

No tears for people of Eppawala?

by D. G. B. de Silva
(former Sri Lankan Ambassador)

The history of the ancient agricultural settlements in Eppawala-Katiyawa area may be as old as that of the Sinhalese civilization. The land lay in the direct line of the natural drainage system which commenced in the Matale foothills and made its track towards Vilachchiya before entering the sea. It was on this drainage system — the upper reaches of it such as Dambulu Oya and Mirisgani Oya — one comes across the earliest attempts to construct organized irrigation works to provide a regular constant supply of water to Anuradhapura and its environs.

Kala Oya brought down vast sheets of flood water during monsoon rains down its channels forming a marshy area called 'Kala-gohoruva' in the folk tradition. Mahavamsa also alludes to this particular nature of the terrain where it refers to Rev. Mahanama taking his nephew and protege, prince Dhatusena, through this marshy terrain to safety from the pursuing Tamil usurpers. The area had assumed a strategic importance from the time King Vattagamani Abhaya sought refuge in the same area again in the face of Tamil usurpation. Dhatusena repeated it. Eppawala area has thus gained symbolic significance against foreign usurpation and as a centre of national resistance long before Ruhuna became the centre of such resistance.

Dhatusena's gratitude to the people who provide him shelter and succour was by way of a great gift — the Kala Oya and the Yodha Ela — which connected it with the capital city. The latter is better known as 'Jaya Ganga'. Even today after fifteen centuries since the impounding of Kala Oya, what a breath taking view it is to watch the vast sheet of water silhouetted against the distant Matale foothills standing sentinel over the whole area and the Jaya ganga entering on its majestic meandering course towards Anuradhapura. It was, perhaps, from this nostalgia-filled background that John Still, the great lover of our jungles and ancient monuments wrote his poem on "Dhatusena".

It was Loku Banda Ratwatte Rate Mahattaya who assisted the British government to bring this ancient masterpiece back into working order by procuring and supplying the required labour nearly two centuries ago. His contribution at a time when human labour alone, perhaps, combined with the help of tamed elephants took the place of tractors and bulldozers, was fully recognized that he was given a place of honour along with the Governor of the colony in the plaque erected to commemorate the successful completion of the irrigation work.

How disturbing is it to find today in the same general area another monument being set up to compete with and almost undo the work that the ancients achieved so painstakingly? The new monument is one that emphasises not the ingenuity but the folly of contemporary Sri Lankans and their greed to make a quick buck. If ingenuity there is, that credit should go to the multi-national companies who have advantageously hoodwinked the politician, the planners and the public of this country to believe they are taking enormous risk in this venture and are offering great economic benefits to the country.

The landmarks that will be left behind by the new monuments for the future generations would be a mass of canyons, gullies, caverns and tunnels, like those reportedly caused in the state of Florida in the US by the IMC-Agrico's mining operations there and where the U.S. environmental authorities are battling the spread of the mosquito menace through spraying of insecticides. Will that be the gift that our contemporary generation would leave for the future generations of people around Eppawala and those around the ancient district of Anuradhapura? Surely, do not the future generations deserve a better deal from our generation? People still fondly recall the names of great ancestors who masterminded the great irrigation project fifteen centuries ago; and those like the Vanniya Ilangasimha Divakara who was assigned Eppavala, Katiyawa and Angomuvu by the 14th century king to maintain the irrigation works, or the later Loku Banda Ratwatte Rate Mahattaya whose contribution was largely responsible for the restoration of these works. How the promoters of the Eppawala mining project would be remembered by our future generations is anybody's guess.

Who are people of Eppawala?

The people living in this area generally referred to as Eppawala are not all descendants of the builders of Kala Oya or the Jaya Ganga or those who provided security to our rulers who were under the threat of invasion. Mahaweli Development Authority brought hundreds of families in recent years from Kandyan areas and settled them here. In the 19th century, the British Assistant Government Agents, Ivers and others, brought people from other areas, notably from the Jaffna peninsula to settle in the lands served by Kala-Balaluveva (see Diaries in National Archives). The discretion in section was left with these young administrators. The experiment of settling people from the Jaffna peninsula failed because the settlers were awe-struck by the sheer density of the jungles, the like of which they had never seen and many returned to their original homes.

There are, however, a few Purana villages in the area, one of which I had the privilege of visiting and conversing with the people. The people have no documentary proof to the ownership of land they occupy and cultivate. Their disposition, customs, manners, outlook to life, the nature their homesteads built in a cluster, a mere four to five thatched houses built round a single compound not more than two to three metres away from each other, are all pointers to the fact that they must be the descendants of an ancient people as they claim, now impoverished. They are distinctly different from the more exuberant Mahaweli settlers and others.

Are these the people who are referred to in the

Mineral Investment Agreement (MIA) initiated by the Government with the Mining Company whose majority shareholders are two multi-nationals, (IMC-Agrico of U.S. (65%) and Tomen Corporation of Japan (25%)), as "squatters having no legal or possessory right" and are to be summarily removed by the government on behalf of the Mining Company with no prospects of relocation or other compensation? The key word in the MIA is that the Government will "cause the removal" of these "squatters" at minimum cost to the Company. God only knows what methods would be used in removing these people at "minimum cost" to the Company.

These people claim these to be their ancestral land, bequeathed to them from generation to generation. They know what is in store for them. They have already seen two occasions of violence at their doorstep. One died in the last incident and many were injured. Human right violations as perpetrated under Suharto's dictatorship on behalf of the Freeport MC Moran Company against the indigenous people of Iran Jaya are now glaring before their eyes.

What they do not know, perhaps, is that indigenous people of the world have organized

themselves against exploitation and violation of their human rights, and the grabbing of their traditional land by multi-national Mining Companies. Representatives of indigenous people met in New York at UN Headquarters last year to commemorate the fifth year of the NGO Committee on the Decade of the World Indigenous People. They were supported by UN High Commissioner for Human Rights (UNHCR), International Labour Office (ILO) and United Nations Development Programme (UNDP). The theme last year was "Indigenous Peoples' and their Relationship to Land". (Data taken from an article by Engr. Catalino L. Corpuz, Jr. published in 'Echoes' 16/1999, and reproduced in Daily News dated February 5th, 2000 under the title "The Rape of the land of indigenous peoples" and subtitled "Of great relevance to our Eppawala predicament"). Freeport McMoran, the Company originally involved in Sri Lanka and Rio Tinto Zinc are specially named in this article as "Mining Companies... which wreck havoc on Indigenous peoples' lands".

The article is even more illuminating because it gives the clue to understanding the reasons for the provision in the MIA for relocation/removal of people in Eppawala in the "exploration area" which could become part of the "mining area" (together they form the "contract area", 56 sq. km. at Eppawala and several sq. km. at Clapenberg in Trincomalee).

The article observes: "When new mining areas are discovered political barriers must be removed so that transitional mining corporations can gain easy access to large areas of mineral lands and assured of continuity in their operations". How relevant is this assessment to the situation of the relocation/removal of occupants of land at Eppawala will be discussed below.

A justification has been made by the proponents of the mechanized mining project under the MIA on the ground of economic benefits to the country which would offset the minus factors. How illusory these arguments are, have been exposed by Premila Canagaratna in her well-studied article which appeared in Sunday Island of February 6, 2000 under the caption "The Eppawala phosphate Project: A Revealing Financial Analysis".

No tears for Eppawala?

Why is that there is a deafening silence among the public over the fate of the innocent people of Eppawala some of whom are to be summarily removed without relocation or compensation and some relocated? The silence is even more disturbing in the light of the devastation which is going to be caused to the good earth; environmental impact; short term and long term diseases which would be spread; the neglect of the interests of future generations; and the down right hoax that is being perpetrated on the people of this country by a multinational conglomerate on the economic benefits of the project to the country.

Even the Sri Lanka media barring a small section, which claims to be in the vanguard to protect human rights and help create an environment of transparency, are silent or disinterested. A few have become spokespersons for the mining company. This can be understood in the context of attempts made by the multinational companies elsewhere, to threaten journalists and writers reporting on human right violations and other adverse effects of mining operations such as in Iran Jaya, where Freeport McMoran operates one of its largest gold mines, and using coercive methods to stop the international public opinion against the mining companies.

The land grab: what the MIA discloses

The MIA acknowledges that if mining is conducted within the portion of the exploration area south of Mahaweli Authority's main canal which flows through the exploration area, the occupants of such land may be directly affected. To the extent this area is included in the mining area and constitutes a part of the area to be mined under the Company's Development Plan approved by the government, and the Company determines that it is necessary to relocate such occupants in order to accommodate Mining such area, then the company will pay the cost of such relocations. The catch is that the Government is contractually bound to use its best efforts to facilitate relocations of inhabitants as requested by the Company in a manner which does not create an undue financial burden on the Company or delay its development and operation of the mining area. This provision is clearly to the advantage of the Company. The Government has abdicated its responsibility towards the affected people by agreeing to "facilitate" relocation/removal on terms favourable to the Company. If the

tinuous.

One warning with regard to the case at Eppawala is that the Mining company formed and whose representatives have initiated the MIA is a local company — 'Sara bhoomi' in which the multi-national IMC — Agrico with its acknowledged links with Free Port — McMoran Inc being the major share holder (65%). The Tomen company of Japan is the other major share holder (25%). Lanka Phosphate Ltd., have been offered 10 percent 'free' shares without voting rights for selling their mining licences. They have other financial obligations to perform. Freeport McMoran has merged into IMC — Global. Dr. M. M. I. W. Herat now serving with a British multinational company and who is a spokesperson for IMC-Agrico-vide his article in Divaina dated February 9th, 2000-maintains that Freeport McMoran Resource Partners is a part of Agrico-Chemicals and has nothing to do with the Eppawala project. But he refers to Freeport McMoran Resource Partner as an involved party in the project. What confusion to mislead the public of this country?

Foreign shareholders could dispose or sell their shares freely after 10 years. The question in this situation is who is the party liable in relation

get the government to have the relocations/removal completed speedily using methods which involve the least cost? Is it not the idea to have the entire Exploration area of 56 sq. km. and the Processing Area of another several sq. km. freed of habitations? The Exploration Area it is understood consists of 2600 families or around 12,000 persons. The cost of relocation averaged at a cost of Rs. 200,000 per family for a dwelling house alone is about US\$ 7 million. This averaged cost includes the value of agricultural land to be provided and the development cost of such land. Even on this politically and socially sensitive issue, ignoring the economic side of it which would deprive the people of means of self employment in agriculture, the Government has put its weight on the side of the Mining Company!

The objective of the relocation removal of people becomes very explicit when one reads also the sections on "Roads" (Clause 24.4(c) 24.8) which have an important bearing on the restrictions imposed on the government and the public in the use of roads in the mining area and outside.

New Roads (these could include the Exploration Area, buffer zone and even link roads) constructed and maintained by the Company will be allowed to be used by the Government in such a way not to prejudice or interfere with the company's operations. These clearly include roads outside the Mining Area. Public use is not mentioned and hence it could be inferred they are excluded. What is even more significant is that the Government and third parties have to pay for maintenance costs of these roads. The presumption is that these would be toll roads.

Roads outside the Mining Area and Processing Area will be "public roads" for purposes of traffic laws and regulations, but the Government will make special regulations under the traffic laws to provide for proper safety of users which means application of restrictions on other users of the public roads. The Company shares in the costs, damages, or deterioration and of upgrading having regard to increased traffic (i.e. the Company's use of these roads).

In the Mining Areas and Processing Area, the roads will be subject to Company's rules and regulations only. In other words, roads within these areas would be converted to private roads of the Company and not public roads. Lanka Phosphates, the local 10% share holder in the Investment Company will also pay proportionately for the use of roads in the Mining/Processing area.

These restrictions imposed on the government itself in the use of roads as well as restrictions imposed on the government and the public in the use of Company's ancillary facilities, (dock facilities to be negotiated); and on land which may be required in future on grounds of national security, should show clearly that the idea is to create a strictly "restricted access" area not only in the Mining Area and Processing Area but also covering the whole "contract area", which means an area of 56 sq. km. and above. This includes the right of the Company to enter and stay within this area (Contract Area) including, without limitation, portions of the air space and shoreline. (Clause 17 (6)).

The objective behind getting the people out of a large area consisting of the Mining Area and the Exploration Area should now become clear. The only restriction that applies on the Company's right to remain within these areas are the areas reserved by the Government for purpose of national security as may have been notified to the Company prior to the Government's approval of the Company's Development Plan. In other words, if any further areas are required in future for purposes of national security within the "Contract area" the Government has no right to act unilaterally. The Company's approval would be required. How strange indeed when the Government is haggling with minorities over powers to be delegated to proposed new units of devolution?

Regulation of Encroachments

The principle followed from British times in respect of "encroachment" on state land has been to regularize such occupation as far as possible. Several criteria have been used in these settlements, landlessness and investment made being given priority consideration and expansion by land owners being rejected. The case of "Purana Villagers" who at times even occupied ancient tank beds has been fully understood. Though these villagers had no documentary proof of ownership of land, the tradition was accepted. These were of course, outside the Kandyan hill areas where people were disposed in order to sell land to foreign investors.

Not since the days of the British colonial administration in the mid 19th century have the people of this country been deprived of their land on a mass scale for reasons that they could not show proof of ownership or possession. Now this is happening under their own elected Government to 'facilitate' foreign investors to make enormous profit.

The principle involved in the land grab by the colonial administration and what is proposed under MIA is the same. The number of people affected now may be less. However, the consequences are far greater in the present case. The damage caused by clearing the hill country forests in the last several centuries may be retrievable through a programme of reforestation; but the damage to be caused to the earth through large scale mechanized mining is irretrievable and irreversible. There lies the difference.

With the situation regarding the 'land grab' so glaring in our eyes, and the so called economic benefits to the country being proven to be a great hoax (see article by Premila Canagaratna — "The Eppawala Phosphate Project — A Revealing Financial Analysis" — Sunday Island, February 13, 2000), why is there so much apathy over the fate of the people of Eppawala? Certainly they deserve not only a hearing but immediate concerted action by all concerned as much as the indigenous peoples of the world.

Agreement reveals all about the land grab

Government would not neglect the interests of the people it would be taking upon itself at least a portion of the cost of relocation of peoples including the provision of alternate land over which there is no mention in the MIA.

As far as the category of people referred to as "squatters having no legal or possessory rights" (Clause 17.3 of MIA), the Government agrees to "cause their removal", again at minimal cost to the company. Neither the company nor the Government takes responsibility over them beyond this. No compensation is offered to them. As I have pointed out inhabitants in 'Purana vil-

ages' with no documentary proof to the land they occupy or cultivate would fall into this category.

How the removal at minimum cost to the Company of the so-called squatters would be effected is anybody's guess.

The conditions on which exploration licences have been issued to two local companies already are quite specific on the restrictions imposed on the licence holder under the Mines and Minerals Act No. 33 of 1992 and its Regulations including amendments to them, as regards land owners' rights and of public and historical sites in the licensed area. As such, the question of relocation/removal arises only when it is decided to mine in those areas, for which exploration licences have been issued.

The Company is free to purchase other land from private owners. What are the provisions under which mining licences would be issued? Will that cover the land owners' rights? Whatever the situation may be, it is clear that the objective of the MIA, Clause 17.3, is for the multi-national corporations to "gain free access to large areas of mineral lands and be assured of continuity in their operations" as observed in the article published in Echos/Daily News I referred to earlier.

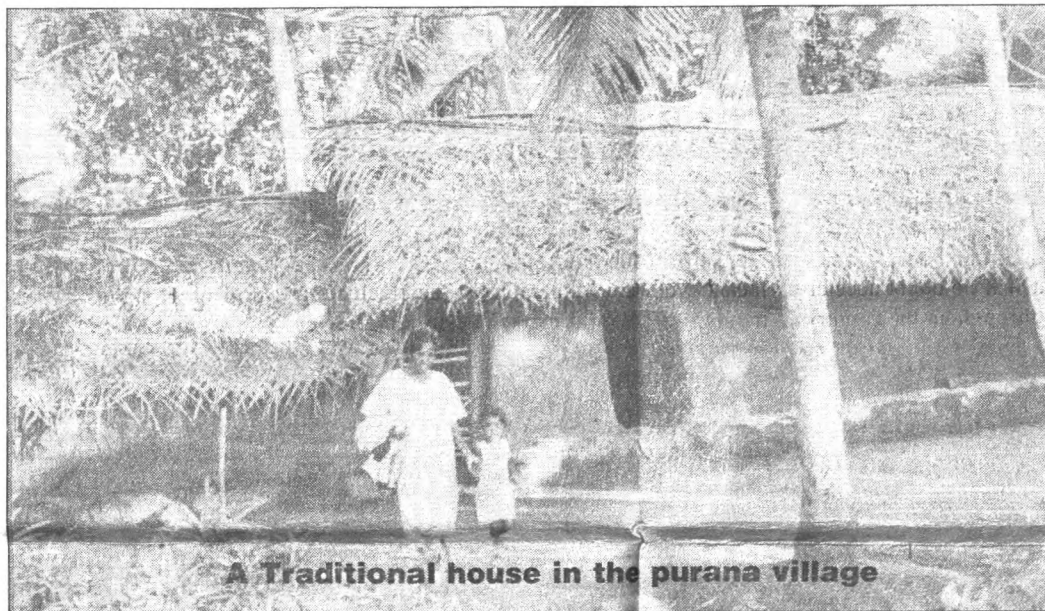
The objective in relocating/removal of inhabitants on the one hand, and the purchase of private land on the other hand, could be interpreted as moves to clear problems arising from having a resident population in the "contract area" (Exploration/ Mining areas) whose nuisance value could retard the Company's plans. Accusations over human right violations, environmental impact on residential areas, health problems etc. which could also give rise to legal action and international and local public pressure as happened in other mining areas round the world, specially in Iran Jaya, in Indonesia, could arise in relation to Eppawala also. It is now clear that steps are being taken to avoid such a situation by a single stroke, with the Government acceding. This is also why the MIA provides for what seems to be a hypothetical situation at the present stage by using such terminology as "If mining is conducted within the exploration area" and "to the extent that this area is included within the Mining area" etc. As such as I see, there can be no time-bar to initiating legal action by interested parties or mounting protests on grounds of human rights violations of people which could result from the MIA when implemented. These actions have to be intensified right now. As other cases round the world where courts have ordered compensation to affected people even after the implementation phase had been completed show the judicial review can be con-

As I am aware, are confined to administrative parlance and has not found a place in the Ordinances. (I am subject to correction on this). The term "squatters" used in the MIA itself should be a pointer to the alien authorship of the MIA. Perhaps, it was because of the ambiguity of this term not defined in our laws that it was fully described as "squatters having no legal or possessory rights".

Apart from legal implications arising from the use of the term in an agreement with a multinational company, there are far more important issues arising from it which should engage one's attention. One which as I see, should not be ignored is how a government with a conscience could justifiably call a section of the people "squatters with no legal or possessory rights" in an instrument they sign with a multi-national company, to whom the land is to be transferred. The situation is even less admissible when such declaration seems to be made in on what seems to be hypothetical grounds, and without an inquiry having been held to determine the rights of the people affected to the land they occupy. Could the absence of documentary proof to land be sufficient reason to declare them 'squatters having no legal and possessory rights'?

How many such persons are there? If one is to attach importance to the condition entered in the MIA that removal of these persons is to be done at minimal cost to the Company and with no relocation rights or rights to compensation in the case of the so called squatters, one gets the impression that large numbers are involved to become such a significant financial burden on the Company as to make special provision in the MIA. Are there many more people who come under the category of "squatters" other than inhabitants of "Purana villages", over whose removal a huge outlay of expenditure would have to be incurred? If not why enter such a clause which seeks to minimize the Company's expenditure on their removal? What did Minister C. V. Gooneratne say in this connection? "There will be no upper limit on such compensation and all occupiers who are displaced will have to be compensated by the Project Company, irrespective of the nature of their legal title". Only the hope of a politician, I suppose, far removed from legal realities arising from MIA.

Is the cost of relocation of a section of people and the removal of others without relocation benefits or compensation too much of a financial burden for the Company which claims to bring in such a big investment to the country? Alternatively, is the importance given to the cost of relocation of another section of people and the summary removal of another section as squatters, introduced in order to magnify the problem and



A Traditional house in the purana village