A Complete Change in the Legal System to Support the Private Sector led Economy in Sri Lanka, in Collaboration with World Bank, But, with no Consultation with the People

On June 22, 2000 Professor G.L. Peiris, Minister of Justice, Constitutional Affairs, and Ethnic Affairs announced that a major Legal and Judicial reform would be carried out to upgrade the entire Legal System to be fully equipped to support private sector led economy.

He also said that this would be the largest and the most comprehensive legal reform since Independence in Sri Lanka. A loan of Rs. 1.4 billion has been obtained from the World Bank following discussions held in November 1999 between President Chandrika Bandaranayake, Prof. G.L. Peiris and the President of the World Bank, Mr. James Wolfensohn. The loan Agreement with the World Bank was signed in Washington on June 22.

(Daily News June 23, 2000)

Lack of openness and transparency

What was special about this decision between the Government and the World Bank, which included the “largest legal reform” and a “massive loan” was the remarkable lack of openness and transparency, and the complete absence of any prior dialogue with the people of the country or with their elected representatives, the Members of Parliament or the Cabinet of Ministers.

The only mentioning of this proposal was two years ago by Prof. G.L. Peiris (in one brief sentence) at his speech at the Paris Aid Group Meeting. He simply said that “The entire legal system would be overhauled with Assistance from the world Bank, in support of the private sector led economy”.

This speech and the above statement appeared just in one of the English daily news papers on one occasion. We, MONLAR and some Members of Parliament having assessed the seriousness of this move requested Prof. G.L. Peiris and the President to explain the details and content of the reforms intended, but there was no response, then.

The next announcement was in June 2000, as mentioned above, saying that a loan of Rs. 1.45 billion (US $ 18.2 million) had been agreed and the agreement was signed. This report also described that much work had already been done, but the actual content of the reforms were not revealed in a manner that would allow any public discussion.

There has not been any announcement so far about any decision taken at the level of Parliament or the Cabinet of Ministers.

No clear mandate given by the people to allow the Private Sector to lead the Economy

Through out the last 23 years, the two Governments that were in power, simply assumed that the "private sector should be considered the engine of development "and they were given all the necessary powers and facilities to decide the economic policies and plans. However, at no elections since 1977 when this policy was started, did either of the two big parties make a clear statement to the public that the private sector would be given such authority. They never asked the people whether the ordinary masses of people would agree with such a process.

In fact the present Government of the People's Alliance was strongly opposed, to the "policy of privatisation" and its implications, before they were elected. Through out those 17 years there was strong opposition and resistance from all sections of the working people, the workers' Trade Unions, plantation workers, farmers, fisher communities ,environmental organisations and Human Rights groups, against these policies and the consequences suffered by the poorer sections of society. The President Chandrika and all parties in the PA at that time actively participated in this opposition and resistance.

However, when they were elected in 1994, the first thing that should have been done was to make an assessment of the results in terms of the implications of this policy on the economy, the social consequences, on human rights, poverty and social stability. An assessment should have been made about the results as well as the future potential of this policy to achieve the objectives of growth with equity, reduction of poverty, unemployment etc. which the policy claimed to achieve. No such assessment was attempted.

The World Bank and the Big business community organisations advised and insisted that the Government should immediately embark on accelerating the adjustment processes to further strengthen the process of privatisation.

A severe process of setting up structures to carry out this process of further adjustment in favour of the private sector and foreign capital, without any obligation to consult the people, the Parliament and any other elected representatives was started; these structures were all under the President and used the special powers of the President. The NDC (National Development Council), PERC (Public Enterprise Reform Commission), BOI (Board of Investment), Southern Province Development Authority, and the Presidential Task Force on Agriculture are some examples. These institutions had control over the entire range of economic development, but, were not answerable to the Parliament or to the people.

All the policy recommendations made by the WB and IMF were based on this assumption. That the private sector led economy would lead to faster economic growth, which would trickle down to the poor and eradicate poverty. This has not happened in Sri Lanka. The last 23 years of this strategy in Sri Lanka has been a process of "taking away from the poor to subsidise the richest people in the country and foreign businesses, by way of giving them increased tax concessions and massive government investments in infra-structure. The infra structure development efforts in the last 23 years have clearly been for the purpose of attracting foreign investors and not for purpose of making the ordinary people's contribution to development more effective and to make their life easier. Providing "cheap, subservient, labour" is still seen as one of the main attractions for big foreign investments. Thus, under this policy there is an obligation to create more a more cheap labour which can only be done by consciously keeping the people poor.

Therefore any proposal to change the legal system towards supporting the private sector led economy carried out in collaboration with the World Bank's looked upon by the majority of the ordinary poor people with great fear and suspicion. Any open revelation of such a process is bound to come across strong questioning and opposition by all sectors of working people, the poor in the country. It can justifiably be assumed that such lack of openness and transparency about the intended legal reforms in favour of the private sector is due to these factors.

The UNP that changed the policies in 1977 did not ask the people whether the masses of people were in favour of "privatisation". It is true that the people were tired of the state owned enterprises were handled to concentrate the power in the hands of a limited group of Government bureaucrats. What people wanted was not a similar domination and power in the hands of a limited group of ruthless profit makers and a government that suppressed the poor to allow this plunder.

The promise of the UNP was. "A free and righteous society "But, the period of this conversion was the period of worst suppression of the people in the recent history. The PA in their campaigns in 1994 described this period rightly as one of terror, suppression and corruption". What PA promised was "freedom from such terror, suppression and corruption, a society with a human face, a market that is genuinely free and beneficial to all and a society of freedom and prosperity "what emerged after 6 years was far from it.

Business Community admitted their failure

In August 1998, the major organisations of the big business community in Sri Lanka, such as the Ceylon Chamber of Commerce, The Association of Chambers of Commerce and Industry, the Exporters Association and the Employers Federation issued a Joint Declaration. This was called a "Proposal of the Business Community for Peace and Economic Development" In this declaration at the very beginning they said that "The governments during the last 22 years adopted the policy of considering the private sector as the engine of growth and development and open market policies based on this assumption was continued throughout this period. However, they admitted that in spite of the private sector being allowed to control and handle the entire economy, poverty and employment in the country have not been solved. None of the other social problems such as health, education, housing, have been solved.

But they demanded that all political parties (meaning the two major parties that ruled the country) should agree that the same private sector, big business, would be allowed to lead the economy without any obstacle for at least another 15 years. They demanded that industrial, agricultural; trade and commerce policies of the country should be based on their guidance.

In these proposals they said the highest priorities should be the creation of a flexible labour market, meaning that the existing laws protection security of employment and other labour rights should be removed. The World Bank in March 1996 also recommended the creation of a free labour market by removing laws protecting security of employment such as the "Termination of Employment Act"

World Bank has admitted the failure of its poverty alleviation strategies of the last 50 years

In the World Development Report of the World Bank in1999 it is admitted that the strategies advocated and adopted by the WB for poverty alleviation for over 50 years have not succeeded. Poverty in the world has been increasing it would continue to do so and by 2015 there would be more poor people that at present.

Human development report has said the same thing and it has also said that Globalisation process (led by the WB and the IMF) has increased disparities between the countries and within countries.

A study conducted by IFAD of the UN on the changes in Rural Poverty in 114 selected countries between 1965 to 1988 titled "State of World Rural Poverty" has shown that the strategy of "Growth trickling down to alleviate poverty" has not proved to be correct. World's rural poverty has been increasing as a result of this approach. It recommends a New Approach that recognises the potential of the poor to alleviate their poverty should be adopted. The contribution that the small rural producers can make in overcoming their poverty and the capacity of these small producers to contribute to the overall national growth should be recognised and enhanced.

Sri Lanka had a low and decreasing income disparity up to 1977. It had such rapid and large increase in the income disparities since the change over to private sector led growth strategy that by 1993 Sri Lanka became one of the highest income disparity countries by 1993 that it became only next to Brazil, the country with the largest disparity among the countries listed by the World Bank. In it's World Development Report of 1993.

Some indicators of the Consequences of the Private sector led economy

The seriousness of the consequences of private sector led economy, in the manner in which it has been applied in Sri Lanka, can be seen by looking at some of these figures;

1. There were nearly 1.8 million (1.768, 921) families who received poverty alleviation (Samurdhi) grants by 30th June 1999. They received a family income of less than Rs. 1,000(US$ 13.3) per month which is much less than 1 US $ per day
2. By 1993 60% of the children below 5 years were malnourished (according to an island wide survey by UNICEF
3. A survey conducted in 1994 revealed that 50% of the pre school children, 58% of the primary school children, and 36 % of the children between the ages of 11 to 19 were anaemic. 39% of the pregnant mothers and 45% of the non -pregnant mothers were anaemic. In 1999 about 65% of the pregnant mothers were said to be anaemic according to health department sources.

Some of these figures were stated by the Minister of Plan Implementation on his message on the Nutrition week (Daily News, March 20th, 2000)

An extremely serious consequence of this policy was the near complete breakdown in rural small scale agriculture, the main livelihood of the rural population which is about 78 % of the total.

This contributed to a massive growth in unemployment and displacement of youth from their livelihoods. The youth rebellion in 1988 –90 resulted in over 60,000 disappearances which was said to be the highest recorded figure in the history of the UN Committee for Involuntary Disappearances that visited Sri Lanka in 1991.

This loss of livelihoods of youth is one of the largest contributory factors behind the intensification of the ethnic conflict and the resultant war that has killed over 60,000 and has displaced about 1.5 million people.

Requirements for continuing the Private Sector led economy in Sri Lanka

The suggestions made by the private sector as priorities and the recommendations of the World Bank for further structural adjustment are the clearest indicators of the future requirements for continuation of the private sector led economy.

They include the following,

Both the World Bank as well as the private sector insist that a "Free labour market "or a "flexible labour market should be created. This is to say that the employers should be allowed to decide on the "expulsion" of workers and recruitment of new labour without any legal restrictions for the security of employment. A free labour market also means that no compensation would be paid when workers are removed from their jobs. The World Bank has specifically stated that the "Termination of Employment Act which requires that workers should be paid compensation if they are removed from employment. They also have said that the employers should have more freedom to decide on the wages and wage systems, about holidays and the World Bank has been complaining that the amounts spent by the Government for pensions should be cut down.

The major recommendations for structural changes in relation to Agriculture by the World Bank since 1996 and by the National Development Council in 1997 relate to this emphasis of the private sector about the need to create a much larger abundance of "cheaper labour " to be competitive in attracting foreign investment.

This recommendation is for the government to intervene in encouraging and accelerating the process of small farmers selling their land and moving out of their agricultural livelihoods. This is to be done, not by creating better opportunities for farmers to be attracted to better economic activities in other sectors, but by creating conditions that would make it impossible for the farmers to continue in the cultivation of domestic food crops, such as rice and other subsidiary food crops. The present agricultural situation is compelling small farmers to do this through desperation.

!.8 million small farmer families losing their means of living would certainly create a much larger abundance of cheap labour. The same recommendation for creating a free labour market has been proposed in relation to the plantation workers too.

The policies and adjustments pushed through in relation to fisheries is to invite big foreign companies for deep sea fishing and to attract and promote bigger investors in fish farming (aqua culture, such as export oriented prawn farming) in the coastal areas, invite companies for inland fisheries allowing them to take over the very rich resources of inland water reservoirs, with a tremendous potential for providing livelihoods and food security to the small scale fish producers (about 500,000 families) and to the poorer sections of the domestic consumers.

Already the policy of privatisation and the promotion of big companies in the production and distribution of day to day consumer items such as soap, tooth paste, washing powders, soft drinks, cooking oils, shoes, agro-chemicals, fertilisers, tobacco and alcohol, including essentials such as milk and milk foods and medicines and drugs, have created large monopolies such as Enslavers, Nestle, Coca Cola and drug companies completely destroying the small scale producers and the large potential for creating livelihoods and the possibility of utilising the creative for many more people. These monopolies dominate the entire field of advertising and trade and are using the policy of having no price controls to dictate very high and constant price increases transferring their large advertising expenses to the average and poor consumers.

In the recent months when the prices of all items increased by a very large margin, suddenly due to increased taxes for war and to meet the large budget deficits, the organised workers and other people began to agitate against the unbearable cost of living, the response of the government, as expressed by the Commissioner of Internal Trade was to say that the government can not intervene on the prices due to the "Open Market policies ". This is a clear element of the Private Sector led economy as it is applied in Sri Lanka. The impact on the people is made worse by the fact that unlike in many other countries, including the USA there is no government intervention to control the formation of monopolies. In fact the governments policy is the opposite as seen in the case of signing the contracts such as the selling of Gas to the Shell Company, the attempted sale of the Epical Phosphate deposits to the largest mining company in the world, Free Port Mc Moran of USA, the agreements that have been reached with the Platte sugar company to buy all their produce by the Government at prices much higher than the world market prices of sugar. This agreement has resulted in the consumers being compelled to pay a price of about Rs. 32 per keg when the world market price of sugar is around Rs. 12 per keg. Prima, U.S.A company has been given a similar monopoly to import a large quantity of wheat and to sell wheat flour and other types of animal feed. The government institutions such as the Oils and Fats Corporation that were buying domestic products such as maize , providing the small farmers a considerable market at prices higher than the present prices offered by the traders were closed down. The closing down of the National Milk Board provided the milk foods companies such as Nestle a monopoly to dictate unbearably high prices of milk including the essential milk for babies. Some of these moves are not only serious violations of the principles of a free and competitive market economy but are serious crimes committed against the poor in a country where there are such high levels of malnutrition and anaemia among children and mothers.

Proposed change of legal system in favour of the private sector is totally undemocratic and a crime against society

Looking at these consequences, some of which have resulted from the already given powers and facilities to the private sector for 23 years, a decision to change the entire legal system in the country to further enhance and facilitate the private sector controlled processes violated the basic requirements of participation.

To do this with out any assessment of the consequences, particularly the social consequences and without providing any opportunity for the people to know what is being done and express their views on such a proposal and with out revealing to the people, particularly those that are likely to be the affected victims , the contents of these intended legal reforms and their implications, is not only a violation of democracy and principles of openness and transparency, but it reality would be a serious crime against them in violation of the basic requirements of social justice.

When this is done as a deal worked out between the World Bank, the big businesses and a few people in power who have collaborated in the past to bring about such costly failures and destruction there is reason for fear and suspicion.

In fact it is only the lack of information and awareness that keeps the people away from expressing their “anger“against those who are really the engineers of these moves.

It is really tragic that those who are the key planners of these moves can openly describe them selves as “Pure and Intelligent Leadership”.

Responsibility of the World Bank President and his Role in the Proposed Legal Reforms

As already mentioned it is said that this agreement for Legal Reform was decided and the Rs. 1.45 billion loans was granted, as a result of a discussion that was held in Washington between President Chandrika, Prof G.L. Peiris and Mr. Wolfish, the President of the World Bank.

On 6th October 1998, Mr. Wolfensohn making his annual speech titled “The Other Crisis “to the WB Board of Governors spoke about the Asian financial crisis of the late 90s and described how not only the Asian Tigers, South Korea, Thailand, Indonesia, Malaysia but also the big economic powers such as Japan crashed in their economies that were said to be miraculous successes of the policies of Market liberalisation. He described the immense sufferings that all poor people had to under go as a result of this financial architecture by the big financial institutions. The most important point he made in this famous speech was that the price for these failures have to be paid not by the planners or by the respective governments but, by the poorest victims who had no part in the planning and the decisions. This price had to be paid with their lives and the lives of their children. He said that the lesson to be learnt was that the plans imposed from out side, from the top do not work effectively and that it has to be admitted that the big financial powers of the world are incapable of planning for the whole world. Therefore, each country should be allowed to decide, with the participation of civil societies, on their strategies and plans for economic development based on the specific needs, and conditions, histories and cultures that were different. He emphasised that not only the financial aspects should be considered in such planning but that it was equally important to look at the social and human consequences of these plans.

He went even further in designing an approach that takes these aspects into consideration in his formulation of the “Comprehensive **Development Framework"**. However, according to professor G.L. Peiris he has agreed to grant this massive loan of Rs. 1.45 billion to overhaul the entire legal system in the country. Therefore, a question arises as to whether he did not know that this Legal Reform Proposals had been decided, without the awareness of any of the important sectors of society that should have been consulted and that it had not even been discussed and decided at the level of the Parliament and the Cabinet of Ministers as far as the public knows.

It is difficult to believe this since the World Bank has a permanent residential office in Colombo whose function it is to keep the World Bank informed of these happenings in Sri Lanka and to monitor how the World Bank funded activities are designed and implemented. The question then arises about the genuineness and the seriousness of the World Bank about its claims to have civil society participation and transparency, particularly on matters that affect poverty alleviation. Has Mr. Wolfensohn been sufficiently responsible to ensure that that the principles he stated were adopted.

A Look at the Project Proposal and the Project appraisal by the World Bank

The project proposal for the "Legal and Judicial Reforms project" that has been presented by the Ministry of Justice, Constitutional Affairs, and Ethnic affairs says that a Committee for Commercial Law Reforms was appointed in October 1998with representatives chosen from among The Ministry of Internal and External Commerce and Food, The Law Commission, Bar Association of Sri Lanka, Attorney General's Department, The Ceylon Chamber of Commerce, and The National Chamber of Commerce. The committee comprises of 2 persons from the Law Commission, 1 from the Ceylon Chamber of Commerce, 1 from the Federation of Chambers, 1 from the Bar Association and one from the Attorney Generals Department. They have the responsibility of "Conceptualising the reform agenda", and "facilitate debate and consensus building among stake holders"

This group has identified a number of areas in the law that needs amendments among them are subjects such as:

a) Intellectual Property
e) Company Law
l) Debt Recoveries Act
m) Labour Law
n) Intellectual Property Law

There are several other areas. The group has already synthesised their individual priorities and agreed on most important areas for reform to be included in their report the selection was on the basis of potential impact on private sector activity, linkages with country's political and economic situation and with global market outlooks etc... The final report after consensus was submitted in April 1999 the next step was to form separate groups to develop detailed amendments followed by preparation of draft legislation

According to the Indicative time table for completion of Activity

Identification of priority areas	- completed
Report on priority areas	- completed
Consultation with stake holders	
On inception report	- Dec.31, 1999
Preparation of Draft new legislation	- June 30, 2000
Consultation on draft new legislation	- Dec 31, 2000

It is stated that Report on Priority Areas of Reform is now completed.

From the above it is clear that the key planners and designers of this process had heavy representation from the big business interest while there was no representation to protect the interests of the people, the workers and of the interests of social justice, human and labour rights, environment etc. This absence is highly questionable particularly because further strengthening of the private sector led processes would seriously affect the interests of the people mentioned above. The intended legal reforms include such areas as "Labour Law", Intellectual Property Rights Law, environmental impact of further market expansion, giving a freer hand to the private businesses etc. Some of these issues such as the Selling of the Phosphate Deposits to the US Company have already been vehemently fought against by civil society forces.

Phosphate Case

It is interesting to note that a few months back the people who were fighting to protect their resources of phosphate and the environment and land; being plundered away by this foreign company was able to use the existing law to get a verdict that protected their interests. In this case the respondents, the Government and the Companies argued that the Government has the right to sell this and the courts have no right to decide on this. However, the court took up the position that natural resources and the wealth of the country belong to the people and that the government was only the care taker and the protector. The people can ask for protection by the law if this right of ownership and the responsibility as protector is violated by the Government.

Any legal reform to further strengthen the private sector interests and power and the government's ability to support the private sector, should, therefore, be watched carefully by the people. It is absolutely necessary therefore that such people should be consulted in this process of redrafting law. The same thing applies in the case of many other areas proposed for reform such as Intellectual property rights, labour laws etc.

The structural adjustments pushed forward by the WB and the Private sector discussed so far make it obvious that legal reforms that may have implications on labour rights, environmental rights, right to natural resources such as land, water, sea, forests, biological resources and therefore the more fundamental rights such as the right to food and nutrition and livelihoods must consider the people affected as stake holders. Sufficient opportunity should be given to these people to participate in deciding even the very basic goals of this project (concept of strengthening the private sector led economy as against an economy that is based more on people's participation and potential contribution towards directly addressing the issues of poverty etc.)

A look at the Project Appraisal by the World Bank

The World Bank has done a project appraisal and produced a report to the government of Sri Lanka on the

"Proposed Credit in the Amount of SDR13, 600, 000 (US$ 18.2 million equivalent) (World Bank Report No. 20135-CE) on May 12, 2000

It is interesting to note that The Key performance indicators in this report include

- Improved transparency in legal reform process, through increased consultation with stake holders. In answering the question on **Participatory Approach and** stake holder participation the answer given is that the stake holders, namely Bar Association, law schools, Chambers of Commerce, Judicial Services Commission and business Associations have been part of the process of consultation. This shows that there is a very narrow understanding of the stake holders in this matter

Similarly on the issue of environment it is simply said that the project will have no negative environmental impacts. Of course it is true that the mere reform of law will not have any thing to do with environment. But it is the facilitated expansion of private sector operations that will have very serious environmental consequences. Therefore, it is obviously necessary to allow such interested groups to have a say in reforming laws to protect these interests against the ruthless operations of the private businesses. Enforcing property rights and contractual obligations is said to have a positive impact on the environment. There are enough evidence in Sri Lanka and world over to show that this is not generally the case.

Regarding assessment of social aspects; what is said is only that public access to legal information is a high priority among other things. The way the project intends to respond to this need is by improving access to information through LAWNET. Which is a facility accessible to a very highly limited group of privileged people? The intention is really to provide easy access to the businesses and not to the victims of big business operations.

The degree of transparency in the information about brining in these legal reforms shows the type of openness it will have.

Finally we would like to bring attention to the Global Process of struggle that is going on today to fight against the present processes of Global domination of the big national and international powers of trade. The very basic questions about the wisdom of further promotion of these very undemocratic processes have to be questioned.

By Sarath Fernando

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