

COUNTRY REPORT: BANGLADESH

Managing Ecologically Critical Areas in Bangladesh

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Introduction

Within a relatively small geographic boundary Bangladesh enjoys a diverse array of ecosystems and biodiversity in general. The 1992 National Conservation Strategy of Bangladesh identified 31 areas as environmentally critical areas. In order to ensure *in situ* conservation of these critical areas, the Bangladesh Environment Conservation Act (BECA), 1995¹ empowered the Government to declare an area rich in biodiversity and environmentally significant as an Ecologically Critical Area (ECA). The Act also empowered the government to make Rules for ECA management procedures.² In 2016 the Government finally adopted the Ecologically Critical Areas Management Rules.³

Ecologically Critical Areas Management Rules

For the proper management and development of the ECAs, the Government framed *the Ecologically Critical Areas (ECA) Management Rules, 2016* (hereafter the Rules). The Rules provide different committee systems for the management of ECAs from the national to village level. The Rules at first provide for the establishment of a National Committee⁴ consisting of a Chairperson⁵ and 19 other members⁶ including 2 academics and 2 NGO activists. The Department of Environment⁷ (DoE) provides the secretarial assistance to the National Committee. The Rules then describe responsibilities and functions of the National Committee.⁸ The National Committee plays a pivotal role in the management of ECAs. It is this committee that is empowered, of its own accord, or on the basis of a request supported by information to the effect that due to environmental degradation the eco-system of an area is in a critical condition or is threatened to be in such situation, to recommend to government

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¹The principal legislation regulating environment in Bangladesh (Act No. 1 of 1995). Bangla text of the Act was published in the Bangladesh Gazette, extra-ordinary issue of 16-02-1995 and amended by Act Nos. 12 of 2000, 9 of 2002 and 50 of 2010.

² See *the Bangladesh Environment Conservation Act* (n 1) section 20(2) (k).

³Original text (in Bangla) of the Rules was published in the Bangladesh Gazette, Extra-ordinary Issue of 22-9-2016.

⁴ The ECA Management Rules 2016, rule 3.

⁵ Secretary, Ministry of Environment and Forest (MoEF) as per official capacity.

⁶ Representing different concerned Ministries and Departments.

⁷ Principal government agency responsible for overall protection and improvement of Environment under the MoEF.

⁸*The ECA Management Rules 2016*, rule 4.

to declare an area as an ECA. In recommending a site, the National Committee will consider existing natural conditions and biodiversity, forests, wildlife, protected areas, wetlands etc. and causes for ecological degradation, possible threats and preventive measures for this. The Committee will also take into account livelihoods, religious and social culture of local inhabitants, and the presence of archeological sites. The National Committee will also make recommendations regarding the generation of alternative livelihoods for the people dependent on an ECA. The Committee will meet once a year.⁹

The Rules also make provision for so-called District Committees, to be established in the district where a particular ECA is situated. This committee will be formed by 26 members,¹⁰ including 7 civil society members, headed by the Deputy Commissioner of that district.¹¹ When any ECA is situated in more than one district then the concerned Divisional Commissioner will be the head of District Committee.¹² The Rules then prescribe the responsibilities and functions of the District Committee.¹³ The District Committee will guide the *Upazila*¹⁴ Committees regarding any development plan and necessary measures suggested by the DoE to overcome the critical situation existing within the ECA. It will also co-ordinate the functions of other subordinate committees and can send the recommendations to the National Committee on the basis of their proposals regarding activities or processes, which cannot be initiated or continued in an ECA.

The Rules mandate the District Committees to visit ECAs and monitor the progress of implementation of development plans and measures taken by the DoE and to generate alternative livelihoods if the livelihood option of locals are being limited by any of the protective measures adopted for the ECA in question. The District Committee has to take necessary legal actions against any person or entity who or which has committed, or attempted to commit any prohibited activities in an ECA. When any ECA is situated in more than one *Upazilas* it will coordinate the activities of *Upazila* Committees. The District Committee will meet thrice in a year.¹⁵

The Rules also provide for the formation of *Upazila* Committees in the *Upazila* where the particular ECA is situated. This committee will be formed by 21 members (*Upazila* level

⁹ *ibid*, rule 5.

¹⁰ District level government officials from different concerned Ministries and Departments.

¹¹ *The ECA Management Rules 2016*(n3) rule 6.

¹² *ibid*, rule 6(2).

¹³ *ibid*, rule 7.

¹⁴ Sub-district level tier of local administration.

¹⁵ *The ECA Management Rules 2016*, rule 8.

government officials including 5 civil society members), headed by the *Upazila Nirbahi* (executive) Officer.¹⁶ The *Upazila* Committee has the same functions as the District Committee, but it will give recommendations to the District Committee and supervise the functions of Union Coordination Committee and Village Conservation Groups.¹⁷ Moreover *Upazila* Committees will assist in registering Village Conservation Groups and in forming cooperative societies. These committees are also empowered to take measures to resolve disputes among different stakeholders dependent on ECA. It is also responsible for maintaining proper accounts of money received from the Ecology Management Fund. The *Upazila* Committee will meet once after every three months.¹⁸

The Rules further provide for the formation of Union Coordination Committees.¹⁹ This committee will be formed with 13 members, including 5 civil society members, headed by the Chairperson of that union council.²⁰ It will coordinate and observe the functions of Village Conservation Groups and will give them necessary directions and solve their problems in performing their functions.²¹

Finally, the Rules provide that, for the purpose of conservation and development of an ECA, one or more Village Conservation Groups can be formed in that area by the locals or people dependent on that area and that a Village Conservation Group should be registered as a cooperative society under the Cooperative Societies Act, 2001.²² Village Conservation Groups will ultimately implement development plans and necessary measures in an ECA suggested by the DoE.²³ These groups will create public awareness regarding prohibited activities or processes in an ECA, mentioned in the relevant notification. In case of any violation they have to inform the relevant *Upazila* Committee. For the purpose of conservation and development of an ECA, a Village Conservation Group can initiate a scheme or project with the permission of the *Upazila* Committee and approval of the DoE.²⁴ Any infrastructure or facility in an ECA or in its vicinity can be vested, by the government or any authority, to the Village Conservation Group for use, maintenance and management.²⁵

¹⁶ *ibid*, rule 9.

¹⁷ *ibid*, rule 10.

¹⁸ *ibid*, rule 11.

¹⁹ Unions are the lowest tier of local government set-up in Bangladesh. *The ECA Management Rules 2016*, rule 12(1).

²⁰ *ibid*, rule 12(2).

²¹ *ibid*, rule 12(3).

²² *ibid*, rule 13.

²³ *ibid*, rule 14.

²⁴ *ibid*, rule 15.

²⁵ *ibid*, rule 16.

In addition to making provision for the management of ECAs by way of the above committees, the Rules also set out the procedure for declaring an area as an ECA.²⁶ Before declaring an area as an ECA, a draft notification has to be published for at least 60 days on the website of the Ministry of Environment and Forest (MoEF) and DoE and in two Bangla daily newspapers to seek opinions from stakeholders and interested persons. Opinions obtained by this way are required to be taken into consideration at the meeting of the National Committee. In the Gazette notification declaring an ECA, the boundary and legal description (land survey information) including a map of the area concerned shall be provided. This information too must be widely circulated in the concerned area.

The declaration of an ECA goes hand in hand with the regulation of activities in the area - activities or processes may be prohibited. In deciding on these activities, the Government is required to consider matters as mentioned above in rule 4 of the Rules.²⁷ The Government shall, in accordance with the standards referred to in rules 12 and 13 of *the Environment Conservation Rules, 1997*²⁸, specify the activities or processes which cannot be continued or initiated in an ECA. As per the Rules, notwithstanding anything contained in any other law, the class of land of any ECA cannot be changed without permission of the DoE.²⁹ To manage the *sayrat mahals*³⁰ in an ECA, the Ministry of Land in consultation with MoEF and other concerned ministries and departments will issue necessary directions in this regard.³¹ After issuing a notification—declaring an ECA, DoE will issue a site specific plan for that particular ECA for the purpose of management and development of that ECA.³²

The Rules provide that any ECA can be conserved and managed by way of a public-private joint initiative.³³ If any registered and non-profit non-government organisation (NGO) is interested in participating in the management of any ECA or part thereof, it can apply to the Director General (DG) of DoE. After necessary inquiry, if the DG is satisfied by considering its conservation and development proposal, funding procedure etc., s/he can enter into a contract with that organisation. After that, the DG or any committee or any person authorised by them will visit the area and will monitor and assess the progress of implementation of management and development plans.

²⁶ *ibid*, rule 17.

²⁷ *ibid*, rule 18.

²⁸ The principal Rules under the *BECA, 1995*. Rule 12 reading with schedule 2-8 deals with determination of environmental standards of air, water, sound, odour; and rule 13 reading with schedule 9-12 deals with determination of the standards for discharge and emission of waste.

²⁹ *The ECA Management Rules 2016*, rule 19.

³⁰ Some places used by common people and managed or leased by the government.

³¹ *The ECA Management Rules 2016*, rule 20.

³² *ibid*, rule 21.

³³ *ibid*, rule 22.

The Rules furthermore provide for the establishment of an Ecology Management Fund.³⁴ Money for this Fund is obtained from *inter alia* the following sources: the national budget; subject to the approval of the government, foreign individuals or governments, any international organisation or institution; native individuals or authorities; and fees charged under the Rules. The Fund can be utilised for preparing, processing, implementing, monitoring and assessing the plans and for incentives. Necessary money can be allocated to the *Upazila* Committees and Village Conservation Groups. The Fund will be managed by the DoE and it is also subject to regular audits.³⁵ In every year the DoE will prepare an annual assessment report on the performance and achievement of Village Conservation Groups and on that basis it can give incentives to those Groups.³⁶

The Rules permit any survey, and scientific research to be conducted in any ECA. Such activities are, however, subject to the requirement to obtain permission from the DoE. Finally, the DoE is mandated by the Rules to submit an annual assessment report on ECAs and an ecological report after every five years to the government. The DoE has to follow the directions given by the government on the basis of these reports.

³⁴ *ibid*, rule 23.

³⁵ *ibid*, rule 24.

³⁶ *ibid*, rule 25.

Current scenario of Ecologically Critical Areas of Bangladesh

On the basis of the power to declare ECAs as set out under the BECA, 1995, and before framing of the Rules, the MoEF, has to date declared the following areas as ECAs:³⁷

| | Name of ECA | Ecosystem type | Location | Area (ha.) | Declaration date |
|----|---------------------------------------|--------------------------------|-------------------------------|--|------------------|
| 01 | Sundarbans (10 km landward periphery) | Coastal-Marine | Bagerhat, Khulna and Satkhira | 292,926 | 30/08/1999 |
| 02 | Cox's Bazar-Teknaf Peninsula | Coastal-Marine | Cox's Bazar | 20,373 | 19/04/1999 |
| 03 | St. Martin' Island | Marine Island with Coral reefs | Cox's Bazar | 1,214 | 19/04/1999 |
| 04 | Sonadia Island | Marine Island | Cox's Bazar | 10,298 | 19/04/1999 |
| 05 | Hakaluki Haor | Inland Fresh Water Wetland | Sylhet and Moulavibazar | 40,466 | 19/04/1999 |
| 06 | Tanguar Haor | Inland Fresh Water Wetland | Sunamganj | 9,797 | 19/04/1999 |
| 07 | Marjat Baor | Ox-bow Lake | Jhenaidah | 325 | 19/04/1999 |
| 08 | Gulshan-Baridhara Lake | Urban Wetland | Dhaka City | 101 | 26/11/2001 |
| 09 | Buriganga | River | Dhaka | Total area of 4 rivers is 7,607 (including foreshore and river bank) | 01/09/2009 |
| 10 | Turag | River | Dhaka | | 01/09/2009 |
| 11 | Sitalakhya | River | Dhaka | | 01/09/2009 |
| 12 | Balu | River | Dhaka | | 01/09/2009 |
| | Total Area under ECA | | | 383,105 | |

The Government in the Gazette notifications declaring the above ECAs, prohibited some activities or processes, which cannot be initiated or continued in an ECA, including felling or collecting trees; hunting, catching or killing wild animal; fishing and other activities those are harmful for aquatic life; industrial establishment; polluting water by disposing waste; and any other activity that could destroy or change the natural characteristics of soil and water. Continuing any such activities or processes in any of the ECAs is punishable with imprisonment up-to 2 years, or fine up-to BDT 2 lac for the first offence; for the repetition of

³⁷ Source: DoE, mentioned in 'Bangladesh Environment and Climate Change Outlook 2012', page 53.

the same offence the offender will be punishable with imprisonment up-to 10 years or a fine up-to BDT 10 *lac*.³⁸ Establishment of brick kiln in or within minimum 1 kilometer distance from the boundaries of any ECA is also prohibited and punishable.³⁹

Concluding Remarks

The promulgation of the Rules has great significance for the protection and improvement of the environment in Bangladesh. The Rules have introduced many innovations in the management of ECAs, which include, *inter alia*, public participation in environmental decision-making, proper monitoring by the responsible authority, reporting to the government, a specialised funding mechanism, participation of local communities in resource management, alternative livelihood generation for affected people, incentives for local communities involved in management, the preparation of site specific plans for the management of ECAs, and the encouragement of public-private partnerships for environmental management.

Despite these positive attributes of the Rules, there are some practical hurdles for the implementation of the Rules. In the first instance, the Rules have not established any independent institutional mechanism. Not a single dedicated post/office has been created by the Rules. It shares the existing institution i.e. the DoE for the management of ECAs. Though the Rules provide that, an officer of the DoE will carry out the secretarial functions of the District, Upazila and Union committees, the DoE only has offices in 22 out of 64 districts, and has no office in any Upazila or Union. Thus, for practical purpose of management of ECAs, one independent cell in the headquarter of DoE and at least one office of the DoE in each district would need to be established to oversee the implementation of this Rules.

Second, most of the functions of the Committees are advisory in nature and some of the functions of the various committees overlap and in some instances appear to be contradictory (for example, the functions of District and Upazila Committees in terms of generating alternative livelihood for affected people overlap and are contradictory insofar as the National Committee may make recommendations on the matter while the District and Upazila Committees have a legal obligation to address this issue; and initiating legal proceedings against any prohibited activities in ECAs). Lack of power and coherence will undermine the achievement of the objectives of the Rules.

³⁸ See *the Bangladesh Environment Conservation Act* (n 1) section 15(1).

³⁹ See *the Brick Manufacturing and Brick kilns Establishment (control) Act 2013*, section 8(1)(e). Bangla text of this Act was published in the Bangladesh Gazette, extra-ordinary issue of 20.11.2013.

The Rules also provide for direct legal action by the Committees. As the Rules are framed under the BECA, 1995, any case under the Rules has to be initiated in the Environment Courts.⁴⁰ No person or group of persons or a committee can file a case directly to the Environment Courts.⁴¹ Which will further hinder the enforcement of the Rules.

Furthermore, while the attention being paid by the Rules to the need to create alternative livelihoods for affected people is laudable, the creation of such alternative livelihoods is not coupled with access to funds from the Ecology Management Fund. Finally, the Rules deal primarily with procedural matters without prescribing substantive rights or obligations. Without the imposition of substantive obligations and the creation of rights, the generalised penal provision in the Rules, to the effect that “violation of any provision of these Rules will be an offence punishable with imprisonment up-to 2 years or with fine up-to BDT. 2 lac or with both” will likely prove difficult to enforce in a court of law.⁴²

For the effective implementation of this Rules, the above shortcomings and inconsistencies should be removed and a funding mechanism should be established with regular and adequate finance flows.

⁴⁰ In 2010 the ‘*Environment Court Act*’, which repealed the earlier Environment Court Act of 2000, was passed. At present, three Environment Courts in Dhaka, Chittagong and Sylhet division of Bangladesh are functioning. An Environment Court can entertain offences and claims for compensation under the *BECA, 1995* and Rules made there under.

⁴¹ The primary responsibility to file a case in the Environment Court is vested to the DoE. As per Ss 6(3), 7(4) of the *Environment Courts Act 2010*, no Environment Court shall receive any claim for compensation or complaint of offence under environmental law except on the written report of an Inspector of the DoE. An individual who wants to file a case, at first has to present a written request to the Inspector to accept a claim for compensation/ a complaint if the Inspector thinks it fit, s/he can only file a case to the Court. For more see, Md. Akhtaruzzaman and Imtiaz Ahmed Sajal, ‘Common People’s Access to the Environment Courts of Bangladesh’ (2016) 15 Journal of Judicial Administrative Training Institute 211.

⁴² *ibid*, (n 3) rule 27.