

Eppawala Phosphate Project

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My attention has been drawn to the recent renewed discussions on the Eppawala phosphate deposit. It so happens that I have in various capacities been involved in international studies in the areas of phosphate mining, appropriate technology and sustainable development, all of which are pertinent to the current issues relating to the mining of the phosphate deposits at Eppawala.

Many years ago I was the Chairman of the Commission of Inquiry into International Responsibility for Phosphate Mining in Nauru. This gave me an outstanding opportunity to study the ways in which the multinational phosphate companies exploit phosphate reserves to which they have access.

In the case of Nauru, despite the fact that it was under international trusteeship, the exploitation of phosphate reserves was carried out to the point where in large sections of this island not even a quarter inch of topsoil was left and the entire land resembled a moonscape. This is vividly depicted on the front cover of my book on Environmental Damage in Nauru and that is a picture which I wish could be seen by all who are concerned with this problem in Sri Lanka.

This book condensed the eight volume report which we as the Commission of Inquiry prepared. This volume titled *Nauru, Environmental Damage under International Trusteeship* was published by the Oxford University Press. It observed that a large portion of that little island is now unfit for human occupation, and unfit for any other purpose, and that the inhabitants of the island do not enjoy the basic human right of enjoyment of their natural environment. This is therefore a situation which gives us a clear warning of what we might expect of the phosphate resources at Eppawala should they be permitted to be extracted by a foreign entity in the space of a few years, when in fact it is a resource which should be carefully used having regard to the interests of future generations.

International corporations if given entry to phosphate land in Sri Lanka are likely to do the same. There may be all sorts of stipulations in the contractual documents which require rehabilitation of the land which has been mined, but my experience of such conditions has been that they are nearly impossible to enforce.

Eppawala should never be allowed to reach such a situation as Nauru, by surrendering control of the project operations to an outside agency. Once work starts on mining or quarrying the apatite it will be difficult to call a halt. Restoration of the site will not be possible especially because of the impact on our ancient cultural heritage in the form of the ancient irrigation system and other cultural heritage sites and monuments.

Moreover, if, as in Sri Lanka, the land containing phosphate is also close to or identical with historical heritage sites, the danger is multiplied several fold, for such sites, once given over even temporarily to the mining entity, are likely to be deprived of their priceless cultural value. This could well be a step on the road towards dismantling our historical heritage.

On no account should the inducements offered by any foreign corporation be permitted to give them any control direct or indirect over such sites.

In the case of Eppawala, which is in close proximity to cultural heritage sites and monuments, efforts were made starting back in 1974, to quarry the apatite rock and grind it to a fine powder for application as a slow acting fertiliser for plantation crops. This project used labour intensive

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technology appropriate to the time when a youth insurrection had just occurred and there was need for a crash program for employment. Efforts were made later to improve progressively the level of technology in extraction and processing of the Eppawala apatite, phosphate rock, but the wholesale transfer of technology from an overseas corporation is a different concept altogether.

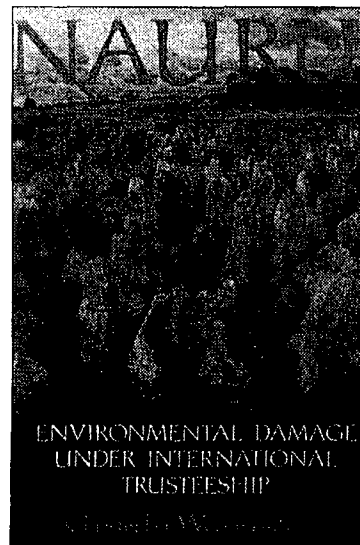
On the question of appropriate technology the UN Commission on Human Rights invited the UN University in the late 1980's to study the impacts of technology on human rights. I was asked by the UN University to coordinate this study and two volumes resulted which concentrate very heavily on appropriate technology, sustainable development and such issues. Case studies from many countries confirmed that the technology imported into the poorer countries is often decided upon without due regard to the appropriateness of the technology and its impact upon human and cultural rights and the rights of future generations.

When technology is transferred into a country there are pressures of external factors which for one reason or another, it is unable to resist. Often the developing world's role is that of a passive receiver of technology, and since technology has an even more intimate interaction on society than pure science, we should ensure that technological choice should turn in the direc-

tion of technologies which liberate the many rather than strengthen the few. These two volumes - *Human Rights and Scientific and Technological and Development* (1990) and *The Impact of Technology on Human Rights: Global case Studies* (1993) contained numerous examples of large scale modern technology, inappropriately introduced into poor countries with serious resulting damage to human rights.

In my two volume study *Justice Without Frontiers*, I further discussed "The Problem of Appropriate Technology" in volume II (1998, pp. 149 - 151). I there mentioned five internal factors and nine external factors that influence the transfer of technology. The internal factors as mentioned by me in 1998 are as follows:

"Internal Decisions



Uninfluenced by External Factors

A developing country may take a decision to import a new technology because its government:

(i) genuinely believes that the technology is truly essential to the well-being or development of the country;

(ii) believes that there will be a political advantage to it in importing such technology, e.g., that computerisation of the governmental process will give it greater control over its citizens; or that some extensive project, e.g., an irrigation project, will gain it political mileage;

(iii) is under pressure from internal vested interests to import such technology. Such pressures may come from economic interests it needs to cultivate for political reasons or from powerful individuals who will develop a vested interest in the technology;

(iv) has corrupt reasons, in the sense that individual members of the government or their associates may see private profit in it for themselves;

(v) sees advantages in the offer of a technology highly attractive to the dominant classes in the target country, though not directly of benefit to the masses. Such as elitist class and its demands are often psychologically linked to those of the consumer society of the West. As Marc Nerfin, the President of the International Foundation for Development Alternatives, so cogently

observed at a UNU Workshop in Indonesia in 1986, "there is a fracturing into two of every society, much worse than the traditional East-West and North-South rifts: the two Indias, the two Chiles, the two USAs, the two worlds".

The nine external reasons mentioned are such reasons as:

"Pressures of External Factors

The government maybe powerless to resist a new technology or product for many reasons such as:

(i) it may be tied to an aid package and must therefore be taken along with it;

(ii) it may be a technology sought to be introduced by a multinational corporation which is so influential in the country concerned that the government cannot afford to displease it and has no option but to permit its introduction;

(iv) the country concerned may have adopted an open-door economic policy and feels it may damage its image as a free investment country by denying entry to a technology which is heavily pushed by powerful overseas financial interests;

(vi) the technology emanates from a country to which the country concerned is heavily in debt;

(ix) the technology concerned may be made available apparently free of charge, but the strings attached are that the providing country becomes the sole market for the apparatus that needs to be purchased for implementing the technology, e.g., television infrastructure or a high-technology hospital."

Any project regarding the import of technology needs to be examined in the light of the factors outlined above.

All technology that is imported into a developing country needs to be scrutinised in the light of factors such as the internal and external factors I have listed. This is not always easy, for we are here on sensitive ground. It is important, however, that any major decision involving the import of technology or the control of natural resources should be subjected to the strictest scrutiny in the light of the considerations outlined above.

The third area in which my studies would have relevance to the Eppawala is the Principle of Sustainable Development. Eppawala lies at the heart of the ancient water and soil conservation ecosystem of western Rajarata, dominated by the 1500 year old Kalaweve reservoir and Jayaganga irrigation channel system, which takes water to the Anuradhapura city tanks. The extent of the apatite deposit is sufficient for use in Sri Lanka agriculture for several centuries.

In my *Separate Opinion* in the Danube dam case in the World Court, in 1997, I discussed -

(a) 'Development as a Principle of International Law',

(b) 'Environmental Protection as a Principal of International Law' and

(c) 'Sustainable Development as a Principle of International Law'. Thereafter I discussed

(d) the Importance of the World's Diversity of Cultures', and

(e) the 'Wisdom of the past concerning Sustainable Development', where I showed that reconciling the needs of development with protection of the environment is not new, as this had been a governing philosophy in ancient Sri Lanka.

Referring to the imperative of balancing the needs of the present generation with those of posterity, or inter-generational equity, I described the irrigation system of ancient Sri Lanka, the philosophy of not permitting, even a drop of water to flow into the sea without benefiting humankind, and pointed out that sustainable development had been already consciously practised with much success for millennia in Sri Lanka. I said "The notion of not causing harm to others and hence *sic utere tuo ut alienum non laedas* was a central notion of Buddhism.

It translated well into environmental attitudes. 'Alienum' in this context could be extended by Buddhism to future generations as well, and to other component elements of the natural order beyond man himself, for the Buddhist concept of duty had an enormously long reach."

Continued on page 9

Eppawala... From page 6

This Separate Opinion is now regularly cited whenever the question of sustainable development is discussed and has been developed further at McGill University's Centre for International Sustainable Development Law of which I am the Patron. This Centre has recently produced a major work on the subject co-edited by Marie-Claire Cordonier Segger and myself, *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (2005). This work deals with the reconciliation of economic, social and environmental law and has great relevance to the Eppawala problem for it stresses the sustainable management of natural resources having regard to the conflicting interest involved. The issues discussed in this work needs to be studied as a preliminary to any discussion on Eppawala.

I should refer finally to a judgment of the Supreme Court of Sri Lanka. In this case the following observations were made, which also have intense relevance to the matter in hand.

"Indeed, a hypothesis has been advanced that the Eppawala Deposit was not 'discovered' in 1971, but was known to our rulers and people for thousands of years who shared the thought that the deposit should be utilised. The difference between them and us is how this should be done. The ingenuity of the rulers and people of Sri Lanka in times gone by, it is suggested,

had created a stable and sustainable agricultural development system harnessing the key natural resources available within their natural habitat, including the Eppawala deposit. The natural processes of weathering, microbial activity and precipitation might have released plant nutrients which were carried overland by flowing into the reservoirs, channels and rivers as well as permeating into the soil matrix and possibly reaching underground aquifers".

Such a hypothesis needs to be studied by scientists, for the implications are far reaching. For reasons such as this, a former Director of the Archeological Survey of Sri Lanka, Dr Siran Deraniyagala, has remarked *"The water heritage of Sri Lanka comprises two elements, the natural heritage and the man-created (cultural) heritage."* He went on to observe that *"should this heritage resource with which Sri Lanka is blessed be diminished in any manner"* this could be seen as the neglect of the country's birthright.

For all these reasons, the people of Eppawala and all concerned with our country's environmental welfare and historical heritage, should be supported in their efforts to safeguard and continue to utilise our phosphate resources in a sustainable manner, rather than allow them to be exhausted in a mere thirty years as proposed.