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LAND GRABBING – SCOPE, ISSUES AND REMEDIES

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Back ground

The true scenario in Sri Lanka is that unless you have access to land, you are denied your livelihood. The term access to land is large enough to embrace the whole range of rights and duties associated with use and enjoyment of land, including



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ownership, possession, occupation and control over land. It is therefore clear that land grabbing can take place where these rights are expressly or impliedly denied either to individuals, public, public institutions and finally to the State. While access to land is an inalienable right of citizens of a given country, it is the duty of the State to prepare and implement a policy for the management of land in order to ensure that this limited resource is utilized for the benefit of present and future generations.

The management of ownership, right to possession, occupation or use and enjoyment of land are central to economic prosperity; and good governance can be measured in terms of efficacy of laws permitting individual access to land. In other words there must be a very transparent legally enforceable machinery to provide land to any rightful person who seeks such land for approved development projects aimed at livelihood enhancement.

Scope of the problem of land grabbing.

In this background, land grabbing can take one of several forms.

- (a) Land acquisition for public purposes or approved projects of the State.
- (b) Encroachment of land by private individuals or corporations.
- (c) Unscrupulous occupation of large extents of land by armed forces.
- (d) Lease or Sale of State land to multi-national companies with apparently legal agenda.
- (e) Morbid failure on the part of Statutory functionaries (to make relevant orders at crucial times) such as, Divisional Secretaries, Urban Development Authority, Mahaweli Development Authority etc. result in land grabbing by unauthorized persons.



Photo taken from <http://transcurrents.com/news-views/wp-content/uploads/2011/09/llp195.jpg>

Being an agricultural economy, Sri Lanka has a long history of land grabbing going back to the British colonial era, when, from 1805 onwards, lands were expropriated for plantations of cinnamon, coffee and rubber. In 1840, with the enactment of the Crown Land Ordinance and waste land Ordinance the British Government ensured the availability of land to British investors to set up plantations both on watersheds and elsewhere. Local Sri Lankan communities suffered by losing their traditional rights to access and use their land. Up to then, the land as a resource had been admittedly well managed by indigenous practices.

Land grabbing essential part of governance

The foregoing scenario proves that land grabbing is part of uncivilized governance. It reached the highest devastating levels through the Waste Land Ordinance when a British businessman introduced commercial tea plantations in the district of Kandy. Tea plantations owned by British companies flourished as a result of large scale land grabbing and the exploitation of migrant workers from southern India through forced labour.

Magnitude of the problem

This land grabbing also marks the beginning of senseless destruction of watersheds in the country which continues unabated up to date, even under the so-called national governments. It is an undeniable fact that the central mountainous area of Sri Lanka is the heartland of the country providing sustenance to all other parts of the country, irrespective of the racial composition. If this area is kept free from human intervention, it will certainly, but indiscriminately provide much needed sustenance to the rest of the country to usher in a new era of development. The nature is no respecter of persons. Our politicians have failed to realize this truth. Up to this very moment there appears to be no policy of reclaiming the watersheds, which means the crucial mountainous uplands of Sri Lanka.

Destruction of livelihoods

The successive governments have failed to re-establish the natural forests destroyed by their predecessor in these heartlands. As a result, we continue to experience constant floods, droughts, bushfires, earth slips, and forest dwindling which has finally led to shortage of water, food, power and livelihoods. But it has promoted short term gains for most politicians who are active in divisive politics.

Recent examples of land grabbing under the guise of development projects are as follows; Sea Port, Hambantota, Airport, Mattala, Road Network at Mayurapura and Siribopura, all in the southern province in addition to Uva, northern and eastern provinces.

Why I call them land grabbing in the guise of development projects is

- (a) that these development projects never followed the legally established approval procedures prescribed by the National Environmental Act on one hand and Policy approved by the cabinet in 1995 as National Involuntary Resettlement Policy, which has no legal force up to date. The Government has maliciously failed to pass it as an Act of parliament.
- (b) Legal procedure prescribed by the Central Environmental Act, Land Acquisition Act, Sri Lanka Ports Authority Act and Land Development Ordinance were not followed in many instances in acquiring these lands.
- (c) It is dangerous to rely on the existing land acquisition Act as providing socially acceptable machinery to acquire lands for public purposes.
- (d) Divisional Secretaries who are now vested with powers earlier held by the Government Agents under the State Land Act and the Land Development Ordinance invariably fail in carrying out their quasi-judicial duties coming under their respective Statutes. They don't evince a judicially active mindset. That is basically the nature of the uncivilized public service in this country. No politician is worried about reforming them. They themselves are in need of reform.

- (e) This may be due to Prejudice, Malice, Fear and Ignorance, an essential part of the culture of public servants.
- (f) It should be no news to anyone with a basic knowledge of the provisions in the land acquisition Act that;
- i. Any body's private land can be acquired by the State without first paying a cent.
 - ii. Possession of such lands acquired whether they be houses, estates, barren lands or plantations can be taken without providing any compensation or alternative accommodation.
 - iii. One can be totally homeless when acquisition is completed by taking over possession.
 - iv. If you object, the Magistrate can issue at the request of the State an order to Fiscal ejecting you from your home or land. The Magistrate cannot inquire into the legitimacy of your homelessness.
 - v. If you disagree with the Government's official valuation of your property you are not paid a cent, until appeal procedure is over.
 - vi. Appeal procedure takes a minimum of 5 to 10 years for completion. No cent can be paid unless and until the procedure is complete.
 - vii. All the development projects are innately accelerated, the procedure of acquisition is also accelerated in terms of the Act, but there is no acceleration of payment of compensation.
 - viii. The appeals from all claims to compensation in respect of acquired lands are heard in the Board of Review, Borella, at YMBA building.
 - ix. The Board consists of several members appointed by the President from the legal profession and former valuation department officers, who have a heritage of upholding the government's valuation.

- x. The rent to the building is provided by the Department of Valuation, Transport to the Board and staff is also provided by the Valuation department.
- xi. The legal officer appearing for the State is also appointed and paid by the valuation department.
- xii. This is the Board of Review set up by the Act to review and revise the orders made by Valuation Department and Divisional Secretary.
- xiii. There is no provision in the Land Acquisition Act to provide any advance payment of the final sum due to the Appellant until the appeal is over.
- xiv. This law does not provide for notice to be given of the execution of the fiscals order so that the victim can remove his household items. Therefore the State can take over not only the land and the houses thereon, but also the household goods of the victim.
- xv. Thus, this Act passively provides for total and complete social and economic disintegration of the displaced families.
- xvi. In this manner, this piece of legislation enables the officers to effectively practice terrorism against the victims of land acquisition.
- xvii. Most of the lands acquired are lying idle, but the Act does not unconditionally provide for divestiture of unused lands, thus making this piece of legislation again a mockery.

Available Remedies

Land grabbing in whatever form cannot be remedied by the District Court in view of s.23 of the Interpretation Act.

S.22 prevents the Court of Appeal and High Court of Civil appeals from exercising any power except as provided in the Proviso.

S.24 prevents injunctions being granted against the State or a Minister.

Thus, wrongful acquisitions also become finally regular and legal.

Further examples; Divisional Secretaries seem to fail in most cases to effect the necessary endorsements on permits and grants upon the death of original the permit holders or grantees, acting under S.72 of the Act and the other provisions.

Unresolved disputes lead to land grabbing. Divisional Secretaries are aware of the land grabbing that takes place while relevant orders are not made.

- (a) Unwanted disputes eventually arise from failure of the Divisional Secretary to alienate lands in time or when alienating without surveying. The same happens when permits or grants are issued without dispossessing current occupants.

The need for a comprehensive right to information Act;

Much of the problems that arise from the Land Development Ordinance or Land Acquisition Act or other related Act cannot be successfully handled without having access to various documents or information from the State and its authorities. Some of the documents may be from the State while others may be from private parties or companies. But unless a special law provide for peoples right to information all our efforts would be in vain. Survey department's general and current practice is not to issue copies of plans and tenement lists. There is nothing to compel them to issue a copy of a public document. There is no punishment accorded to them if they fail to follow the provisions in the Evidence Ordinance.

One of the biggest problems faced by peoples needing access to land is the absence of fixing up and punishing the relevant wrong doers within the circles public service. The Courts are powerless to do anything when it comes across a flagrant violation by a public officer in the form of a commission or omission. Right along the path to nation building the public service has been a severe stumbling block. Regular courts are not empowered to punish a public officer and

rectify the mistake committed by him. A new law is thus needed to deal with him as if he were an enemy of the nation.

I am of the opinion that the following provision should be enacted in a special piece of legislation.

"When it is revealed in any court of law, whether civil or criminal, in the process of adjudicating upon any right whatsoever or in trying an accused for any offence, that a public officer has committed an act of irregularity or omitted to do any act which he is bound by law to do, such court shall have power and duty to order the head of the department to which the errant officer belongs that said irregularity, omission or commission be rectified at the expense of the public officer or officers who were at fault, but where the public officer has retired, that his pension rights be utilized to rectify the said mistakes. This may need fine tuning.



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