, Gazette Extraordinary No. 1,429/11 – Tuesday, January 24, 2006.

1.6.2. Are there regulatory provisions enabling communities, civil society organizations, and individuals acting in the public interest to approach government authorities for administrative remedies?

Only if provided under the law. The NEA provides for an appeal to the Secretary of the Ministry in charge of the subject of Environment in the context of EIAs and Environmental Protection Licences (EPLs), but this right of appeal is only granted to the developer which works to the detriment of civil society. The same is the case with regard to the CCA where Section 21 allows the developer the right to appeal against the refusal to grant a permit to conduct a development activity that is not a prescribed activity in the CZ. An aggrieved citizen will need to file an action in the courts.

1.6.3. Are there regulatory provisions enabling alternative dispute resolution mechanisms and recognizing the validity of their decisions/outcomes?

Under section 23 BB (3) of the NEA there is provision to challenge a project approval decision in the case of projects listed as a prescribed project under the NEA. The successful use of this provisions is however impeded by the politicization of the process and the lack of independence of the bureaucracy from political interference.

An example where this provision was successfully applied relates to case filed by EFL with regard to the Upper Kotmale Hydropower Project. The case challenged the Ministry of Environment's decision to approve the project by filing a writ application in the court of appeal, seeking a stay order on the grounds that its exclusion from a second appeal process was arbitrary and contrary to principles of natural justice and contrary to the procedure set out in the 'Public Participation handbook'⁶⁹ published by the CEA. EFL sought to quash Secretary's (of the Ministry of Forestry and Environment) findings, arguing that they contained a number of generalised and un-attributed quotations, showed bias against the 'Environmental Lobby' and had been made on the basis of what the Secretary saw as the mission of his Ministry rather than in terms of the National Environmental Act. At the hearing of the case a settlement was reached whereby the state agreed to conduct a fresh appeal with the participation of EFL. Consequently, there was a fresh appeal hearing, at which certain significant steps were taken, including the establishment of a monitoring committee chaired by the Central Environmental Authority on which EFL has a seat⁷⁰. The case concluded with approval granted for the project, but with the addition of mitigatory measures including the inclusion of a watershed management plan.

69. Central Environmental Authority (CEA). Guidance for Implementation of the Environmental Impact Assessment (EIA) Process. No 1 A General Guide for Project Approving Agencies Process. 3rd Edition

70. SAELR, 1998. Appeal under section 23 DD of the national Environmental act by Ceylon Electricity board (no 1 3) The South Asian Environmental Law Reporter. Vol. 6(3):113-138

Institutions

2.1. Overview of existing institutions on management of coastal resources

Coastal management in Sri Lanka has existed since the 1920s, although the first dedicated institutional structure, the Coast Protection Unit was established in 1963 as part of the Colombo Port Commission. This arrangement changed in 1978 when the Coast Conservation Division (now Department) was established under the Ministry of Fisheries, which was upgraded to the current Coast Conservation Department (CCD) in 1984. The CCD remains the primary state agency in charge of CZM, although several other agencies enjoy jurisdiction in this area to varying degrees as described in 1.3.1 above.

2.2. Transparency

2.1.1. Is there a designated body, individuals or organizations for information dissemination?

Although a Department of Information exists, its focus is not related to resource management or related governance issues. As stated in 1.2.4, the rules pertaining to revisions of the CZMP and review of draft EIAs identify responsible agencies for making these documents available. This section also noted that several government agencies, including the CCD appear to be taking steps to facilitate access to information through the internet, although the kinds of documents and information made available remains to be seen.

Sri Lanka is still not a fully-fledged computer user⁷¹ and an estimation of computer literacy of the population between the ages of 5 and 69 reveals that at national level, 10% of this population is computer literate, although this varies from one Province to another. Consequently, most people's access to government documents will be as hard copies made available at selected government offices where the public is allowed to inspect them

71. Satharasinghe, A. Computer Literacy of Sri Lanka - 2004 Website at <http://www.statistics.gov.lk/cls2004/index.htm>

and make personal copies. However, the cost of photocopying are high, between US \$5-10 since most state agencies cannot afford to subsidize this process. Since the official poverty line in Sri Lanka is estimated at around US \$15,⁷² and the national poverty head count is 22.7%,⁷³ it can be deduced that the costs of obtaining copies of government documents many present a barrier to access for many people. At the same time most of the development activities are initiated in the rural areas where people have limited access to communications hence will be deprived of access to information as result.

2.1.2. Is there an information management system in place (e.g. internet, printed media, organized group meeting at community level)?

There is currently only a partial system, with information capture occurring mainly through reviews of CZMPs approximately every four years. While the CCD has a website (<http://www.coastal.gov.lk/>), access to key documents is poor. For instance, neither the CZMPs developed in 1997 and 2004 are available, nor other key documents such as the Coast Conservation Act and its amendments. Documentation is limited to permit applications and guidelines that follow from these policy and legal documents.

2.3. Accountability

2.3.1. Is there a monitoring and evaluation (M&E) framework for coastal management and/or ICM created, and is it operational?

There is currently no such framework in operation, although recent institutional developments within the CCD indicate a recognition of the need for such a framework.

In 2001 a new research and design division was established in the CCD to address the need for regular monitoring and evaluation in the coastal zone (IPID & PILF 2005). The role of M&E is recognized in the CRMP 2004, particularly the need for independent monitoring and evaluation of initiatives generated through the SAM process, especially in respect to livelihood enhancement. The same document also identifies an M&E process in relation to shoreline protection, but an overall M&E process does not appear to be envisaged. In the case of externally funded SAM and other processes, the M&E component is provided by external evaluations that are often conditions of funding. In the case of the CRMP (2000-2007), the mid-term review report for its Coastal Environment and Resources Management (CERM) Component found that an M&E framework had not yet been developed (CERM,

72. Department of Census and Statistics of Sri Lanka. The Department of Census and Statistics Announces the Official Poverty Line for Sri Lanka. 2004 JUNE. ISSN 1391-4693 Website at <http://www.statistics.gov.lk/poverty/index.htm>

73. Ibid

2004). Nevertheless, the need for monitoring and evaluation is recognized and the project is in the process of documenting the successes and failures of the CERM component at each of the seven sites where SAM planning occurred (Ranasinghe, pers com).

The CEA is also mandated to monitor industrial discharge of effluents into waterways, air emissions and noise pollution, and to respond directly to public complaints on pollution and nuisance arising from industries and other miscellaneous sources. The CEA may however devolve some of its functions to the respective Local Government Authorities or other institutions for investigation of pollution related problems.

2.3.2. Are mechanisms for social and environmental audits established and operational?

No could be identified. However, this response is not conclusive.

2.3.3. Are the mandates of formal and informal institutions for coastal management and/or ICM clearly defined

See 1.3.1 (via 1.3.3)

2.3.4. Do institutions and organizations, including private sector institutions, have a disclosure policy in place and are they implementing it?

None for government institutions. In the private sector disclosure policy would primarily be governed by legal requirements such as information that must be revealed in, for example, the Annual Report. This however relates only to public listed companies. Private companies do not seek to raise money in equity markets, seldom provide financial information, and disclosures are usually related to such matters as their products and services.

2.3.5. Are adequate human and financial resources available for coastal management and/or ICM implementation?

No. The case studies of ICM interventions in Chapter 4 highlight very clearly the dependence on external funding for such programmes and the application of such funds primarily to the planning process and not to plan implementation for which there is currently no solution. While more details are provided in Chapter 4, it should however be noted that the planning process often also includes some on-ground interventions that do address a range of ICM issues at site. What is particularly lacking is the funds to support the continued local-level institutional structures put in place by the intervention to adopt the ICM principles for continued monitoring and management, and implementation of other interventions identified in the SAM or other Management Plan that results from the planning process.

The lack of financial resources also suggests the lack of human resources.

The role of such capacities for ICM at the national scale has been recognized in the CZMP of 2004 which emphasized the need for collaborative arrangements with agencies covering fisheries (capture as well as aquaculture) and other sectors such as shipping, tourism, wildlife, forestry, urban development, irrigation and agriculture. To make such collaboration effective, it was noted the CCD requires capacity enhancement for greater emphasis on policy planning, management, monitoring and evaluation. Inter-agency coordination was also highlighted in respect of information exchange, education and communication (CCD, 2004).

2.4. Rule of Law

2.4.1. Is there a national framework for integrating ICM and a mechanism for coordinating among different government departments and for coordinating with civil society and private sector organizations?

Section 36 (1) of the CAA states that provisions contained in other laws can be exercised in the coastal zone only after consultation with the Minister in charge on the subject of coast conservation. This is meant to be facilitated by the Coast Conservation Advisory Council (CCAC)⁷⁴ established under the CCA. It is comprised of representatives of government agencies whose work relates to the CZ, universities, voluntary organizations and the fishing industry. Its functions are stated as:

- advise the Minister on all development activities proposed to be commenced in the coastal zone
- review the coastal zone management prepared under Part II of the Act and furnish recommendations if any thereon to the Director
- review the Environmental Impact Assessment (EIA) furnished to the Director in connection with applications for permits under Section 14 and make comments if any thereon to the Director
- inform the Director of the need for schemes of work within the coastal zone whenever such need arises
- advise the Minister or Director, as the case may be, on any other matter relating to coast conservation that may be referred to the Council by the Minister or the Director

In practice, the influence of the CCAC had been adversely impacted by its attempt to provide technical rather than policy recommendations although its members were less suited for such a function, being drawn mainly from the Administrative Service. This led to the development of Guidelines for the Council and a shift in focus towards policy. This

74. To be renamed as the Coast Conservation and Coastal Resource Management Advisory Council under S. 7, Draft Amendments to the Coast Conservation Act, No. 57 of 1981, L. D. O 47/99.

has been accompanied by a proposal to establish a separate Technical Committee to deal with technical issues consisting of middle management officers as well as academics and other experts and NGO representative. These changes have been incorporated into the proposed amendments to the Coast Conservation Act currently with the Legal Draftsman's Department (Ranasinghe, pers com).

In areas where SAM planning occurs, some of these overlaps are dealt with through administrative arrangements through multi-agency Co-ordinating Committees (see Chapter 4 case studies), although no such mechanisms exist in other areas.

Institutional co-ordination may also be sought via one of the six Committees on Environmental Policy and Management (CEPOMs), established in 2000 and administered by the Ministry of Environment. These were set up specifically to address the problem of sectoral co-ordination between and amongst all those institutions - both within and outside the government - for integrating environmental concerns into development, particularly with regard to the implementation of the National Environmental Policy and the National Environmental Action Plan (NEAP). As such, the CEPOMs are meant only for facilitating and co-ordinating the policy formulation process in line with recommended NEAP actions. They also facilitate the implementation of recommended NEAP actions by ironing out conflicts and other problems between agencies. Although one CEPOM is specific to fisheries, coastal and marine area development, the many sectors represented in other CEPOMs will also be critical.⁷⁵ Available information on the functioning of these CEPOMs however suggest that the practice has not lived up to expectations. A primary cause seems to be the fact that their effectiveness of CEPOM depends a lot on the leadership and efficiency of the individual handling it at the Ministry. The operation of the CEPOMs is thus at varying levels.

A significant obstacle is the fact that some agencies like the GSMB earn income from their functions and this makes it more difficult to obtain co-operation where these institutions are required to follow CCD policy.

2.5. Participation

2.5.1. Is funding to support public participation in making decisions about ICM allocated and disbursed?

No. The predominant participatory ICM process in the CZ is the SAM planning process, where participation has occurred to varying degrees and is subject to the numerous challenges discussed in Chapter 4 of this report. All SAM processes have been project

75. The other CEPOMs are Agriculture, Plantations, Land Development and Mining; Forestry and Wildlife Conservation; Industry and Tourism; Health, Sanitation and Urban Development; and Energy and Transport.

funded to date, and these funds are managed by the CCD as the project implementing agency. While the SAM Co-ordinating Committees (called the Community Co-ordinating Committees or CCCs) and several on-ground activities (ranging from habitat restoration, infrastructure construction, institutional development, livelihoods support and awareness creation) are facilitated using these funds during the project's lifetime, the case studies in Chapter 4 indicate that there is little allocation by the government for continued CCC operation which becomes the responsibility of the Divisional Secretary. In fact, the CCCs are expected to find their own funds for operation and SAM plan implementation, and this constitutes a major weakness in the site-level ICM interventions.

2.5.2. Is public participation in formulation of rules documented by one or more of the following: number of meetings conducted and who the participants were; suggestions and feedback from the consultations are incorporated into the final product, among others?

The meeting, participants and their contributions are not recorded in final documents such as the CZMP or site level SAM or other management plan. At the site level, only the membership of the CCCs is recorded. In the case of the Negombo SAM planning process under the CRMP, the brevity of meeting minutes was highlighted as an issue, in that attention only to final decisions did not reflect the views and considerations expressed in the discussions leading to decisions. The majority of outputs of such processes are also in English which remains a significant barrier to access at the community level (Mr. Fernando, community stakeholder, pers com).

2.5.3. Are institutions adequately staffed and skilled for conducting participatory approaches?

As discussed in detail in Chapter 4 of this report, two significant conclusions from the case studies examining the implementation of ICM approaches are: i) the failure to pay adequate attention to the local political economy when attempting to establish integrated and participatory management frameworks at the local level, and ii) a difference in opinion between the stated policy (CCD, 2004) and ICM practitioners with regard to the degree of influence local groups should be allowed to have in the process. These and other experiences such a failure to ensure field staff are drawn from the project sites suggest that what principles ICM stands for and requirements in practice have not been adequately considered. In fact, the traditional engineering and biophysical orientation of the CCD further suggests that working with multiple non-state local actors is a relatively novel situation, thus highlighting the need for a strategic review of the departments staffing, and at least guidelines for the selection of key project personnel in future ICM initiatives.

2.6. Access to justice

2.6.1. What is the quantum of fees for using courts?

Fees in District courts are a percentage of the value involved in each case. In the Appeal and Supreme courts the cost of a case involves the legal fees for the lawyers; stamp duty on documents produced in court; “batta”^{*} to the witness, and the cost of typing and photocopying, which all add up to a fairly large bill even for comparatively simple cases⁷⁶. In a civil case the costs are intended to include all the expenses incurred by a party including lawyers’ fees; stamp duty on documents; reasonable expenses in procuring the attendance of witness, and obtaining any necessary surveys, etc. In practice, the costs awarded seldom cover the full amount spent by a party, especially as the computation is based on a rather out dated levy of lawyers’ fees set out in the Civil Court Procedure Code⁷⁷.

76. Ruana Rajepakse. 2006. An Introduction to Law in Sri Lanka . 2nd Edition a Stanford Lake Publication

77. Ibid

*. An allowance to cover expenses such as transport

Processes

3.1. Transparency

3.1.1. Do people have the ability to access information?

In most cases the technical information related to feasibility studies of the respective projects are considered to be government documents which are not allowed to be accessed by the public. Even where documents such as draft EIAs and CRMPs are required to be made public for 30 days by law; in many instances such documents are not made available in the respective government department during this period or they are made available several days late. For example the Colombo-Kandy Highway and the Southern Expressway EIAs did not appear in Sinhala medium when the notice was published and it was made available only several days later. However these were not challenged in court since there was not enough time to seek legal action.

3.2.2. Are people aware of their legal rights to access information?

Most people are not aware of their legal rights and the few existing opportunities and procedures regarding access to information. In most cases the behaviour of government agencies involved suggests their unwillingness to make technical documents available to the general public. It should however be noted that such perceptions are likely to vary significantly from one stakeholder to another.

3.2.3. Do people perceive that ICM information is effectively disseminated?

The majority of the people do not know the existence of ICM policy documents such as the CZMP or the Coast Conservation Act or regulations made there under. In site-scale ICM processes, information dissemination is achieved through project-driven awareness programmes, while CCC decisions are expected to be transmitted by each Committee member to their respective constituents. Taking the SAM planning process in Negombo as an example, the fact that the majority of documentation is in English is seen as a barrier. In this site, discussions within the Community Co-ordinating Committee (CCC) had also begun in English until members had requested the meetings and minutes to be in Sinhala (Mr. Fernando, community stakeholder, pers com). The same respondent also

felt more should be done in a systematic manner to highlight project activities at the site level, especially where the process covers a relatively large area with several villages. At the centre, the CCD website has very limited information as previously noted. Interested parties will need to contact a CCD officer in their district for information, although the level of information available at the District level is unclear.

A new subsection (e) is to be added to the list of duties of the Director of the CCD that holds the incumbent of this post responsible for the dissemination of information on coast conservation and coastal resource management to the public as well as to other government agencies.⁷⁸ How this responsibility will be implemented (what information, methods of dissemination, languages, timing, etc) is yet unclear since these amendments are yet to be passed into law by Parliament. It should however be noted that this amendment, while being a step towards greater access to information in the public domain, falls well short of providing a right to information enforceable by the public. In fact, the proposed amendment appears to place the critical question of what information will be made available at the discretion of the Director General.

3.2. Accountability

3.2.1. Is a disclosure policy in place and is it being implemented by all players in ICM?

No disclosure policy is in operation. It is expected that relevant agencies and other actors will provide information necessary for planning and implementation through administrative arrangements. These however operate between state agencies and do not help the public access information.

3.3. Rule of Law

3.3.1. Do people perceive that rules are equally and fairly applied to all actors?

No. The dominance of corruption charges and perceived failures to apply the rule of law in reporting by national newspapers (many furnishing documentary proof) suggest the perception is that application of the rule of law is very poor overall. Discussion of political interference in ICM processes in Chapter 4 make clear that this sector is no exception. Thus, application of the rule of law appears to go hand in hand with political affiliation at both national and local levels.

3.3.2. Is compliance monitoring mechanisms in place?

78. S. 5, Draft Amendments to the Coast Conservation Act, No. 57 of 1981, L. D. O 47/99.

The Monitoring & Evaluation Division of the Coast Conservation Department has the responsibility for monitoring project and plan implementation. However, no such system is yet in place.

In the context of site level ICM initiatives, the most recent series of SAM plans developed under the CRMP are accompanied by an Action Plan for each site that sets out the specific activities to be implemented under each SAM plan component. Each set of activities is linked to time schedules, responsible agencies, cost estimates and indicators to facilitate progress monitoring. The primary monitoring tool will be a monthly progress meeting between the field implementation manager and the CRMP management during the project period, although a broader M&E process had been envisaged, but not set in place even at the project's half-way stage (CERM, 2004). Post-project monitoring is to be effected by two CCD officers who will remain at each site to work with the local institutions for Plan implementation (Ranasinghe, pers com). How progress on individual activities will be reported is however unclear at the moment. The availability of funds to carry out M&E activities is also subject to the availability of funds within the CCD which is likely to vary each year, and dependent also on the responsible officer's commitment to the process. The matter is also complicated by the fact that post-project Plan implementation is to be the responsibility of the Divisional Secretariat who is expected to maintain the function of the Community Coordinating Committee. However, the involvement and enthusiasm amongst the Divisional Secretaries in the CCC for this role was found to be low as this expectation was viewed as an additional burden in a context of trying operational circumstances. The need to legally include this function within the mandate of Divisional Secretaries was thus recognized as a priority (CERM, 2004).

3.3.3. Number of cases reported for non-compliance during certain period of time

Information not available.

3.3.4. Number of penalties collected for non-compliance?

Information not available.

3.3.5. Quantum of punishment, including damages, that is available and applied in the case of violations of laws and regulations governing coastal management.

Information not available.

3.3.6. Are there alternative dispute resolution measures available for redressing coastal conflicts, and are actors in the coastal zone aware of them and using them?

The available options described below are not particular to the coastal zone. Within the CZ, the only such mechanism is the Co-ordinating Committee used in the SAM process and similar site-level committees in other ICM approaches where space is created for issues and solutions to be discussed in a participatory manner.

Questions in Parliament - A citizen or group may lobby the local Minister of Parliament to raise the issue in question in Parliament on their behalf. The Minister in charge of the subject raised then has the responsibility to respond within a specific period of time.

Committee on Public Petitions - This consists of ten members nominated by the Committee of Selection. The duty of this Committee is to consider the petitions sent by the public and referred to it by the Parliament and to report back to the Parliament its opinion on the action to be taken in respect of such petitions. This Committee has the power to summon before it and question any person, call for and examine any paper, book, record or other document and to have access to stores and property. The effectiveness of a Committee is very much dependent on the personality of the Chairman of the Committee. If the Chairman wants to harness the energies of all the Committee members, he can find ways and means to do so. He can even cast a sort of obligation on the members by appointing sub-committees and making some of the members Chairmen of those sub-committees. Members of the public may raise issues by a letter addressed to the speaker.

The Ombudsman - Role of the Ombudsman in Sri Lanka is to achieve transparency, accountability and good governance. Established through a Cabinet Decision, the Ombudsman is an administrative arrangement designed to look into and redress grievances of the public. It will inquire into complaints of any injustice arising in consequence of any mal-administration on the part of any officer of the Department of Inland Revenue.⁷⁹ Ombudsmen will investigate into any mal administration if it falls under the following:

- a. A decision, process, recommendation, act of commission or omission which appears to;
- b. Neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities
- c. Repeated notices, unnecessary attendance or prolonged hearings while deciding cases concerning
- d. wilful errors in the determination of refunds or rebates;
- e. deliberate withholding or non-payment of refunds or rebates already determined;

79. Ministry of Finance and Planning, government website <http://www.treasury.gov.lk/keytopic/taxombudsman.htm>

The Ombudsman may, where he considers it appropriate, conduct an inquiry into any complaint. Every such inquiry shall be held in private; the complainant is entitled to appear before it either in person or by a representative. On the conclusion of every inquiry the Ombudsman will submit a report to the Commissioner General of Inland Revenue, setting out his findings and recommendations. Where the Ombudsman decides not to conduct an inquiry he will communicate such decision to the complainant together with the reasons therefore, such communication shall be treated as the conclusion of such complaint. Every complaint with or without any inquiry being conducted will be dealt with to a finish within a period of ninety (90) days from the date on which the complaint is received.

For the purposes of this report however, this represents a limitation on the Ombudsman's relevance since it's authority is limited to issues related to this Act. Though limited, it can play an important role as a fact finder as was the case when it carried out an investigation into the sale of land by the Department of Meteorology to the British High Commission and discovered that the decision to sell had gone against the views of the Treasury due to political interference. The issue of land acquisition is a good example of a subject that may prove relevant in coastal scenarios.

3.4. Participation

3.4.1. Are mechanisms for public participation in making decisions about ICM clearly defined, provide for including all stakeholders, and are made known to the public?

Although public participation is stressed by the CZMP (1997, 2004) the lack of guidelines on this aspect in the CZMPs, the CCA and the current draft amendments to the CCA mean that how this idea or theory of participation is to be effectively practiced remains unclear. This appears to be confirmed by the case studies in Chapter 4, that highlight the need for a clear definition of what the term 'participation' is meant to involve and achieve in practical terms.

3.4.2. Are mechanisms for public participation perceived as being inclusive and fair?

It is clear from the above that knowledge of these mechanisms is low amongst the general public in the first place. Experience with EIA review processes indicate that the 30 day period for submitting written comments is woefully inadequate given that availability of local language copies of the draft are often delayed and that the technical nature of the content poses severe constraints on especially local people's ability to understand implications and assess the suitability of the study in terms of issues covered. It has often been the case that intermediaries such as NGOs or CBOs are needed to provide the translation service and

draft responses. Moreover, the fact that the EIA and the CZMP review process do not expressly afford face-to-face dialogue between the PAA, project proponent and the public on matters highlighted in written comments reduces these processes to mere consultations. Whether or not the concerns expressed will be addressed is thus lost in bureaucratic decisions that are generally not accessible to the public other than through court action. It may therefore be deduced that such processes are neither fair nor inclusive both due to the rules themselves and the manner in which they are practiced.

With regard to the site-level ICM processes, some causes for relatively weak participation in local institutions meant to facilitate participatory decision making related to perceptions on the part of some groups that some are more equal than others. The analysis in Chapter 4 attempts to identify the diverse drivers underlying such perceptions. Many of these are found to originate from entrenched characteristics of local social and cultural values that pose local ICM intervention the challenge of accommodating a vastly heterogeneous population within such local institutions. How realistic it is to place such an expectation upon external interventions however is food for thought given its limited control over local political manoeuvrings that are largely independent of the ICM process. The role of political affiliations and direct interference in decision-making by local politicians to safeguard personal objectives also emerged as a key issue (Fernando, pers com).

3.4.3. Are requirements for periodic evaluation of mechanisms for public participation in place and implemented?

There are none.

3.4.4. Is there documented evidence of participation in the process of developing policies and/or drafting laws related to ICM?

As stated under section 2.5.2, documentation of participation occurs where participation is required by law (EIAs and CZMP reviews), although these generally only involve written consultations. More generally, the practice by government agencies for developing and reviewing policy or legal documents has been to establish a committee consisting of state agencies, NGOs and individual experts. While participation at meetings of these committees are documented, the participants are generally drawn from a narrow group of actors based around urban centres, and may not be truly representative. Minutes of such meetings are generally not available to the public unless required by the courts following the filing of an action.

3.4.5. Is there documented evidence of endorsement of ICM plans by stakeholders?

The ICM plans developed through the SAM and similar processes are meant to reflect consensus on the part of the diverse representatives involved in plan formulation. However, there is no written evidence. In the case of Rekawa, Hikkaduwa and Muthurjawela-Negombo ICM projects (see Chapter 4), endorsement was only sought from the Cabinet (Samarakoon, pers. com). As stated elsewhere in this report, the need for legally binding rules with regard to the formulation and endorsement of ICM plans is an important need.

3.5. Access to justice

3.5.1. Is legal aid available to assist communities, individuals, and civil society organizations seeking administrative and/or judicial remedies?

Legal aid schemes are available in Sri Lanka but are under-resourced and are not comprehensive.⁸⁰

Legal Aid Commission of Sri Lanka - The Legal Aid Commission which is governed by act of Parliament⁸¹ receives support from the state. To seek assistance under the scheme a person's income must not exceed Rs. 6,000 per month. An applicant must give his/her particulars of income, property and other assets and should be certified by the village GN to be eligible under such a scheme. The scheme provides legal aid mostly for civil cases other than testamentary cases. This Commission has been involved with the Ministry of Justice and Law Reform in establishing Legal Aid Clinics in several areas of the country⁸² to make it accessible to rural communities. These operate as Regional Centres. In addition, the Commission has access to regional representatives in other areas.⁸³ The Commission employees three full time legal officers and retains several other Attorneys who are in independent practice as panel lawyers, and undertake legal aid cases for a fixed honorarium. Information on these services and contact details (including the panel lawyers) is available at <http://lawaid.org/regional-centers.html>.

NGOs - There are also a number of NGOs such as Environmental Foundation Limited (EFL), the Public Interest Law Foundation (PILF) and Law and Society Trust (LST) that offer legal aid - some give advice while others arrange for appearance in court as well.

80. Ruana Rajapakse. 2006. An Introduction to Law in Sri Lanka . 2nd Edition a Stanford Lake Publication

81. Legal Aid Law No 27 of 1978

82. Anuradhapura, Kandy, Galle, Trincomalee, Kurunegala, Nuwara Eliya, Kegalle, Hambantota and Ampara. See <http://lawaid.org/regional-centers.html>

83. Matale, Gampaha, Matara, Negombo, Batticaloa, Badulla, Avissawella, Panadura and Jaffna

Pauper's Actions under the Civil Procedure Code - provides for obtaining leave from court in paying fees. The court of first instance generally does not deny access to this facility unless a statute bars it. (Anandalal Nanayakkara, pers com)

In Fundamental Rights cases, courts also facilitate access to documents without charge (Anandalal Nanayakkara, pers com)

3.5.2. Are alternative dispute resolution mechanisms available and are they being used?

In addition to the content under 3.3.6, dispute resolution through mediation is also possible through the Gam Sabha or the village council system that has been in operation well before the onset of the modern legal system in Sri Lanka (it is reported in the Mahavamsa). Settling disputes were first legalized through the Mediation Board Act No. 10 of 1958, although this was later abolished in 1978 by the government since for want of a proper administrative body with trained personnel. However in 1988, the mediation process was reintroduced through an Act of Parliament. This process is commonly used in labour (industrial) disputes, commercial disputes, and social disputes as well as in international affairs. In the mediation concept it is a person's consent to settle the problem or dispute faced by him/her. This is a factor which differentiates mediation from the judicial process. This self-consent also includes a thought to transform one's solution into a permanent (lasting) solution.

Environmental mediation was introduced by EFL in 1998 through the Environmental Mediation Centre (EMC)⁸⁴. The process is handled by an external Panel of Mediators comprising 30 individuals, trained extensively in the Mediation Training Unit of the Justice Ministry. The Panel is made up of government servants, members of the clergy, fellow NGO employees and volunteers, representing various parts of the country. The environmental mediation system usually deals with minor environmental issues that can be resolved by summoning for a discussion through the intervention of environmental mediators.

84. 'Biosphere' Environmental Foundation Magazine volume 22 (1) January – March 2006

Case Studies

The four case studies used in this section are the SAM planning initiatives in the Hikkaduwa Marine Sanctuary (referred to as Hikkaduwa) and Rekawa Lagoon (referred to as Rekawa), the SAM process in Negombo Lagoon under the CERM component of the recently completed Coastal Resources Management Programme (CRMP) and the integrated management planning process in the Muthurajawela-Negombo Lagoon wetlands complex (referred to as Muthurajawela-Negombo). Hikkaduwa and Rekawa were used to test the viability of the SAM approach to ICM (CCD, 2004) between 1992 and 1996.⁸⁵ The third case study covers the two back-to-back projects in Muthurajawela-Negombo which, though not considered as SAM processes, nevertheless adopted a similar approach based on co-management.⁸⁶ These represent some of the first forays into ICM in Sri Lanka. A little over ten years has elapsed since the completion of these projects, allowing adequate time for their outcomes to be better understood and assessed. The fourth case study comes from the latest round of ICM activities, and was selected to assess the degree to which the issues and challenges identified with the earlier ICM projects are being addressed today, although given that it ended only at the end of 2007, some inferences are preliminary owing to the difficulty in assessing results and in accessing project documentation, some of which will only be compiled in the coming months as the project draws to an end.

As stated in the Methodology section of this report, none of the case studies are meant to be comprehensive and serve rather to highlight key aspects pertaining to elements of governance at the site scale.

4.1. The emergence of ICM in Sri Lanka

By the end of the 1980s, it had become apparent that the command and control methods of the permit system and outright prohibition of activities alone could not achieve its management objectives. People were simply not adhering to these dictates (e.g. to prohibition of activities such as coral mining) and the permit system for regulating

85. Implemented by the CCD through the first Coastal Resources Management Project (CRMP)

86. A partnership between the CEA and Euroconsult (this area is technically outside the coastal zone) as part of the Dutch-funded Wetlands Conservation Project.

development activities was unable to deal with environmental degradation caused either by discrete activity outside the narrow coastal strip or by the cumulative effect of diffused activities. In addition, co-ordination between a range of state agencies was also proving to be difficult (Olsen *et al.*, 1992). Underlying and exacerbating these trends was the rapid economic growth in environmentally sensitive areas such as coastal wetlands (CCD, 1997; CCD, 2004). A new approach was clearly necessary, one which sought a more integrated and collaborative management approach that also took the social and economic needs of resource users and other stakeholders into consideration (CCD 1997; CCD 1992; CCD 2004).

In response, the Coastal 2000 policy document (developed in the early 1990s) identified the Special Area Management (SAM) planning process as a suitable methodology. Its attraction was the notion of addressing in a holistic manner the problems that can arise from the accumulated impact of hundreds of individual resource use decisions both in and outside the narrowly defined coastal zone (CZMP, 1997) through stakeholder dialogue and action. Thus, the Special Area Management Plans (SAM Plans) were conceived as a 'bottom-up' strategy for managing coastal resources that complements the existing 'top-down' regulatory approach. Active community participation is emphasized (CZMP 1997, CZMP 2004) in the belief that this will help focus on the key problems, encourage the creation and following of resource management rules, and result in a more equitable distribution of the economic benefits of such management. One of the main objectives of SAM was therefore to address competing demands of natural resources within a specific geographic boundary by planning out optimal sustainable use of resources (Wickremaratne and White, 1992). The SAM approach is led by the CCD in terms of the receipt of donor funding, overall project management and as the facilitator (technical and financial support) for community-developed resource management plans where they and the CCD and other central and local government agencies will be partners. This relationship is also to be extended to monitoring of the resources as well as intervention implementation (CCD, 1997; Clemett *et al.* 2004).

In 1997, following the completion of the SAM plans for Hikkaduwa and Rekawa (which received funding support by USAID), the SAM approach was formally adopted by the CZMP of 1997 which identified and ranked 23 potential SAM sites and defined some SAM procedures. This led to a second round of SAM initiatives in eight localities⁸⁷ (CRMP 2000-2007), supported by a grant provided by the Netherlands Government that was administered through the Asian Development Bank (ADB) and the Government of Sri Lanka.

87. Bar Reef, Negombo Lagoon, Lunawa Lagoon, Maduganga Estuary, Hikkaduwa, Habaraduwa including Unawatuna Bay and Koggala Lagoon, Mawella/Tangalle and Kalametiya).

4.2. The SAM planning process

The SAM process is meant to be dynamic and adaptive and involves a number of steps that overlap (Senaratna, 2007). The main steps adopted in the SAM approach are indicated in the Figure 4.1. The process begins with the development of an Environmental Profile (also referred to as the Level One Plan) that identifies resource management issues in terms of implications for the resource base and local communities' quality of life. This is done through several technical studies covering ecological, biophysical, economic and social aspects of the site. These assessments are expected to be conducted in consultation with local communities, and the resulting document subject to comments by the communities (CCD, 1997). Consultations are undertaken generally using Participatory Rural Appraisal (PRA) tools such as SWOT (Strengths, Weaknesses, Opportunities and Threats) analyses and the Logical Framework Approach (CCD 2004). While these may be accepted methods, it must be noted that each method may have certain shortcomings as described in Stirrat (1996) and Mosse (2003) that affect a project's ability to identify the marginalised and disempowered (Senaratna, 2007). While further discussion of this lies outside the scope of this report, the degree of inclusivity of a planning process will have important consequences for several elements of governance such as equity in access to decision-making processes.

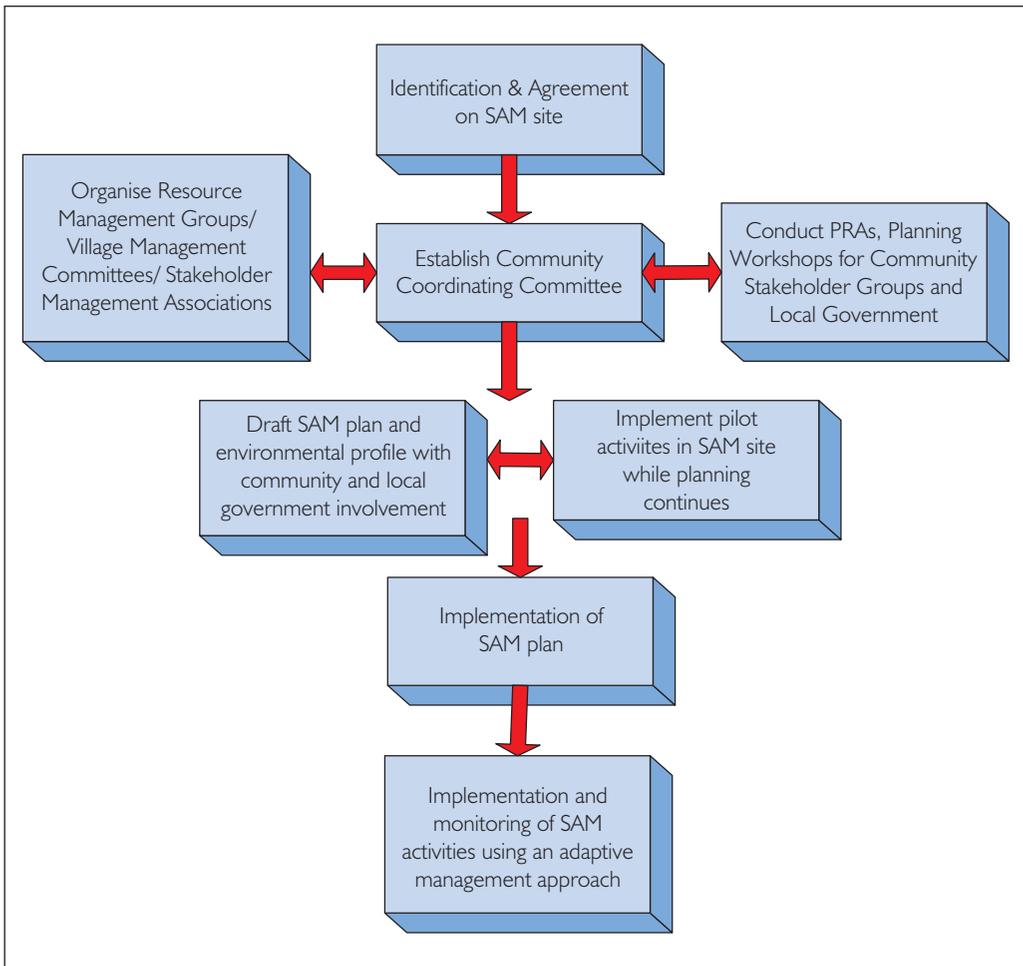
The second step is the establishment of an institutional co-ordination mechanism (which is referred to as the Community Co-ordinating Committee or CCC) to facilitate collaborative planning and implementation by representatives of central government agencies, local government authorities (Pradeshiya Sabhas, Municipal or Urban Councils), local or community based organization representatives, NGOs and project staff. A major function of the CCC is to provide a platform for consensus building amongst the diverse participants. The central government agencies represented will vary according to the ecosystems and human activities prevalent at each site. The Divisional Secretary assumes special importance as it is the incumbent of this position that generally chairs the CC and is expected to administer the SAM planning process during and after the project's lifespan. Local organizations are to be identified through resource mapping and community organisation, planning and training workshops and some CBOs may be created where they are absent. The principal aim is to set up a series of resource management core groups, defined according to their dependence on different resources. The workshops are used to inform people of the project, of coastal ecosystems and to raise awareness of local environmental issues and their links to local livelihood activities. A Field Project Implementation Unit (FPIU) Manager is employed for each site and is responsible for overall co-ordination of project implementation at that particular site (Landstrom, 2006; CERM, 2004).

Once the CCC is operational, a draft SAM Plan is developed (the Level Two Plan) based on discussion of the Environmental Profile and identification of management objectives, responses and the responsibilities of the local groups, the project and different local

government institutions in terms of Plan implementation. The contents of the Plan are expected to reflect a process of negotiation resulting in consensus, and thus endorsed by the participants on behalf of their constituents. The plan is then submitted to the CCD for approval. While some actions may be implementable immediately upon CCD's approval, overall, the plan will be implemented incrementally subject to available state and donor funds.

The final stage is meant to involve periodic revision of the SAM Plan based on the evaluation of implementation. An annual or biennial 'State of the Coast' report indicating implementation progress is recommended for consumption by the public.

Figure 4.1. The key steps adopted in the SAM approach
(from Senaratna 2007, adapted from CCD, 2004)



4.3. Special Area Management planning in Hikkaduwa and Rekawa (1992 - 1996)

4.3.1. Hikkaduwa Marine Sanctuary

Province	Southern	Main ecological features	Near shore coral reef
GNDs	13	Economic status	
Urban/Rural	Mainly urban	Main livelihood activities	Predominantly tourism and related trades, coral mining, some fishing
Population	13,815	Main issues	<ol style="list-style-type: none"> 1. Destruction of coral reef due to coral mining; land-based pollution (tourist, domestic, municipal); unregulated glass-bottom boat tourism and trampling by tourists; anchoring by fishing boats, and El Nino induced bleaching 2. Declining fish stocks 3. Unplanned construction of tourist facilities on beach front and inadequate sewage systems 4. Inadequate solid waste disposal facilities and other related resources
Area	-	Main objectives	<ol style="list-style-type: none"> a. Prohibition of fishing boats from the sanctuary b. Regulation of the use of the reef by glass bottomed boats

Source: Landstrom (2006)

The process

The Hikkaduwa Special Area Management and Marine Sanctuary Coordination Committee was initiated in 1992 under the chairmanship of the Minister of Tourism and Rural Industrial Development. The Director of the Department of Wildlife Conservation served as co-chair since management of the Sanctuary established in 1979 rests with this Department (Lowry *et al.* 1999). Since the activities at Hikkaduwa revolve around tourism and the reef, an economic valuation of the local tourism industry costs and benefits, and the key coastal resources was carried out (Landstrom. 2006). This assessment was used to develop a framework to justify managing the coastal resources that support tourism. The SAM process was applied to develop and implement an integrated coastal management plan. This included the development of an environmental profile; collecting essential data; education and awareness building on natural resource management and organizing the local community into stakeholder groups; developing a collaborative management plan and incorporating resource economics as a tool for developing management policy.

Results

The Hikkaduwa SAM Plan was completed in 1996. As part of this, the prohibition of fishing boats from the sanctuary was achieved through the rehabilitation of the harbour. Regulation of the use of the reef by glass bottomed boats however proved to be more problematic. Attempts to restrict the number of glass bottom boat operators by forming an association and introducing a permit system were less successful for reasons discussed in 4.6 below. Overall, the results at Hikkaduwa appear to be weak with the SAM process coming to a halt once the project funding was over at the end of 1996. Landstrom (2006) notes that the CCC had to be re-established when a second SAM process began under the CERM component of the CRMP (2000-2007), thus indicating that the original CCC remained active only while funding under the first SAM process was available. The requirement of a second SAM project seems to further support these conclusions. The same author also indicates that interviews with project personnel and site-level stakeholders showed that local participation was limited mainly to three groups – the Hikkaduwa Glass Bottom Boat Owners’ Association (HGBBOA) formed in 1995; the Association of the Tourist Board Approved Hoteliers of Hikkaduwa (ATBAHH) and the Fisheries Cooperative Society, with participation dominated by the ATBAHH. Other organizations such as the Hikkaduwa Small Hotels and Restaurants Association and the Tour Guides Association remained largely outside the process for reasons described under section 4.5.3. Many of these organisations also exhibited a high degree of instability and consequently have dissipated and been re-constituted several times when internal disputes could not be resolved (Landstrom. 2006).

4.3.2. Rekawa Lagoon

Province	Southern	Main ecological features	Lagoon
GNDs	07	Economic status	Widespread poverty and unemployment and high percentage of families supported by state administered social welfare schemes. Lack of training for alternate jobs. Significant dependence on natural resources.
Urban/Rural	Mainly rural	Main livelihood activities	Near shore and lagoon fishing; coral mining and lime production; agriculture (mainly paddy) and livestock.
Population	5,400	Main issues	<ol style="list-style-type: none"> 1. Coral mining induced reef degradation 2. Poaching of marine turtle eggs 3. Loss of mangroves 4. Over-fishing driven by competition between fishermen and poor water pollution
Area (ha)	1,000	Main objectives	<ol style="list-style-type: none"> a. The sustainable use of the lagoon (long-term) through resource planning and alternate livelihoods development b. Increase the lagoon’s productivity

Source: Landstrom (2006)

The process

Rekawa SAM Coordination Committee (RSAMCC) consisted of government departments, local community groups and other relevant parties. It includes representatives from CCD, DFAR, NARA, DWLC, FD, the DS of Tangalle, Hambantota Integrated Rural Development Project and the Coastal Resources Management Project of the Natural Resources and Environmental Policy Project, the Irrigation Department (ID), the Tangalla Pradeshiya Sabha (PS), Rekawa Lagoon Fishermen's Association (RLFMA), Sea Fishermen's Organization and Women's Development Society (RSAMCC, 1996; Ekaratne et al., 2000).

The planning process started with a series of informal discussions held with the community to gain an understanding of the relevant issues. After the discussions and consultations, a social mobilization programme was initiated, to create awareness on the importance of managing natural resources in a sustainable manner, and to encourage participation in the SAM process that also included some development interventions that targeted poverty reduction and activities that had an adverse impact on the target ecosystems. A graduate was recruited to mobilize the community and lived in Rekawa for a period of two years to coordinate the programme. He selected and trained a group of female social mobilizers to conduct community-level discussions and awareness-building exercises in addition to household-level interviews. The social mobilizers visited each household in the SAM area and discussed the need for environmental protection, particularly of the coastal and lagoon environment (Banda, 2002 in Clemett et al., 2004).

At the same time, the social mobilization process initiated activities to organize the community to undertake some of the responsibilities of the SAM process and strengthen community organizations in the Rekawa SAM site that covered an area of seven GN Divisions encompassing 20 villages. As SAM progressed, community-based organisations were formed or strengthened and more representatives were assimilated into RSAMCC. Later, many of these GN level organizations were represented in the Rekawa Development Foundation (RDF) formed in 1997 originally to facilitate the socioeconomic development of the villages falling within Rekawa SAM site. It is entrusted with responsibility over seven areas of development activities: agriculture; fisheries; lagoon and environment; self-employment and micro-enterprises; health and education; vocational training; and awareness building (Banda, 2003). The RDF was therefore an important contributor to RSAMCC. Its role was subsequently broadened in an attempt to formalize and continue the functions of the RSAMCC post-SAM planning. The RDF also acts as a focal organization to channel funding into the area and to coordinate implementation of SAM activities on behalf of the community. RDF executes proposals submitted to them by members of the community-level organizations, which meet monthly to discuss development issues in the village. If the proposals are too difficult to execute within the resources of RDF, they are submitted to the representative government agencies for action (Clemett et al., 2004).

Consequently, a high level of community involvement was noted by Banda (2003) in the planning process, with a majority of those interviewed having been involved in the overall SAM process in terms of attending workshops, etc. The planning process led to the development of a comprehensive local management plan to address four main issues: water supply to the lagoon; management of lagoon and marine resources; land-use planning; and poverty alleviation and alternative livelihoods. To address these issues, a number of overall project objectives were set up and this consequently led to the definition of several specific activities, their administration and outputs and these were all incorporated into the detailed SAM plan (RSAMCC, 1996; Clemett *et al.* 2004). The community mobilization at this site was seen by Ekaratne *et al.* (2000) as one of the strengths of the SAM process. The greatest achievement of the social mobilization was perceived by Banda (2003) to be community support to SAM implementation, which is perhaps best embodied in the institutionalization of the planning and implementation process through the RDF.

Results

A SAM Plan for the Rekawa Lagoon and the surrounding environs was developed. Under this process, efforts were made to rehabilitate the lagoon, and address over-fishing and destructive fishing practices through establishment of the Rekawa Lagoon Fisheries Cooperative Society (RLFCS) in 1995, originally in response to talk at the time of outside businessmen selecting the Rekawa lagoon as a site for large-scale shrimp farming. The local community felt strongly that this may have a negative impact on their traditional life-style and formed the society to voice their concerns as a united force (Senaratna and Milner-Gulland, 2002). There are three types of fishers in Rekawa, based on the fishing gear used (jakottu, caste nets and drift gill nets). The society also helped resolve conflicts arising between the three groups as well as implement the Rekawa lagoon fisheries regulations formulated in the 1980s (RSAMCC, 1996; Joseph and Kumara, 2001).

The society was however not as successful as originally envisaged under the SAM planning process, and was defunct by the late 1990s. This was due to a number of reasons, which according to some society members included mismanagement of funds accrued from membership fees. This and other issues resulted in the members losing faith in the society (Joseph and Kumara, 2001; Senaratna and Milner-Gulland, 2002). In early 2000 the fisheries society was revived with the support of RDF and a GTZ funded community fisheries project. The fisheries society was renamed the Rekawa Lagoon Fisheries Management Committee (RLFMC) and a new fisheries management plan was written with the full collaboration of the members (Joseph and Seneviratne, 2000; Joseph and Kumara, 2001). Consequently there was a fair degree of positive thinking among the members of the RLFMC when interviewed in 2002 that this may result in a more dynamic organization that plays an important role in lagoon resource management (Senaratna and Milner-Gulland, 2002; Senaratna Sellamuttu and Clemett, 2003).

Two complementary research projects conducted by Imperial College London and the Stockholm Environmental Institute, (York) found that in Rekawa, a household survey covering a representative sample of 105 households (made up of 35 households each in 3 villages) revealed that 85% of sample households were aware of the SAM process, 61% of whom had a positive impression of the process and activities, 21% had a negative impression and 18% knew of SAM but could not give details of it and were unaware of the possible livelihoods impacts. Those who could give details appeared to have either positive or negative impressions based on what activities they perceived and recalled as being the most important to their own livelihoods and well-being. For example, in the Boroluwagoda village the 15 positive households associated the SAM process with the Rekawa lagoon fishery; in Kapuhewela the 23 positive households were of the impression that the SAM process was about the protection of mangroves, other natural habitats and wildlife. All 21% of those who had a negative impression were from Oruwella village, which was at the centre of attempts to stop coral mining and lime production, and there was still some resentment regarding this in the village (Senaratna Sellamuttu and Clemett, 2003; Clemett *et al.*, 2004; Senaratna 2007).

Also under the SAM process, in addition to awareness programmes and law enforcement, a number of alternative income generating activities were initiated to compensate households engaged in destructive natural resource use activities, such as coral mining - this did not lead to a significant number of people taking up new livelihoods. This is probably a reflection of the alternatives provided, not a reluctance to change. In general the alternatives offered seem to have been introduced in an *ad hoc* manner and not to have sufficiently considered peoples skills, the potential income from each activity and the existence of and access to markets (Senaratna Sellamuttu and Clemett, 2003).

Overall however, SAM appeared to be actively pursued in Rekawa more than ten years after it was initiated, mainly due to the significant achievement of institutionalizing the SAM process in a local organization: the RDF which became the implementation arm of the RSAMCC. Discussions with members of RDF and attendance at an RDF meeting provided evidence that RDF is still functioning (Clemett *et al.* 2004; Landstrom, 2006). RDF had also been effective in securing funding from donors resulting in improved livelihoods through access to electricity, water supply and sanitation (Clemett *et al.* 2004).

RSAMCC was also found to function through meetings usually once every one or two months, although the schedule depends on the availability of the Divisional Secretary. The community committee members were found to generally perceive RSAMCC to be successful in comparison to other committees in the Hambantota District because many of the issues raised at RSAMCC meetings were effectively addressed (Clemett *et al.* 2004).

4.4. Participatory management planning in the Muthurajawela-Negombo Lagoon wetland complex

This case study consists of three separately funded but linked projects that together represent integrated resource management planning and implementation in this site. The projects are:

- i. the Wetland Conservation Project (WCP, 1991-1997)
- ii. the Integrated Resource Management Project (IRMP, 1998-2003)
- iii. the Coastal Resources Management Project (CRMP, 2000-2007)

Coastal resources based management was initiated in 1989 for the Muthurajawela marsh and the Negombo estuarine coastal wetland system by the Board of Investment with Dutch financial and technical assistance on a directive of the Executive President of Sri Lanka. The approach adopted was based upon guidelines formulated after a survey of special area management approaches as practices in other countries. The Muthurajawela Marsh and Negombo Lagoon Master Plan was drafted in 1991 and received Cabinet approval shortly after. Implementation of the Master Plan for the wetland complex was subsequently taken on by the initiatives constituting this case study. In the first instance, implementation was assigned to several government agencies, but was co-ordinated by the Wetland Conservation Project and then by the IRMP which operated out of the CEA and was a collaboration between the CEA and Euroconsult with the help of funding from the Netherlands government. Thus, the Master Plan's implementation started in 1991 and continued to the end of 2007 under the CRMP.

Province	Western	Main ecological features	A wetland complex of interdependent wetlands including Muthurajawela marsh, Negombo lagoon and estuary and other associated wetlands (e.g. mangroves, sea grass beds).
GNDs	4 DSs	Economic status	
Urban/Rural	Both	Main livelihood activities	Diverse fisheries (lagoon, estuary, near shore) at large and small scales, limited agriculture and livestock (mainly poultry) urban wage-based employment.
Population	714,428 (of the 2.1 in the District)	Main issues	<ol style="list-style-type: none"> 1. Rapidly growing population pressures and degradation - encroachment by settlements for housing and agriculture, and effluent. 2. Eutrophication due to industrial pollution and dumping of garbage. 3. Sedimentation 4. Flooding 5. Poor governance
Area (ha)	6,232	Main objectives	Continued implementation of the Master Plan used within an ecosystem framework (integrating biophysical and the relevant social and political factors).

Source: Senaratne et al. 2008

The Process – the WCP and IRMP

To implement parts of the Master Plan, the WCP developed an Environmental Profile (GCEC/Euroconsult, 1991); a participatory conservation management plan (CEA/Euroconsult, 1994) and a draft fishery management plan. The IRMP continued this work, with particular focus on consolidating consensus for the draft fishery management plan and declaration of a Fishery Management Area (FMA) under the Fisheries and Aquatic Resources Act. Other activities of the IRMP were:

- strengthening of a multi-functional 'Muthurajawela Visitor Center' to serve as a base for conservation based activities as well as local income generation;
- establishing income generating activities for household income supplementation to compensate for losses incurred as a result of the fisheries management plan;
- organizing community-based 'fishery committees' to direct decision making by the Fishery Management Authority for Negombo Lagoon;
- establishing a revolving fund to support fishery management interventions including anchorages; and
- resettlement of an encroacher community into permanent housing scheme (CEA/Arcadis-Euroconsult, 2003)

With regard to the fishery management plan, a participatory fishery management planning methodology was tested for Negombo lagoon from 1995 under the WCP and continued by the IRMP. Until this time all fishery management plans for Negombo lagoon had been prepared in a top-down approach using services of technical specialists. To facilitate planning, a stakeholders' Steering Committee was established and participation was encouraged through awareness and planning meetings held at the village level. Following stakeholder consultations, consensus on the content and meaning of the draft fishery management plan was developed by way of four meetings, where the fisher community were invited. The process culminated in a meeting attended by the Director General and officers of the Fisheries Department. Meetings were conducted in the local language (Sinhala). All meetings were documented with lists of participants and major decisions recorded.

- When the area was declared a FMA in 1998, the focus shifted to strengthening the Fisheries Committees (FCs) that would be responsible for implementing the fishery management plan in the FMA. These are legal entities established under the Fisheries and Aquatic Resources Act and operate under a constitution and through elected representatives. The key activities for facilitating implementation were:
 - o Publication of the fisheries regulations pertaining to the Negombo lagoon through gazette notification.
 - o Organizing and registering 10 village level FCs. These were then organized into a Fisheries Management Authority (FMA). The FMA is not a legal entity.
 - o Registration of all lagoon fishers (as recognized in 1996) for issuing licenses through the FMA.

Results

By the end of the IRMP in 2003, the project succeeded in finalising the fisheries management plan for Negombo lagoon and establishing the local institutions through which this plan was to be implemented. However, implementation of the management plan was not fully operationalized. The issuing of licenses to ensure that fisheries effort is limited and sustainable was a major challenge in view of the significant variation in income security amongst the fishermen who, in the case of Negombo lagoon, are in the lowest income group with low education levels to begin with. Thus they lacked skills and training in other fields and consequently were not willing to give up fishing for another livelihood activity. The mixed results of the alternate livelihoods development component (CEPA, 2003) made such a transition all the more unlikely.

Other reasons for partial implementation include the loss of strong support for the process from the Director General of the Fisheries Department who passed away before the FCs were organized; interference by some non-fisher members who operated illegal shrimp ponds and significant levels of interference by local as well as national politicians in an attempt to safeguard vested interests through, for example, the appropriation and

allocation of marsh land to their supporters. The organizing of FCs had been ongoing for about 18 months before the death of the DG, and declined thereafter due to lack of proper leadership at the DFAR. This was exacerbated by the transfer of some of the DFAR officers who had been involved in the process from its inception, and the change in government which called for a fresh management plan in 2001.

SAM planning in Negombo lagoon under the Coastal Resources Management Project (CRMP) and Integrated Resources Management Project (IRMP), 2000 – 2007

The CRMP was a major initiative of the Ministry of Fisheries and Aquatic Resources (MFAR) with financial support of US \$ 80 million in total from the Asian Development Bank, the Netherlands Government and the Government of Sri Lanka. The CRMP comprised of four components, namely: (i) coastal stabilisation (to minimize the potential adverse impacts of coastal erosion in critical coastal stretches through establishment of appropriate physical interventions); (ii) coastal environment and resource management (CERM – through the SAM-planning approach); (iii) fisheries resource management and quality improvement (addressing issues such as overfishing in coastal waters, reduction in the high percentage of fish wastage through improved handling, and the lack of infrastructure support facilities in specific locations; and (iv) institutional strengthening (enhancement of the institutional capabilities of the MFAR and concerned government agencies and community organization in resource management). The CRMP was conducted in: the North-western Province, in Puttalam District; the Western Province in Gampaha, Colombo, and Panadura-Kalutara Districts; and in the Southern Province in Galle, Matara and Hambantota Districts (CCD, 2004). Under the CERM component, the SAM process was initiated in eight sites (Bar Reef, Negombo Lagoon, Lunawa Lagoon, Madu Ganga, Hikkaduwa Nature Reserve, Unawatuna Bay including Koggala Estuary, Mawalla Lagoon and Kalametiya Lagoon (CCD, 2004). In our current review we are focusing mainly on the Negombo site and the continuation of activities that took place from the IRMP phase.

The Process

The Community Co-ordinating Committee acted as the apex institutional mechanism for co-ordination and decision making, and typically reflected representation from central and local government and local CBOs and NGOs. While the project engaged in the awareness creation and livelihoods and skills development, the main focus and expectation from the fisher community was the restoration of water flow regimes between the lagoon and the sea to return the lagoon's productivity to past levels. This was to be effected through dredging of the canals that linked the lagoon and sea, an operation that was to account for the majority of available funding.

Results

Emphasis in this report is on the dredging of the lagoon channels and thus does not reflect all achievements of the project. Focus on the dredging component results from its usefulness in illustrating many of the key constraints encountered in terms of governance elements. The proposed dredging was not undertaken during the project despite the technical plans, cost estimates and tenders called for in 2005. This is viewed as a major disappointment for the lagoon fishermen for whom this has remained a priority for several years (Fernando, pers com). There appear to be two main reasons for the stalemate reached at this point: tenders seeking payment well beyond the estimated costs (Ranasinghe, pers com) and political interference (Fernando, pers com). The latter, it is claimed by the interviewee, occurred when a revision of constituency boundaries occurred with respect to the Negombo and the adjoining District whereby the lagoon stakeholders were re-distributed between the two constituencies. This in turn brought the Member of Parliament (MP) from the two districts into direct competition for votes and influence in the lagoon area. As one of the most visible interventions in the area, the proposed dredging became the focus of a tug-of-war between the two MPs with neither allowing the other to further the process (Fernando, pers com).⁸⁸ Moreover, the CCD and the Community Coordinating Committee was powerless to resolve the issue, thus illustrating the degree of power wielded by local MPs when operating at the local scale, and making a mockery of the accountability expected through the local government institutional hierarchy.

Another manifestation of unilateral politically motivated decision-making during this project lies in the conversion of land demarcated for a fish landing site for the South Pitipana village in favour of a playground for the Makuliya village which the then MP desired to cultivate for votes. This decision was taken unilaterally by the MP with no consultation with the affected parties nor with any local government authority. Resistance was perceived to be futile in the face of the threat of violence (Fernando, pers com.).

This case study also serves to highlight the influence of the civil war that continued in the country in which the coastal zone had a special security significance even in areas beyond the North and East where the conflict predominated. This is due to the use of the near shore as access to any part of the country, and thereby necessitating stringent security measures such as no go zones enforced by the Sri Lanka Navy. In this respect Negombo is a case in point owing to its proximity to the country's only international airport. As a result, the regulation of some fishery activities had proved to be impossible. Cage fisheries for instance was prohibited during daylight hours, and was also restricted to a 10km

88. At the time of writing this report however, the CCD has succeeded in identifying a company to undertake the work despite the CRMP project's closure at the end of 2007. This has been made possible by the company's willingness to recover the cost by selling the sand made available by the dredging, thereby making up-front financial payment by the CCD unnecessary (Ranasinghe, pers com).

stretch of the lagoon which corresponds to a no-go area designated by the navy. The net result was the practice of cage fisheries during the day in contravention of the prohibition (Fernando, pers com). Poor law enforcement also results from the lack of monitoring of the lagoon during the night when no CCD or fisheries officer is on duty. This allows the use of prohibited net types without danger of prosecution. The potential to enlist the co-operation of legitimate fishermen and local fisheries organisations in monitoring was undermined by the lack of authority for members of such committies to make arrests (Fernando, pers com).

4.5. Findings and Assessment

The analysis below seeks to demonstrate that participation has both quantitative as well as a qualitative aspect that needs to be balanced if a local governance system is to be truly representative⁸⁹, equitable, and capable of reaching consensus on key resource management issues. The participatory aspect of the SAM and similar ICM processes appears to have been only partially successful with poor intra- and inter-organizational cohesion; an inability to sustain planning and implementation responsibilities and a lack of continuity noted by several observers (Clemett *et al.* 2004; Landstrom, 2006; Senaratna, 2007; Samarakoon, pers. com). The issues highlighted appear as common threads through successive phases of ICM initiatives (i.e. from the pilot interventions in the early 1990s to the CRMP that ended in 2007). An exploration of factors underlying these provides a powerful insight into several aspects that are fundamental not only to the SAM model of local resource governance, but any other intervention that seeks to establish participatory, representative and locally driven integrated resource management. Moreover, this suggests that the current SAM strategy applied in Sri Lanka under-estimates the challenges associated with community organisation and institutional development.

4.5.1. Lack of legal authority for the Community Co-ordinating Committees (CCCs)

The lack of any formal authority for the Community Co-ordinating Committee and hence the SAM plan has been identified as a key weakness inhibiting implementation in several reviews of this process (Lowry *et al.*, 1999; CERM, 2004; Landstrom, 2006; Samarakoon, pers com), in that it shrouds the plan in ambiguity with regard to its ability to bind or obligate the different actors to their respective roles and responsibilities. This is particularly important in light of the considerably complex mix of sectoral mandates in operation in the CZ and in view of the significant challenges to its validity that seem likely to come from the local and central political players. It also cannot require developers and other actors outside the process to abide by the stipulations of SAM plan. Implementation of these

89. That is, which sections of a community participate and whose interests they represent.

plans consequently relies heavily on the voluntary participation of the diverse members of the CCC and other relevant actors. While this issue needs to be highlighted, it should also be noted that the proposed amendments to the Coast Conservation Act that is currently with the Legal Draftsman's Department grant the CCD the authority to designate Special Management Areas⁹⁰ in any area within or adjacent to the CZ. The objective of this is the promotion of collaborative resource management within the designated area, and thus appears to relate closely to the SAM approach. This inference appears to be further supported by the fact that such a Protected Area (PA) status can be bestowed only for areas identified by the CZMP as requiring such a management approach. However, provisions that recognize the legal identity of CCCs and define their functions and powers could not be located in the draft version seen by the authors of this report. Nevertheless, it appears that provisions for the recognition of CCC as formal bodies have been included (Ranasinghe, pers com).

4.5.2. The need to formalise the responsibility of Divisional Secretaries to facilitate the work of CCCs post-project

Both the CERM mid-term report of the CRMP (CERM, 2004) and Landstrom (2006) note a lack of enthusiasm on the part of the local government representatives who were jointly responsible together with the CBOs for continuing the SAM process post-project. As noted above, the Divisional Secretary in each SAM site is expected to continue the process through regular meetings of the CCC and fund raising. Failure to maintain CCC meetings in Hikkaduwa is attributed to the perceived futility of the exercise due to the inability to raise funds needed for implementation (Lowry *et al.*, 1999). In addition, local officials seemed not to understand or to accept their role (Lowry *et al.*, 1999; CERM, 2004; Landstrom, 2006) where as in Rekawa the commitment of the then Divisional Secretary was an important driving force in the process and the community members still involved in RDF and RSAMCC continue to stress the importance of an effective DS. The key question therefore is whether the capacities, resources and orientation of local government officials tally with the burden of these expectations, especially where most Divisional Secretariats are already operating in a resource scarce environment with respect to their other responsibilities, and do not have access to the knowledge base as do officials in central government. The need to formally incorporate this role as part of Divisional Secretaries' official responsibilities through an administrative circular is thus critical, as was recommended in the midterm evaluation of the CRMP's CERM component (CERM, 2004). This is yet to happen.

90. Part IIIC, Draft Amendments to the Coast Conservation Act, No. 57 of 1981, L. D. O 47/99.

4.5.3. The overriding power of political interference

The pervasiveness of political agendas and attendant threat or use of violence in resource management decision making has already been noted in the previous section in terms of the experiences in Muthurajawela and Negombo Lagoon. What is clear is the nullifying effect this has on the jurisdictions and functions of both central and local government agencies, and thereby to the planning process itself. Willingness to cultivate local electorates by local politicians and willingness of segments of the electorate to take advantage of this further skew the transparency and equity of resource management decisions and the enforceability of existing rules. This is not an uncommon situation, but a viable solution is yet to be found. The experience from the IRMP however suggests that one platform for rebutting such influence is stakeholder group size that translates into potential votes at stake. The example involves the stopping of plans to establish a fisheries harbour outside the lagoon mouth in Negombo as this would have significantly disrupted the lagoon's hydrology and hence its productivity. The large stakeholder group available to be mobilized around this common threat helped to successfully oppose such plans developed by a Minister (Senaratne *et al.* 2008).

4.5.4. Dependency on external donor support for post-project Plan implementation

As mentioned above, the implementation of the SAM Plans which occurs mainly after the project (which is usually focussed on the planning process) is squarely dependent on the availability of funds from external sources. The responsibility for this has been devolved in practice by the CCD to the CCCs in each site with the result that allocations from the CCD's operational budget is minimal (Ranasinghe, *pers com*). While this approach may be valid to encourage self-sufficiency and robust local institutions in the long term, the almost immediate switch between virtually total financial dependence during the project to independence there after does not provide for an interim period of consolidation and evolution of institutional capacities and processes that tend to be incremental in nature. The decision by the Divisional Secretary in Hikkaduwa to terminate the CCC meeting due to the lack of funds underscores this fundamental bottleneck (Landstrom. 2006). The collapse of the FCs in Negombo lagoon following the demise of the Director General of the Fisheries Department and transfer of Department personnel has already been noted above. In Rekawa, despite its existence to date, the RDF's activity has been inconsistent and determined by the emergence of funding opportunities. It may even be argued that its lifeline in recent years was ironically the significant spike in funding that flowed into the area after the 2004 Tsunami, especially since Rekawa was severely affected. Such a policy, is thus incongruous with the expectation that the planning process should leave behind sustainable local resource management institutions. Nevertheless, this was the practice with the original

SAM sites as well and appears to be the same under the latest CRMP's SAM sites.⁹¹ It is critical therefore that this interim/transition period is built into the overall planning process and that a clear project exit strategy is developed at the beginning of the initiative, not left to be done at the end of the implementation phase.

4.5.5. Inconsistencies in the selection of local representation to the CCCs

Selection of local representative bodies for the CCCs in Rekawa, Hikkaduwa and Muthurajawela-Negombo Lagoon was based on registration with the Divisional Secretariats rather than through a secret ballot or an independent grass-roots process of identification (Samarakoon, pers. com). This not only left room for influence by personal relationships but also erroneously assumed that registered organizations are the most appropriate representatives of the people's diverse interests (see 4.5.10 for further discussion). Failure to carry out an independent grass-roots process of identification prevented the projects from verifying whether the selected organizations and individuals truly represented key local interests, especially the poorest and most marginalized who, it may be argued, should assume special significance for SAM planning. In fact, it was noted in the Muthurajawela-Negombo Lagoon experience that the very poor lacked the time, knowledge and level of comfort to participate in the CCC, making the need for more grass-roots level dialogue all the more important where interaction can occur in a context more familiar to these vulnerable groups. This omission thus left room for discriminations and special interests existing in the communities to be reflected in the constitution and operation of the CCCs, and the choice of priorities and tradeoffs reflected in the SAM Plan (Samarakoon, pers. com). This consequently offered little possibility of change to the status quo although change is a key requirement if effective action towards integrated management is to be taken. The process of selection is the same in the case of Fisheries Committees.

4.5.6. Absence of operational rules for the CCCs - No rules or codes of conduct were used to govern the operation of the CCCs in Rekawa, Hikkaduwa and Muthurajawela-Negombo Lagoon, including tabling of issues, decision making and the management and disbursement of funds for SAM activities (Samarakoon, pers. com).

4.5.7. Lack of statutory authority underpinning the right to participate – This flows from point (d) above. However, the proposed amendments to CCA, while providing a legal basis for the SAM process, do not articulate any right to participation or procedures to be followed to ensure equal access, transparency of process and accountability for decisions taken. Whether these will be stipulated in regulations once if and when the amendments become law remains to be seen.

91. Interview with Director, CRMP, CRMP Office, Ministry of Fisheries and Aquatic Resources, September 2007.

4.5.8. Use of English over local languages

The SAM plans were drafted in English with summaries in local languages as the comprehension of foreign consultants took precedence over the ability of local stakeholders' ability to comprehend the plan's content and implications to them. (Landstrom, 2006; Samarakoon, pers. com). During the midterm review of the CERM project in 2004, it was evident that members of the CCCs in some sites were unaware of some of the decisions taken by the CCCs as copies of the updated SAM Action Plans had not been translated into local languages (Sinhala/Tamil) and shared with them. Therefore the midterm recommended that to ensure transparency of the SAM process, the environmental profiles, SAM Plans and Action Plans are discussed in detail with members of the CCC at each site after being translated into the locally used languages (CERM, 2004). The use of language should be incorporated into a set of standard operating guidelines and procedures for future CCCs.

4.5.9. A lack of transparency in local organizations' structure and operation

The representation and participation of constituents within any organization is significantly shaped by the organization's operational rules with regard to membership, leadership and decision making, amongst others. Dominance of individuals becomes possible in the absence of transparent processes since leadership of local organizations are often viewed as stepping stones towards realizing local political ambitions. Most organizations owed their existence to individual personalities and such rules were not in force. An exception was the anonymity provided by secret ballot adopted by the *Kattu-del* society in Negombo which ensures a greater likelihood that the elections are based on merit (Samarakoon, pers. com). It should also be borne in mind that whatever the level of organization, inequalities amongst the membership is bound to exist, and positions of office (e.g. head, treasurer, etc) provide inherent advantages in terms of influence over decisions that determine the distribution of the benefits of membership to the members. In the case of the RDF for instance, the RDF itself consisted of a group of village level community development committees and village committees each with their own head who was the representative in the RDF, and other office bearers. One of the issues noted in the CERM midterm review was that office bearers of the village level committees may have unfair advantage in receiving benefits from the SAM process compared with other community members (who may be more deserving in terms of being more vulnerable and poor) – CERM 2004, Senaratna 2007.

4.5.10. Failure to appreciate the influence of community and intra-group heterogeneity on building participatory and consensus-based resource governance institutions

In her evaluation of the Hikkaduwa and Rekawa SAM processes, Landstrom (2006) suggests that the failure to appreciate these influences especially in Hikkaduwa may reflect an approach on the part of the government towards operationalizing the SAM concept that is based on a set of theoretical assumptions that are not supported by ground realities. These include the homogeneity of communities and their willingness to participate when the opportunity is provided. The engineering and natural science orientation of a majority of studies conducted at the outset of the SAM process and the emphasis on an Environmental Profile with very limited or no attention paid to the patterns of social differentiation, political fragmentation and power relations appears to support this conclusion. This also suggests an assumption on the part of the policy that the process of awareness raising/education predominantly again on environmental issues through the project sponsored workshops will translate directly into participation.

Yet the SAM planning experiences in Hikkaduwa, Rekawa and the integrated management planning and implementation exercises in Muthurajawela-Negombo demonstrate how differences between and within community groups can pose obstacles for the translation of community mobilization activities into participatory and integrated resource management initiatives. For example, differences in social and economic standing in Hikkaduwa contributed to make the Association of the Tourist Board Approved Hoteliers of Hikkaduwa (ATBAHH) the dominant local organization through greater access to and influence over government officials, project consultants and donors and thereby the decision making processes. In contrast, the actual and perceived capacities of other groups to voice their needs and opinions were significantly lower (Landstrom 2006). The same author identifies the level of education of a group's membership to be key to influencing others' perceptions and responses towards specific groups. This was another advantage for most ATBAHH members in terms of the weightage attached to their views and proposals. Another restrictive aspect of Hikkaduwa's heterogeneity was that many of the smaller tourist and related operations belonged to the informal sector, and members were unwilling to draw attention to them selves in the event that the focus will shift to the legitimacy of their operations. The Hikkaduwa Small Hotels and Restaurants Association that had not participated is an example. In Muthurajawela-Negombo dialogue with fisheries organisations indicated that they were uneasy about collaborating with NGOs who they saw as organizations that used the fisher community to obtain funds for their own benefit.

This lack of homogeneity was also found to operate within specific resource groups or organizations contrary to an assumption in the theory that people who use the same resource in similar ways must therefore share similar views and interests, and thus react

similarly to a given situation. What the experience in Hikkaduwa demonstrates is in fact the great diversity within such groups and the difficulty faced in overcoming these divisions. The Hikkaduwa Glass Bottom Boat Owners' Association members response to a proposal to establish a jetty and queue system for boat operators provides a good example. While this would have provided greater organization of boat movements in the sanctuary and greater equity in terms of business opportunities for each member, operators along some sections of the beach refused to participate on the basis that they would have to move away from their current locations that gave access to their houses. Thus it appears that members operating from specific sections of the beach expected the jetty to be located in 'their' area (Landstrom, 2006). Other drivers of divisive identities amongst this group included perceptions by home grown operators of others born elsewhere as outsiders and those operators for whom this activity was the sole source of income and those who had other income streams. Change in leadership also prompted the disbandment of this and other associations. Consequently, the Association's support base has frequently fluctuated and has often struggled to gain the support of the majority of operators. Landstrom (2006) in fact reports that the state has had to engineer and coerce the Association's membership by linking membership with the granting of a license to operate.

In the Muthurajawela-Negombo case study, disparities in income and coping capacities were instrumental in preventing the permit system from operating effectively. Since it is the poorer fishermen who use the most destructive fishing methods,⁹² and because it is such methods that will not be granted a licence, these fishermen who also possessed the least options of alternate livelihoods, refused to adhere to the licensing system. This further helps demonstrate that participatory management can be effective only if the 'weakest link' amongst group members are able to adhere to the rules or can find acceptable alternate income activities.

Landstrom (2006) also notes that the institutional development component of the Hikkaduwa and Rekawa projects were primarily concerned with establishing/strengthening the vertical links between existing/newly formed local organizations and local and central government agencies, rather than a combination of vertical and horizontal links. This again suggests an under-estimation of the challenges faced in organizing meaningful local representation in the first place before they can be linked to the government bureaucracy.

92. These require a minimum of investment and very little training to operate.

4.5.11. Organization of local groups around resource uses may consolidate existing divisions

Encouraging the organisation of groups on the basis of specific livelihood activities and links to resources may have mixed results from an ICM perspective. The lessons from 4.5.10 above already demonstrate that livelihood activity may be no less encumbered by fault lines as any other organizing principle. Furthermore, while resource user based collective management may facilitate more sustainable use of a target resource, when viewed from a broader perspective, institutionalization around specific resources or livelihood activities may also compartmentalize resource users. In fact, the experiences in Hikkaduwa show that it promotes existing divisions and opens the door for their reflection in the dynamics within Community Co-ordinating Committees. This was observed in the case of the Boat Users Association where the identity created by institutionalization caused it to move away from other local institutions and interests (Samarakoon, pers com). Combined with the unequal capabilities of different groups, the interests of the more influential are likely to prevail at the expense of others' interests. In other words, the social and power relations existing in each locality will be reflected within the CCC and the process overall, especially if these dynamics are not understood at the outset of the process. The role of the government agencies as mediators also assumes significance in such contexts.

Thus, the case studies demonstrate that, as with any process of negotiation between multiple parties, a broad range of differentiating factors including disparity in knowledge, resources, social standing and political influence can constitute a substantial disruptive force at the local level, and will significantly influence participation and consensus building in the planning process, its legitimacy and ultimately its effectiveness in identifying and sustaining resource management arrangements. While the difficulty in overcoming these complex and entrenched situations must be acknowledged, failure to reflect such challenges in policy guidelines (e.g. the CZMPs of 1997 and 2004) suggests an insufficient consideration of such complexities in theory.

4.5.12. The legacy of command and control management – the demise of traditional communal systems and the lack of rights to participate

In her analysis of causes underlying the weak local institutional performance overall in the first three case studies, Landstrom (2006) makes the important link between the SAM experiences and the historical trend in resource management following the onset of colonial rule over 500 years ago, that the SAM approach was intended to transform at least in terms of the coastal zone. Her analysis highlights the dismantling of traditional collective management systems and the concentration of land ownership in the State which has come to own approximately 80% of all land in the country at present. In the early 1980s co-management of coastal resources gained wide acceptance in many developing countries

as it became clear that while the state legally owned the coastal resources, often central government authorities were far removed from the site of the resources and had insufficient capacity to manage these resources on their own (Lowry *et al*, 1999; Pomeroy *et al*, 2004 in Senaratna, 2007). While Sri Lanka followed a similar trend in the early 1990s by adopting one form of co-management through the SAM process (White and Samarakoon, 1994), the lack of a communal property system and management tradition, and the strict adherence to the exclusionary 'command and control' approach by successive governments post independence has not only left communities bereft of the rights to underpin truly participatory management, but importantly has also caused behaviour based on limited responsibility and self-interest to fill the value vacuum left by the demise of these traditional systems (Landstrom, 2006). Hence the difficulty in organizing groups across interests such as livelihood activities that serve only sections of a community, and the difficulties met in brokering tradeoffs between such groups in the interests of a more inclusive vision.

Although the CCA does not recognize the delegation of authority to communities (nor do the proposed amendments), the issue of the lack of a legal right for communities to participate in co-management processes is highlighted in the National Environmental Action Plan (Ministry of Environment and Natural Resources, 1998), although little has been done in terms of actual legal reform.

4.5.13. Differential interpretation of participation between written policy and SAM practitioners

The collapse of the coordinating committees and several other local organisations is also attributed by Landstrom (2006) to a gap between the elegant SAM theory and envisaged process on the one hand, and the views of the state agencies and their staff who implement the SAM projects on the other. This is based on several interviews with SAM staff that indicate a narrower interpretation of the role of local organisations and degree of community empowerment over resource management decisions than that visualized by the policy documents. The latest CZMP (2004) envisages co-management arrangements whereby decision making powers and responsibilities are shared. While this does not go so far as to advocate wholly community-based management, it does recognize a prominent and in fact equal role for communities. Communities are considered the primary stakeholder group to be engaged by the project, while the state is expected to play the role of facilitator through supply of technical and financial support and mediation. When viewed in the long term, the CZMP 2004 also suggests an assumption of leadership roles by the local stakeholders by emphasizing the importance of self-sustainability post-SAM planning.

Through interviews of project staff and consultants however, Landstrom (2006) constructs a different view of the role of communities and hence the nature of their participation amongst SAM practitioners. This is one that significantly limits the role of the SAM process

to providing a space for various local groups to discuss issues and present their views, but do not assume leadership of resulting actions as envisaged in the CZMP documents, where the government and stakeholder community groups are expected to work closely together and share decisions (Pomeroy *et al.*, 2004 in Senaratna, 2007). However, it should also be noted that the actual community-state relationship varies from one CCC to another and may be closely linked to the strength of the participating CBOs and other stakeholder groups and the investments made by the projects themselves in either creating new or supporting existing local institutions to assume lead roles in the process.

While this discrepancy between stated policy and practice over the key issue of participation helps explain the results of past SAM processes, the authors of this report suggest that such scepticism should not be dismissed outright. Instead, it should be used to prompt careful consideration of the potential implications of different degrees of devolution of authority over resources to non-state actors. It is suggested that central to such consideration is the fact that the operationalization of such authority may be driven by considerations quite different to those of the state as custodians of the country's natural resources on behalf of the greater good of society, amongst whom the Constitution expects the benefits of resource stewardship to be distributed. Rather than an argument against any form of co-management, the point is that such devolution will operate in a socio-political space that may not result in the environmental and developmental outcomes envisaged or assumed by the state and by the theory supporting devolution. Here too, significant differences in perception about how resources should be used and who should benefit are likely to exist between the state and perhaps many conservation organisations on the one hand and local communities on the other. Of particular importance is likely to be the differing values attached to land use options (e.g. conservation versus space for housing or food production). This may be viewed as a constant tension that needs to be factored into any devolution of authority. In fact, it may create the further dilemma of legitimacy for projects where local views on the use of resources do not align with pre-conceived government objectives. Further reason for caution may be seen in the reasons for poor local institutional performance discussed in this section (e.g. a high degree of heterogeneity) that expose the inability to assume sustainable and equitable management at the local level and explodes the often romanticised myth of local communities living harmoniously amongst themselves and with their surroundings. The lack of tradition of community-managed systems noted earlier again assumes relevance, though it may be argued that this ironically was at least perpetuated by the state in the first place.

The interviews of practitioners carried out by Landstrom (2006) exposes another practical consideration pertaining to local communities' capacities for taking decisions on coastal resource management. This specifically relates to the technical or scientific knowledge that (is supposed to) inform government decisions. Yet it may be argued that co-management offers the possibility of combining the science of government and NGOs with the traditional/

local knowledge and practices of communities where these offer appropriate means of dealing with resource management challenges. The following example from Muthurajawela-Negombo is illustrative, but the intervention by external parties that was necessary also illustrates the importance of continuous links between communities and the state and other actors in the long term. In this example, conflict arose between two fisheries resource user groups who believed they were competing for the same shrimp species. To address this, project personnel demonstrated scientifically to the two parties using species identification methods that the species caught by each gear type were different (Samarakoon, pers. com).

Another relevant aspect highlighted especially by the experience in Muthurajawela-Negombo are the significant political pressures under which local government agents operate and the danger of these agendas assuming a greater control over decision making if authority is devolved. It may also be argued that capacity building also applies to these government personnel who often do not enjoy the high levels of exposure to policy and scientific discourse as staff of central government agencies.

What can be distilled however is that devolution must be accompanied by institutional conditions that can manage differences in values and perceptions and marry modern science with traditional/local knowledge. According to this study and those of others cited in this report, there is much to be desired in terms of the current state of these conditions.

4.5.14. Dominance by the State

In both Hikkaduwa and Rekawa, Landstrom (2006) concludes that the process was essentially driven by the government agencies towards the pre-determined conservation-oriented objectives that underlay the commencement of the SAM process in these two sites in the first place. She deconstructs this dominance into two main drivers: i) a gap between the national policy documents' emphasis on collaborative locally driven management and the views and actions of the state agencies that applied this notion narrowly to retain much of the decision-making functions within their own agencies, and ii) the inability of strong local organizations to emerge, which, in addition to the preceding analysis, she views as a function of the government's half-hearted focus on social mobilisation and institutional support.

Although the CCCs contains a mix of central and local government and local community representative bodies and individuals, the dynamics of the CCC are influenced by the dependence of community members on the state machinery for accessing a range of basic services. Of particular importance is the role of the Grama Niladari (GN) who, as the liaison between the people and the Divisional Secretary, holds the power to determine which individuals or households will benefit from government and other development programmes, as beneficiaries are determined through the development of lists compiled by the GN (Samarakoon, pers com).

4.5.15. A focus on conservation rather than integration with local development and poverty alleviation strategies

The orientation of the SAM process is focused primarily on the sustainable use and conservation of coastal resources (perhaps not surprisingly, due to the remit and technical background of the key state agency facilitating the process overall) and therefore cannot be described as being truly integrated in its outlook in terms of addressing broader community needs and development issues. While this is not to say that development and general well-being and poverty related issues have not been covered through the SAM process, often these activities do not assume a priority status. Moreover, in the case of some SAM sites, the local communities do not have the political power to change this state-driven agenda for the SAM process.

4.5.16. Lack of legitimacy and the suitability of external interventions

Limited participation and especially representation in the planning process also meant the process and outcomes (i.e. the SAM Plan) lacked legitimacy within the communities, though this varied in each site. Again, this is best illustrated by the seeming collapse of the Community Co-ordinating Committee in Hikkaduwa; the dominance of a single local stakeholder group and unwillingness to participate of several other groups that viewed the conditions as favouring the economically and socially better off groups. In Negombo, the legitimacy of the process was undermined by the politicization of decisions relating to how the available funds are spent and who benefits (Fernando, pers com). The degree to which legitimate local level planning can be directed by an external intervention is another fundamental question that arises, especially if these interventions bring with them an inherent bias towards particular conservation-oriented outcomes, and are managed by agencies and their representatives pre-disposed towards certain groups based on perceptions of economic and social standing. This in fact is the antithesis of the point of integrated planning where a key challenge is the inclusion of groups who are vulnerable due to their economic or social position or other factors.

White and Samarakoon's (1994) description of the evolution in thinking on SAM at the national level and the perceived benefits of local 'participation' suggest an assumption that top-down implementation will be impact-neutral at the local level, even though it seeks to facilitate a bottom-up planning process. This seems to be confirmed by Landstrom (2006) who failed to find an assessment of this apparent dichotomy in project reports. The same author goes on to reflect opinions expressed during interviews with project staff which strongly question the success of the top-down outsider driven mobilization process for establishing local governance mechanisms especially in Hambantota.

The 'distance' between the project personnel (especially managers) and the community was found by Landstrom (2006) to have translated to a perception of the projects amongst locals

in Hikkaduwa as government driven initiatives to meet state objectives. In contrast, interviews by the same author in Rekawa point to the view that the relative success in Rekawa resulted from the ability of social mobilizers to connect with local people. This was mainly due to the fact that mobilizers were chosen from the villages and thus could use existing trust and social networks to internalize the project. They could relate to the communities and the communities could relate to them. The Field Project Implementation Unit (FPIU) manager was also required to live in the village, allowing for his familiarisation with local dynamics and a greater perception of him as one of 'us'. The lessons from Rekawa in the context of strong social mobilization does not however appear to have been applied in the case of the other SAM sites as social mobilizers in these cases were recruited from outside the project area (CERM, 2004; Landstrom, 2006). For example as highlighted in the CERM midterm review it was important that appropriate criteria were developed and followed when appointing staff for the FPIU officers. For instance it stated that social mobilisers should originate from within or near the SAM site as this was considered advantageous when working closely with the community (CERM, 2004). This may remain difficult to achieve in practice in light of administrative rules that require state-employed social mobilizers to be graduates. This leads to two drawbacks. The first is that such graduates may not be available from the villages covered by a particular project. Secondly, the skills and temperament that make for effective mobilizations may be different to what graduates are taught. This was in fact noted in the mid-term CERM report where the graduates were reluctant to leave their offices. This was compounded by political interference in the selection of mobilizers (CERM, 2004).

Such choices on the part of a project thus appear as fundamental to the process of creating viable local governance institutions, at least in terms of legitimacy, ownership and willingness to participate, if not other aspects such as financial sustainability that requires other strategies. Such lessons consequently highlight the need to recognize that the factors that contribute to a perception of good governance at the local level may be very different to the legalistic approach to governance analysis often used at the national level. In addition to formal rules of engagement and institutional operation, what are also often valued by local people are the more informal relationships and processes as well as perceived effort and time spent in their midst by project staff. Interviews conducted by Landstrom (2006) with project staff from the latest CRMP project (2000-2007) indicate that in their opinion the distance between senior project staff and the communities has been exacerbated by an increased bureaucratization that ties especially the project managers to head office.

Another lesson pertaining to legitimacy from Muthurajawela-Negombo was the importance of including from the outset community leaders who derive their authority from non-legal sources. In this case, the leadership involved, were the Catholic Church as the highly devout Catholic communities were far more likely to take the project seriously if it had the blessing of the Church (Samarakoon, pers com).

4.5.17. Too short a time frame to effect lasting social and institutional change

Viewed in this context, any expectation of establishing well functioning local resource governance systems within the span of most SAM projects (about 5 years) is clearly unreasonable. There is evidently a need for a deliberate process of re-engineering mindsets and institutions at the local level but equally within government agencies, a process that evidence from elsewhere suggests requires longer time periods and occurs in incremental steps (Senaratne *et al.* 2008). This also suggests a re-examination of where the emphasis should be in future SAM and other integrated resource management initiatives. Perhaps another over-arching change in viewpoint should be to allow a greater consideration of what is needed to promote the sustainability of local institutions to influence the focus and duration of future interventions.

The preceding lessons make clear the inadequacy of the time-frames (about five years) provided for integrated resource management planning. In particular, these lessons emphasize the need to move from a focus on the end results (resource management arrangements) to the complex challenges that stand between the project and these outcomes, and the processes of change at multiple levels (e.g. individual, household, group and community) that this involves. While it may be argued that greater attention to these aspects could have provided more robust results within the project time-frame, this does not account for the fact that social change is an extremely slow process punctuated by phases of progress and others of retreat as conditions change in the dynamic local context. Landstrom (2006) for instance thus suggests a minimum implementation period of between seven and ten years, although donor funded projects, on which most site-level projects seem to be dependant, are rarely this long. One consideration in doing so is the greater opportunity to motivate younger generations in terms ownership of and responsibilities towards resource management, an aspect the author found to be seen by interviewees as essential to mobilizing change. But as implementation of SAM is dependent mainly on outside donor funding, obtaining funds to cover longer time durations would require some major changes in the way projects are typically funded – where results are usually expected in unrealistic short time frames that reflect the funding cycles that are usually followed.

4.5.18. A severe lack of Monitoring and Evaluation

Monitoring is critical to ensure the long-term sustainability of activities implemented under the SAM process. However a comprehensive monitoring and evaluation programme that included project and community level participation was not set up under the two original SAM sites in Rekawa and Hikkaduwa. As a result, assessing the results of the Hikkaduwa and Rekawa SAM processes is difficult due to “an almost complete lack of monitoring and evaluation”, despite two internal evaluations mid-way in the project (Samarakoon, 1993; NAREPP, 1994). There is no evidence that community monitoring took place and after the

mid-term evaluation of SAM in Rekawa and Hikkaduwa, no comprehensive monitoring or evaluation appears to have been carried out (Lowry *et al* 1999). The fact that mid-term review of the CRMP's CERM component found no M&E mechanism in place (CERM, 2004) suggests that these lessons from the first generation SAM sites do not appear to have been applied to the case of the second generation sites.

4.5.19. The importance of stakeholder unity/common views in dealing with political interference/external interference

The influence of politicians can be positive or hugely disruptive depending on whether a project provides opportunities for or threatens political and financial ambitions. Success in thwarting attempts by the then Minister of Fisheries to build a fisheries harbor in a manner that will adversely impact lagoon fisheries in Negombo demonstrates that the greater the identification with a common interest in a community, the better it will be in thwarting such interference. In this case, when the Minister was presented with a unified front by the lagoon fishermen and realized the number of votes he would stand to lose, the plans were dropped. The scenario of the lagoon fishers in Rekawa coming together as a group to prevent the plans initiated by external businessmen to initiate an aquaculture industry in Rekawa lagoon is another example that clearly shows the force exerted by one stakeholder group (regardless of it being heterogeneous in nature – for example fishers in Rekawa were broadly sub-divided into three groups based on the different types of gear they used), if they speak with a common voice. The observations with regard to heterogeneity earlier in this section however makes the assembling of such constituencies a real challenge, and will depend on the ability to identify and utilize any common interests as focal points.

Conclusions

An overall assessment of the status of governance in terms of ICM in Sri Lanka needs to be derived from the governance indicators dealt with in Chapters 1-3 that apply in the country as a whole and which either do or have the potential to apply in the coastal sector, and from the ICM-specific experiences explored in Chapter 4. While some key issues are highlighted below, what becomes clear is the importance of site-level details in creating the broader socio-cultural, economic and political environment that will either facilitate or undermine good governance practices. As such, the authors of this report believe it necessary to emphasize what is fundamentally the human dimension to understanding governance in the context of development/resource management processes. While attention to the provision of enabling policy, legal and administrative environments is clearly relevant, the ICM experiences explored in the case studies seem to suggest that these alone however will not ensure good governance practices at the local level, and that the interpretation of governance or at least the conditions that support it need to be expanded into the realms of the social sciences.

One point to note overall is that while the prevalence of certain weaknesses in several of the ICM projects explored is highlighted, the conceptualization and recognition of key determinants of success in such processes has evolved significantly since the early days of ICM activities over 15 years ago. This is particularly so if one considers how much the coastal sector agenda has broadened from an initial focus on erosion control and other engineering interventions. Dialogue with CCD officials clearly indicate significant awareness of the issues and challenges gleaned through years of first hand field and administrative experience. As such, and even though some key elements are still missing (e.g. institutional mechanisms for access to information and monitoring and evaluation), awareness of such needs suggest a good platform to promote attention to these needs in future ICM programmes and within the CCD more broadly.

Nevertheless, many key challenges remain and threaten to impede the further refinement of the ICM method if not addressed. These are cited below, and should be read in conjunction with section 4.5 of the previous chapter to avoid the need for significant levels of repetition. As such, text has added to issues below only where it supplements what has already been stated in section 4.5 of this report.

5.1. Complexity of jurisdictions within the coastal zone

This result of sectorized administration is a long-standing and basic issue affecting not only the coastal zone, but virtually all aspects of administration. The remedial options appear to be rationalizing the sectoral structure (i.e. amalgamating closely related sectors); developing efficient co-ordination structures and devolution. In each case, the state remains the primary actor for making progress. Given that Sri Lanka is thought to have the largest number of Ministries and Departments in the world, in view of the significant expansion of portfolios under the current government, the trend appears to be the opposite of what is required. With regards to co-ordinating structures, their mandates and recommendations are often overridden by the parallel and almost unilateral decision-making of individual Ministers, whom the administrative cadre rarely opposes or contradicts. While devolution's potential for empowering stakeholders closer to the ground is clear, successive governments' failure to follow-up on the Thirteenth Amendment with adequate technical, financial and appropriate human resources at Provincial and lower levels of local government has severely undermined their functionality, this weakness has been exploited by local political figures.

5.2. Narrowness of the CZ & challenges posed by externalities

As noted in Coastal 2000, the definition of the Coastal Zone provides an inadequate geographical reach as a starting point for a truly integrated resource management strategy. In many instances it cannot encompass the entirety of ecosystems (e.g. Muthurajawela Marsh, Maduganga Lagoon) that are the focus of management. In such situations, the CCD is dependant on the co-operation of several other central and local government agencies, thus exacerbating the complex mix of jurisdictions in effect within the Coastal Zone.

Many problems faced within the CZ have their origins in actions taken outside or upstream of the CZ. Altered natural flows, agricultural runoff and other pollution, siltation and sand mining for instance constitute major issues both from coastal ecosystem conservation and economic productivity perspectives. While cross-sectoral engagement is practiced at SAM sites, the ability to influence land use and sectoral policy decisions at the broader national level remains a major challenge. Thus, ideally the full catchment of rivers discharging into the sea should be included in the definition of the CZ. However, such a definition was recognised as being administratively and politically infeasible given the limited resources of the CCD.

A key recommendation in this respect is the exploration of the possibility of adopting a basin scale geographical template for ICM, since integration between the components of the natural systems within and outside the Coastal Zone are as critical as integration at a more site-specific level. In fact, integration at the site level may be meaningless in light of the scale of influence exerted by upstream activities. Thus, a threat analysis and an institutional

platform for controlling externalities emanating upstream will be critical to determining the coastal zone governance and ICM strategies.

5.3. Lack of political accountability in decision making

While this report notes the heightened sense of failure to apply the rule of law and other governance criteria such as transparency, it also recognized the existence of avenues to seek accountability especially through the courts through public interest litigation based on fundamental rights and nuisance petitions, as well as several review processes within the Parliament. What appears still to be lacking is awareness of such options amongst the public as well as the availability of legal aid even if people are aware. The complexity and duration of court procedures and the cost to be borne during the process (even if damages are expected at the end of it) are not within the means of most people. In ICM initiatives too, this has been recognized as an issue in section 4.5.

5.4. Difficulty in constantly providing incentives for stakeholders to buy into an integrated approach

Identifying adequate incentives or direct benefits for participation in conserving specific ecosystems have been a challenge due to the inherent tension between conservation and exploitative interests that operate with regard to most resources. In Hikkaduwa for instance, while the CCD's priority was the reef, it was unable to generate interest in an adequate number of people in the communities to make the reef a priority for the community amongst a diverse range of competing interests. Ironically, despite the difficulty in generating adequate community interest in the reef's conservation, there was no such problem in triggering significant interest in securing opportunities to exploit the reef when a permit system was planned to regulate the entry of new glass-bottom boat operators. Notice of the proposed system prompted the increase of glass-bottom boat owners from approximately 50 to 100 which was beyond what the reef could sustain. While the permit system may be a means of closing an open-access system, this experience also demonstrates that it does not ensure sustainability. It further illustrates the fact that each ecosystem will support only a limited and varying number of stakeholders, and that this number may not be adequate for broad-based community resource stewardship. The difficulty in establishing an adequate constituency for collecting resource stewardship was further illustrated by the behavior of the hotel owners who represented an obvious beneficiary group. Yet, the splintering of this group along sub-interests further impeded the process of creating a unified approach towards the reef's management.

The SAM planning experience in Negombo provides a contrasting experience made possible by the dominance of lagoon fisheries as the primary livelihood activity. The approximately 3,000 households engaged in lagoon fishing represented a large enough proportion of the

local communities to enable the lagoon's well-being to become a unifying point of focus around which to develop a harmonized approach to its management. Importantly, this group also formed a large enough voter base to dissuade local politicians from acting to the detriment of the ecosystem's integrity. This power of collective action was demonstrated when the fishermen successfully opposed plans to alter the building of an anchorage outside the lagoon's mouth that would have significantly altered the lagoon's hydrology, character and consequently its productivity.

What these examples also demonstrate is that ecosystems represent only one of many interests that may operate at the community level, and obtaining adequate support for ecosystem stewardship remains a challenge where its productivity cannot provide adequate benefits to a large enough proportion of the community. It should however also be noted that the perceptions of an ecosystem's value within a community may be influenced as was the case in the Negombo lagoon where the project was able to communicate to the fishermen the consequences of the proposed development by translating a scientific understanding into practical, locally relevant scenarios. Nevertheless, ecosystem productivity is likely to be the fundamental determinant in attempts to develop participatory resource management regimes.

Moreover, as access to even the more productive ecosystems will need to be restricted in the interest of sustainability, the need to provide alternate livelihoods should also assume a central position in any integrated strategy. While this has usually been attempted through alternate income development components, the experiences (e.g. from Muthurajawela) suggest that livelihood options will remain restricted unless broader economic development can be promoted in the area so that new employment opportunities are created. Although this may be beyond the scope of ICM initiatives per se, the overall ICM strategy will need to pay specific attention to how it links with, and influences the broader developmental policies and plans for the area in question.

5.5. Areas identified as SAM Sites and recommendations

While taking cognizance of limited resources within the CCD, the fact that these sites are given a priority status in the CZMPs (1997, 2004) suggests that significant conservation as well as developmental results are at stake. Thus, to improve chances of success, the SAM programmes should be re-evaluated from several perspectives based on the issues identified in the previous section of this report and other literature. These aspects include:

- a. A re-evaluation of the underlying philosophy especially in terms of the balance between conservation objectives and development needs and the incorporation of practical lessons from past experiences

- b. Clarity on the functional level of participation necessary in the context of SAM objectives (i.e. what it is meant to contribute to).
- c. Establishing a legal identify for the CCCs as is being perused through the amendments to the Coast Conservation Act.
- d. Following up on the recommendation made by the CERM midterm review to send a government circular to all Divisional Secretaries stipulating the administration of CCCs as an official duty.
- e. Clear operating rules and processes for selection of representative groups, decision-making and management and disbursement of funds, to limit opportunities for capture and to increase legitimacy
- f. A focus on establishing local institutions across livelihood activities and resource bases that emphasizes overall benefits to community over specific resource user groups. An alternative may be to promote a 'community' element within each group whereby specified activities benefiting the community as a whole are agreed to in return for capacity building and other support. This could involve contribution to a community development fund. It could also include the linking of social or environmental objectives with micro-credit schemes and other forms of assistance/benefits whereby recipients agree to undertake one or more social or conservation activities as part of the conditions of the credit/benefit scheme.
- g. Establishment of identifiable legal boundaries as a basis to control access to resources.
- h. Downsizing the breath of project activities to provide more human resources and managerial oversight for greater attention to the socio-political aspects of building local resource governance institutions
- i. Equal emphasis given to a Social and Institutional Profile based on standard elements or components stipulated as guidelines with provision for addition of other aspects on a case-by-case basis
- j. Moving from a project based approach to a more programmatic one where the CCD's and other government agency involvement in the SAM process is viewed as a long-term commitment
- k. Where (e) is not possible, the incorporation of an interim period of at least two years following project closure where the CCD, other government agents and NGOs focus on consolidating the Co-ordinating Committees as well as individual organizations according to their respective responsibilities for SAM Plan implementation. Focus should also be given to developing a funding strategy (ideally before project closure) with identified support for proposal development and donor links.
- l. Significantly greater emphasis on establishing a M&E process for the coastal zone as a whole and at the very inception of all future site level ICM programmes, including funding allocations that support this process well after project completion.

Current policy documents contain several assumptions about who has rights' to use coastal resources, what constitutes a community', and how homogeneous communities are. Much of this literature is also silent about how power is distributed among individuals, families and groups in communities, how management responsibility is most electively organized, and the incentives needed to engage community stakeholders in collective efforts to manage resources. Also missing are discussions about community capacity' to share in the management of resources, the willingness of government agencies to share resource management responsibilities, the conditions that foster sustainable' co management and a host of other considerations. (Lowry et al. 1999)

Understanding patterns of social differentiation, political fragmentation and power relations and historical and cultural factors driving these have been demonstrated to be central to creating viable local integrated resource governance mechanisms. This space for differentiation thus illustrates how a single place can be viewed in many diverse ways, and underscores the importance of understanding these views or seeing issues from different peoples/groups perspectives. Thus these factors emerge as key challenges that have yet to find attention in the written national policy, legislation and guidelines on coastal resource management including the SAM planning process.

Participatory, but long-term support will depend on such participation not resulting in a decline in local incomes. Example of coral mining where alternate livelihoods provided were too few and yielded inadequate income to be sustainable (poor market research), so that coral mining resumed.

Despite some benefits such as this increase in collaboration and notably the continued functioning of RDF and RSAMCC, in general it has not been demonstrated that SAM is a viable and effective tool for CZM as it has not achieved its desired objectives and has been time and finance consuming. The financial costs of SAM are of particular relevance because no funds are available from the Government of Sri Lanka for the implementation of SAM and it is intended to seek funding from donors, the private sector and through collaboration with other departments and local government. There is the potential for this to result in a series of project-type interventions that address local-level issues with no means of "scaling-up".

"when the well-meaning foreign-funded SAM project came to an end, as every assistance programme inevitably does, the foreigners left, leaving no one to revisit and monitor the site and/or the community. The dynamism of the Rekawa Lagoon Coordinating Committee, that served as the cornerstone of the CBC⁹³ initiative, waned with the demise of the SAM project.

(Ekaratne (2000, p 41) as cited in Clemette et al. 2004.)

93. Community-Based Conservation

A clear and effective information strategy should be developed to ensure that communities remain aware of the management plan, its objectives, activities and impacts, and are able to provide input into the process if the plan is implemented.

Shell, coral and sand mining have been addressed primarily through prohibition and law enforcement including fines, destruction of equipment and prison sentences, and only in a few areas has education and training in alternative income-generating activities taken place. In this context, SAM has had the widest range of outputs, outcomes and livelihood impacts of all the CZMP components.

The formation of RDF has probably been the single most important outcome of SAM and led to the greatest livelihood impacts. Through RDF the community are able to raise issues with government agents and have the opportunity to have them addressed. Furthermore, through RDF, Rekawa has attracted significant donor funding which has had a variety of household level impacts.

5.6. Areas not identified as SAM sites

It appears that ICM has been focused at specific parts of the coastal zone, on the basis of priority sites identified in the Coastal Zone Management Plan (1997). In the absence of a process aimed at collective resource management, resource use decisions outside the SAM areas are even more vulnerable to the operation of self-interest both at institutional and political levels given the fragmented administrative and political systems, and at the local level where private land ownership and the fragmentation of ecosystems based on interests work against collective action based on common interests.

CCD undertakes few if any habitat management activities outside SAM areas due to capacity restrictions. SAM areas are limited for the same reason. However, Malala is further complicated by the existence of Bundala National Park, a status which precludes livelihood activities in the DWLC-managed park area.

- **Law enforcement** – A major challenge as its application is always biased against the poor and in favour of the rich and politically connected. (Samarakoon, Personal Communication). This inequality of power that is also expressed as a threat of violence severely inhibits good governance especially at the local level.
- **Creating understanding as part of information** – Mental maps of ecosystems of local people vary according to the aspect of the system they value, and do not match the broader ecosystem perspective necessary for promoting integrated approaches. Bridging this gap in perception and illustrating the linkages between interests and the broader system is thus a key area in terms of information that underpins dialogue for and planning ICM.

5.7. Role of poverty and heterogeneity at the local scale

Poverty forces people to opportunistically search for employment, employ unsustainable methods of farming and fishing, and resist management from fear of income loss. Increased competition for coastal resources, environmental degradation and resource depletion, the weaknesses of centralized management, and the recognition that the problems of poverty and unsustainable resource use practices have to be addressed more directly have led to explorations of new initiatives in coastal management (Lowry *et al.* 1999). The roles that imply heterogeneity are discussed in detail in section 4.5.

5.8. Lack of legal recognition of shared ownership of land

The existing legal framework recognizes only public and private property as opposed to communal property that will require negotiation between a community and the State when interventions are planned. Such collective tenure rights will also allow communities to benefit from investments such as eco-tourism.

5.9. Community-based resource management should not become a panacea

The two Sea Fisheries Cooperative Societies of Rekawa East and Rekawa West are, according to the two secretaries of the societies, totally inactive due to corruption and the large amounts of money owned to the societies from loans granted to members. This illustrates that this approach has its own weaknesses, and simply handing over greater control over resource stewardship to local user groups does not necessarily result in better stewardship. While this does not negate the underlying arguments for participatory resource management, it does illustrate that governance at the local context will assume greater significance when resource management strategies are based on local participation and empowerment.

5.10. Lack of financial and other resources

One of the key constraints for the CCD has been and continues to be the human and financial capacities to give effect to the significant collection of general and issue specific policies developed over the years. While the content of the evolution of the policy framework indicates an incremental progress towards more integrated and inclusive management approaches at all levels of administration, it also needs to be recognized that implementing and maintaining such approaches year on year also requires greater budgetary allocations

- In relation to all institutions, except the CCD, the total budgets requested have not been granted by the Treasury. The percentage not granted differs for each institution. In the case of the DWLC it had been halved by the Treasury. In contrast the CCD has usually received all funds requested. (IPID & PILF. 2005)
- It is the Treasury management division that decides on the cadre of the CCD and the FD too on a request made by them.
- The lack of financial resources does have an impact on the effectiveness of these institutions in performing their responsibilities particularly at the decentralised and field levels. The same analysis applies to human resources. The problem with staff is not just to do with numbers but also with a lack of training and expertise.

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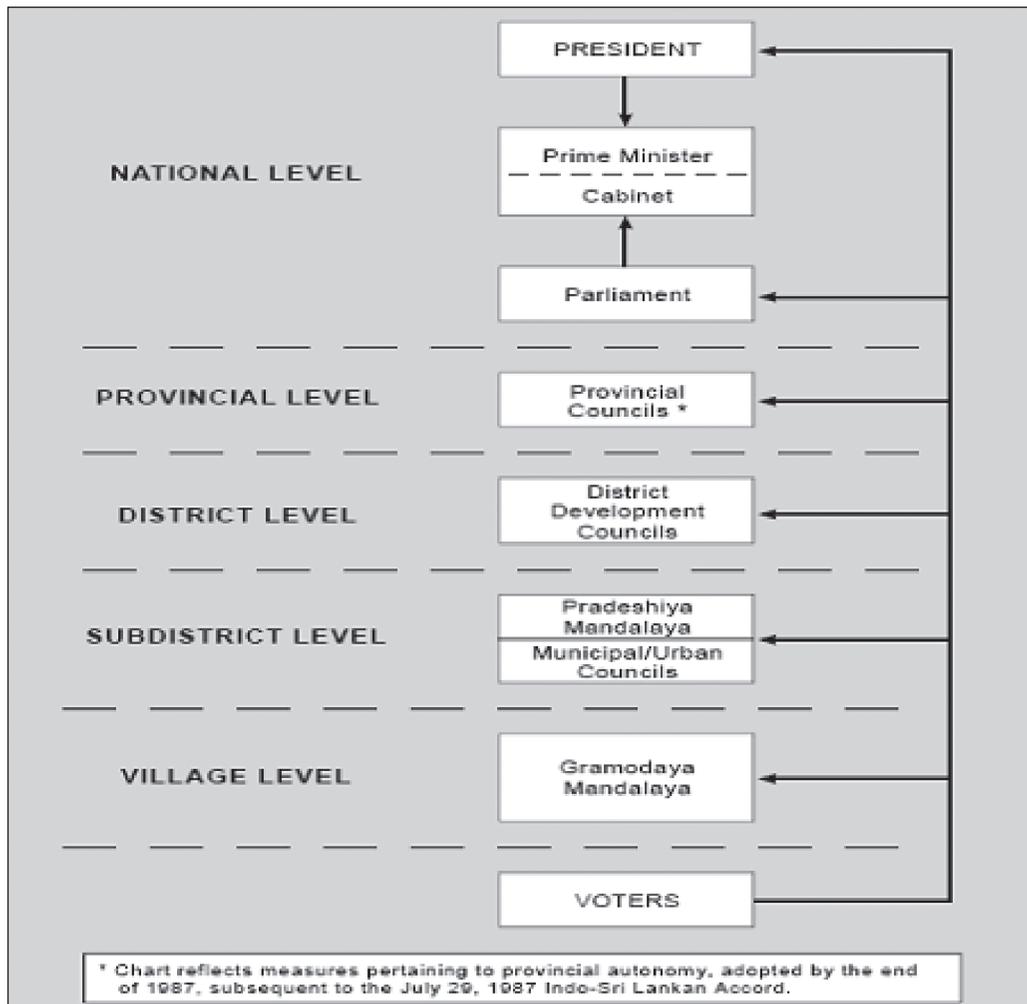
Annexes

Annex I. The administrative framework in Sri Lanka

Traditionally Sri Lanka was divided into nine provinces, which are sub-divided into 24 districts. Up until 1981 each district contained administrative offices representing most national-level ministries and known collectively as *kachcheri* (government offices). During this time all decisions were taken at the central level and passed to the regional and local levels for implementation (Clemette *et al.* 2004).

In 1978, the Constitution of the Democratic Socialist Republic of Sri Lanka was written (the third promulgation of the constitution) and included a commitment to decentralize the country's administration. In 1987, the 13th Amendment of the Sri Lankan Constitution and the Provincial Councils Act No. 42 established the Provincial Council System. The 13th Amendment provided for the: establishment of Provincial Councils; appointment and powers of the Governor of Provinces; membership and tenure of Provincial Councils; appointment and powers of the Board of Ministers; legislative powers of the Provincial Councils; alternative arrangements where there is a failure in the administrative machinery; establishment of the High Court of the Province; and the establishment of the Finance Commission. The Provincial Councils Act No. 42 of 1987 provided for the: membership of Provincial Councils; meetings and conduct of business in Provincial Councils; financial procedure in the Provincial Councils; and the establishment of the Provincial Public Service (GOSL, 2003) (Clemette *et al.* 2004).

A Provincial Council is not a Government Ministry or a Local Authority, but is an autonomous body and is not under any Ministry. It undertakes activities which had earlier been undertaken by the Central Government Ministries, Departments, Corporations and Statutory Authorities (Clemette *et al.* 2004).



Source: <http://www.lupinfo.com/country-guide-study/sri-lanka/sri-lanka131.html>, 1988

Annex II. Law Commission Report on Freedom of Information

The Commission feels, that while we should progressively advance towards the establishment of an open access to information regime at a future date, Sri Lanka should currently adopt a regime that clearly defined what information was secret and establish guidelines in respect of the exercise of discretion by government officials for giving access to other information.

The draft Act provides for the Act to apply to all Government departments, corporations, statutory Boards, Provincial councils, Provincial Agencies and Local Authorities. However, the draft also provides for the Minister in charge of the subject of information to exempt an institution by Gazette notification, where such an exemption is necessary in the public interest. The Commission decided to recommend an enforcement regime that allows the Supreme Court to review denials of access or inadequate access.

The preamble of the draft Act states that it is intended “to complement and not replace existing procedures for access to information.” The draft Act recognises the right of Sri Lankan citizens to be given access to public information upon request if it “affect[s] the citizen requesting such information.”

The draft Act also requires Ministers to publish, proactively and on a regular basis, a description of the government institutions assigned to their Ministries as well as a description of the records, manuals and guidelines, and contact details pertaining to those institutions. It also requires the Information Minister, within one year, to determine the procedure for making and processing requests, including the timeframe, applicability, amount of fees, and applicable language. Thereafter (“as soon as convenient”) the regulations will be placed before Parliament for its approval. Finally, the draft Act provides for an appeal either to the Supreme Court or to the Parliamentary Commissioner for Freedom of Information.

Much of the details have been, left to regulations including issues relating to fees for searching and copying, language of access, transfer of information requests, mandatory time limits for compliance, review procedures etc.

Another problem is that only information affecting the requester is subject to disclosure. This breaches the principle that in a democracy, all information from or concerning the workings of public bodies is of relevance to the public. It appears that the decision as to whether or not the information affects the requester is at the discretion of the public official to whom the request is addressed, and that the onus of demonstrating this rests with the requester. Also, the draft Act does not provide for disciplinary action against officials who arbitrarily refuse to provide information to the public. The Act gives far too much discretion to the Information Minister, and consequently to the government, for setting procedural rules relating to implementation (CEPA).

About IWMI

IWMI is an international, non-profit organization undertaking research to improve the management of land and water resources for food, livelihoods and the environment. IWMI is part of a Consortium of 15 research centers supported by the Consultative Group on International Agricultural Research (CGIAR). IWMI is headquartered in Colombo, Sri Lanka, with offices across Asia and Africa and celebrates 25 years of research in these regions.

Our Role

IWMI is a partner with global, national and regional organizations shaping the global water agenda. IWMI's research and field activities help create new knowledge and provide the evidence scientists and water management experts need to make policy recommendations to local, national and international decision-makers. IWMI offers a wide range of tools and resources, a huge knowledge base on past and ongoing research, and a worldwide network of water professionals to partners and clients seeking lasting solutions to water problems.

Our Mission

To improve the management of land and water resources for food, livelihoods and the environment.

Our Vision

Water for a food-secure world.



Mangroves for the Future (MFF) is a partnership-based initiative promoting investments in coastal ecosystems that support sustainable development. MFF provides a collaborative platform for the many countries, sectors and agencies tackling the challenges to coastal ecosystem conservation and livelihood sustainability and is helping them to work towards a common goal.

MFF builds on a history of coastal management efforts before and after the 2004 Indian Ocean tsunami, especially the call to sustain the momentum and partnerships generated by the immediate post-tsunami response. After focusing initially on the countries worst-affected by the tsunami – India, Indonesia, Maldives, Seychelles, Sri Lanka and Thailand – MFF has now expanded to include Pakistan and Viet Nam. MFF will also continue to reach out to other countries in the region facing similar challenges, with the overall aim of promoting an integrated, ocean-wide approach to coastal area management.

MFF seeks to achieve demonstrable results through regional cooperation, national programme support, private sector engagement and community action. This is being realized through concerted actions and projects to generate and share knowledge more effectively, empower institutions and communities, and enhance the governance of coastal ecosystems.

Although MFF has chosen mangroves as its flagship ecosystem, the initiative embraces all coastal ecosystems, including coral reefs, estuaries, lagoons, wetlands, beaches and seagrass beds. Its management strategy is based on specific national and regional needs for long-term sustainable management of coastal ecosystems. These priorities, as well as newly emerging issues, are reviewed regularly by the MFF Regional Steering Committee to ensure that MFF continues to be a highly relevant and responsive initiative.

