

THE CONCEPT OF “EMINENT DOMAIN” AND ITS IMPLICATIONS ON THE APPLICATION OF LAND DEVELOPMENT ORDINANCE IN THE POST-ARMED CONFLICT NORTHERN PROVINCE OF SRI LANKA.

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ABSTRACT

The Land Development Ordinance No. 19 of 1935 (LDO) is considered as a central piece of legal architecture in providing systematic development and alienation of State land in Sri Lanka. The LDO was legislated to settle landlessness created by the Crown Encroachment Ordinance of 1840 which was intended to transfer all lands to which title could not be established, to the State and is the basis for the incorporation of concept of Eminent Domain into the land policies of Sri Lanka. The problem identified by this paper is that the retaining of the State’s monopoly over the lands and centralized the land powers, resulted negative implications on the application of the LDO as well as on the livelihood of the people in the post-armed conflict Northern Province of Sri Lanka. This is despite the Provincial Councils, Provincial Land Commission and the National Land Commission established under the Thirteenth Amendment which were intended to devolve the powers to administer the land at the Provincial level. Hence, the State’s eminence power and centralized land administration under the LDO lead to increasing politicization of land grant to the individuals through *encroachment regularization*, corruption and bias in selecting the individuals for a permit, lack of transparency and abuse of power and lack of accountability, equity and equality. Hence, the paper recommended the means to accommodate the post-armed conflict socio, economic and legal changes into the LDO through desk-based analysis of existing literature and interviews with relevant officials.

Keywords: Land Development Ordinance, Eminent Domain, implications, Post-armed conflict

INTRODUCTION

Land is considered as one of the basic resources for generating income. Throughout history, it has played an important role in providing for household income, decision making power within and outside the household, and ensuring security and status in society. This is also considered as a storage of value and passes on to the next generation.

The right to land is not recognized as a fundamental right under the Democratic Socialist Republic of Sri Lankan Constitution of 1978. Recently, the Public Representations Committee on Constitutional Reform recommended a new Bill of Rights which in Articles 15 and 20 includes the right to land as a fundamental right.¹ However the statutory land laws which are generally based on Roman Dutch Law principles, guarantee the land rights. It is in doubt whether these guarantees are observed to the fullest by the State in the alienation of lands carried out by the State.

Land in Sri Lanka can be owned/acquired either by an individual or by the State. The State owns over 82% of the land in Sri Lanka (World Bank, 2008) with the remaining owned by private by purchase, gift or donation, prescription, and testate or intestate succession. The State may acquire land under the Land Acquisition Act, Requisitioning Act and Urban Development Projects (Special Provision Acts). It may dispose of land by Permit, Grant or by the President under the State Lands Ordinance No.08 of 1947, Land Development Ordinance No.19 of 1935 and (hereinafter referred to as the LDO) and the Land Grants (Special Provisions) Act No. 43 of 1979 (hereinafter referred to as the LGSPA). Thus, the State land has been defined as ‘*all lands in Sri Lanka to which the State is lawfully entitled or which may be dispensed by the State and includes all rights, interests and privileges or appertaining to such land*’² and is held in trust for the public.³ The policies of the legislations were heavily influenced by political, economic, social and cultural reasons. In this background, this paper focuses only on the LDO which is considered to be the central piece of legal architecture on the State lands.

¹ Report submitted by Public Representations Committee on Constitutional Reform on 10th May 2016 is available: https://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf retrieved on 02/04/2019

²Section 110(1) of State Lands Ordinance No.8 of 1947

³ Land Ownership Bill Special Determination No. 26A-36/2003 cited by Nabeela Raji (2017) *Land Development Ordinance: Key concerns and idea for reforms*, Law and Society Trust p.3

PROBLEM STATEMENT

The LDO was legislated to promote agriculture and enhance the livelihood of the people.⁴ However, the reservation of the State's monopoly through the government officials and centralization of the land powers under the Ordinance reflect the State's Eminent Domain. This resulted in negative implications on the application of the LDO as well as on the livelihood of the people in the post-armed conflict Northern Province of Sri Lanka. The centralized land powers culminated in the confusion of chain of command and lack of specialization on procedural aspects of State land alienation. This paved a way for increasing abuse of powers, politicization of land grant to the individuals through *encroachment regularization*, corruption and bias in selecting the individuals for a permit, lack of transparency, accountability, equity and equality. Hence, this paper aims to identify the effective ways to overcome the post-armed conflict in relation to land issues connected with the legal changes in LDO together with the post-armed conflict socio and economic issues.

METHODOLOGY

The method adopted for this research was based on the Qualitative Method. Primary data for this study was collected from interviews with relevant government officials, legal practitioners, academics, relevant statutory provisions, administrative circulars and reports on judicial decisions. Text books and scholarly articles available at both library and electronic databases also aided as secondary source of data.

This paper is designed on the case study approach to explore the causation between the post-armed conflict land issues and the Eminent Domain of the State. It examines the land issues of certain group of people i.e. the holders of permit/grant. Moreover, the doctrine of Eminent Domain which generally refer to the State's power in acquisition of private land for the purposes of public utility, is extended further to explain the ultimate control/ power of the State over the lands given under the permit/grant to the individuals.

Moreover, this study was limited to focus only on Sri Lankan context as most of the comparative studies related the doctrine of Eminent Domain in the land acquisition by the State rather than in the land alienation by the State. Land become more sensitive in the post-armed conflict context for the survival and sustainability and hence, this study is timely and needed as many people in the post-armed conflict Northern Province of Sri Lanka are deprived of their rights over the State alienated lands due to the reasons resulted from the armed conflict.

LITERATURE REVIEW

The study (Raji, 2017) analyses the provisions of the LDO and built on what has already been recommended for the changes in the LDO. It focuses generally on the implications of the LDO provisions, rather than considering the procedural implications of the LDO in the post-armed conflict context. The socio-legal aspect of postwar evictions was explored (Uyangoda, 2017) to understand the inherent privilege enjoyed by the State in acquisition of the private lands in Sri Lanka. Thus, this paper relates the abuse of absolute power exercised by the State over the lands alienated to the people by permit or grant. The study on "Land and grievances in post-conflict Sri Lanka: exploring the role of corruption complaints" (2014) examined the role of corruption complaints in relation to a number of highly politicised and ethnicised post-conflict land issues and concluded that the complex legal and institutional protection of land was a significant factor behind most of the conflicts over land.

In this background, following an introduction to the concept of Eminent Domain and its relevance on the land policies of Sri Lanka, this paper discusses the relevance of the concept under the LDO provisions before analyzing the implications on the application of the LDO in the post-armed conflict in Northern Province.

THE CONCEPT OF EMINENT DOMAIN AND ITS RELEVANCE ON LAND POLICIES OF SRI LANKA

The Eminent Domain is a powerful tool of the government to acquire private property for the purpose of public interest, on payment of compensation. It emerged as *a justification for State's violation of individual's rights and also as an indicator of State's benevolence to its aggrieved citizens* (Khan, 2015). The concept of Eminent Domain was unilaterally recognized by the colonial rulers and given jurisprudential framework in 17th Century by natural law jurists Hugo Grotius and Samuel Pufendorf. However, the Eminent Domain is considered as significant obstacle to advancement of the land rights, since the State exercises this power as absolute sovereign and not as a guarantor of people's right (Uyangoda, 2017).

The absolute ownership over the land was exercised by the Kings in the ancient time and hence the word 'Eminence' can be related to the monarchical power. The Kings promulgated the rules in consultation with his officials which was considered as the source of law. *The King's prerogative to waste and jungle lands is described as serving the vital purposes of developing new*

⁴ The Land Development Regulations 2005 by Extraordinary Gazette No 1843/50 dated 03/01/2014 categorize the people eligible to obtain permit or grant as peasant; educated youth; lower income group persons; and upper income group persons

areas, extending settlements, and the rehabilitation of settlements devastated by war or natural disaster.⁵ The ancient administrative system was gradually changed by the colonial rulers but the State monopoly over the lands was protected by the successive democratic governments.

The rapid evolution of land policies in Sri Lanka (then Ceylon) can be traced from the British colonization who were heavily influenced by the capitalism and thereby prioritizing the land for plantation sector. The Crown Encroachment Ordinance No.12 of 1840 was intended to transfer all lands, to which title could not be established, to the State and thereby given Eminent Domain over the lands to the Crown. This was further strengthened by Waste Land Ordinance No.1 of 1897 and State Land Encroachment Ordinance No.12 of 1840.

During the colonial period, it was urged to set up an independent body to review the land policy and to make recommendation, due to the landlessness created by the above Ordinances. It was achieved in 1927 by the formation of the Land Commission which opined that the Crown lands be entrusted to the government for the present and future generation of inhabitants. Despite British prioritization, the Commission recommended to prioritize the needs of the peasant groups, which, at some point later turned into nationalism.⁶ The recommendations of the Commission were given legal effect by legislating the LDO in 1935. Although, the Commission referred the 'Eminent Domain' with the public trust doctrine, certain provisions in the LDO retained the monopoly in favour of State. This is further evident from the various land settlement schemes such as the Mahaweli Development Programme, Presidential Task Force on Land Alienation and LGSPA which were intended to enhance the agricultural activities in the dry zone.

The State exercises or enjoys a wider eminence of power over the lands under the Land Acquisition Act No. 9 of 1950. The objective of the Act is to make provision for the acquisition of private lands and servitudes for public purposes and to provide for matters connected with or incidental to such provision including payment of compensation upon the acquisition. In order to acquire the private lands under the Land Acquisition Act, the government has to issue a notice of acquisition and gazette it. "However, there are instances where proper acquisition notices have not been issued when private lands are taken by State entities. "Noteworthy also, is the recent spate of acquisitions using the Urban Development Projects (Special Provisions) Act, which allows the Executive to issue orders for acquisitions on the basis of 'urgency' and for the 'welfare of the people' with very limited redress available for affected parties" (Fonseka, 2014).

The 13th Amendment to the Constitution of 1978 is also greatly impacted on Sri Lankan land policy. Although the 13th Amendment devolves the land powers to the Provincial Councils,⁷ the Supreme Court held⁸ that the power over the State land has not been ceded to the Provincial councils but remains with Central government. The 13th Amendment introduced National Land Commission which will be responsible for the formulation of National Land Policy concerning the use and distribution of State land. Since the Commission has not been set up yet, a National Land Policy is critically needed in the post-armed conflict areas in Sri Lanka.

In the absence of a National Land Policy as envisaged in the 13th Amendment, the successive governments have the inherent privilege in designing the land policies and land settlement schemes to acquire the land by the legislature under the provisions of the 'Eminent Domain' clause in the land policies, laws and the land settlement schemes. Meanwhile, the state is in the habit of using this privilege or power to dilute the ethnic proportion of an area as occurred in Manaluru (an area situated in Eastern Province) which lead to the deprivation/reduction of earnings from fishing for the locals. In this background, this paper addresses following the concept of Eminent Domain under the LDO and practical challenges.

THE RELEVANCE OF THE CONCEPT OF EMINENT DOMAIN UNDER THE LDO

As alluded to earlier, The LDO was legislated to settle landlessness created by the Crown Encroachment Ordinance of 1840. It was enacted in the pre-independence era where the household income generated by most families came from agriculture and therefore the LDO was intended to promote agriculture and enhance the livelihood of 'peasantry' by way of alienation of Crown Land.

The LDO prescribes the procedures *inter alia* of issuing the permits and grants, disposition of holding, succession and cancellation of permits and grants. The chapters⁹ prescribing the above procedures encapsulate the concept of Eminent Domain.

⁵ De Silva, K M. 1981. A History of Sri Lanka, University of California Press Cited in Uyangoda *Supra*.4, p.8

⁶ The Commission recommended to confine the state land alienation to the Ceylonese and to exclude Tamils of Indian origin.

⁷ Item 18 of the Provincial Council List provides that *rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement* are all reserved for the Provincial Councils to the extent set out in Appendix II

⁸ Solaimuthu Rasu V. The Superintendent Stafford Estate (S.C. Appeal No. 21/2013) available: http://www.supremecourt.lk/images/documents/sc_appeal_21_13sc.pdf retrieved on 23/03/2019

⁹ Chapters III, IV, VII and VIII respectively

Section 20 of the LDO provides that all the alienation of State land by grant shall only be made by the Kachcheri *i.e.* the office of the Government Agent (GA) which comes under the central body. The GA is given discretionary power under section 23 to select any applicant to receive a permit or a grant of Crown land, to postpone consideration of any application and to reject any application. The office of GA is replaced¹⁰ by the Divisional Secretary (DS) or Assistant Divisional Secretary (ADS) of each Divisional Secretariat Division. Today the DS or ADS exercises the power of alienation of State lands under the LDO. However, an aggrieved party can appeal against the decision made under section 23(1)¹¹ to the Provincial Land Commissioner, who has the power to give general or special direction or decision to the DS/ADS or land officer on how to discharge his duties in relation to State land.¹²

Upon the alienation of the land, the permit holder becomes a grantee but not an owner. The permit is personal to the permit-holder and upon his/her death no title shall pass or accrue to his/her heirs or to any person other than a successor duly nominated by such permit-holder. The permit constitutes a form of lease in perpetuity and is subject to certain conditions. If the conditions are not met by the holder, the permit can be cancelled and the land will revert back to the State. It will be renewed annually upon the payment of annual fee. The DS/ADS has the discretion to decide to either renew the permit or convert the permit into grant¹³ which gives a clear title to the grantee under the LGSPA.¹⁴ However, the LDO does not specify the time frame within which the conversion can be made. Hence the State monopoly is exercised through the absolute discretionary power of DS/ADS.

A permit holder cannot dispose the land.¹⁵ He does possess a limited capacity to mortgage his interest in the land with the written consent of DS/ADS to any registered society¹⁶ of which he is a member. But a grantee enjoys wider power than the permit holder. He can dispose of a protected holding¹⁷ to any other person with prior written consent of the DS/ADS.¹⁸ Hence, if any transaction occurs without a prior written permission of the DS/ADS, then that transaction will be invalid and the holder can lose the land. There was an attempt to remove the restriction on the disposal of permit/grant by Land Ownership Bill of 2003 but was unsuccessful, since the Supreme Court held that the Bill was inconsistent with the Thirteenth Amendment to the Constitution.

The noteworthy part of the LDO is the succession. The General law or customary laws relating to succession are not applicable to the lands subject to LDO. The permit holder or grantee is not permitted¹⁹ to nominate a successor without prior written consent of the DS/ADS to succeed the land upon his or her demise. In case, if no one has been nominated as the successor or if the nominated successor fails to succeed, the title to the holding shall devolve as prescribed by the rules in the third schedule to the Ordinance.²⁰ If the nominee fails to make an application for a permit within a period of one year reckoned from the date of the death of that permit-holder, shall be deemed to have surrendered to the Crown his title²¹.

Among the people listed in the third schedule, the surviving spouse of the holder is given preference to manage the land during his/ her life time. Upon complying with the conditions of the permit, such spouse is entitled to a grant of the land. Unless the surviving spouse has been duly nominated as the successor of the deceased holder, otherwise he/she has no power to dispose of the land, or to nominate a successor. Upon the death of such surviving spouse or such surviving spouse contracts another marriage after the death of the holder, the land is succeeded by the people as listed in an order under the Rule 1 of Third Schedule to the Ordinance. If the land is granted under the LGSPA, the surviving spouse of the deceased holder is not subject to any conditions if he/she was nominated by the deceased. Such is subject to the same conditions if he/she is not nominated by the deceased.

Chapter VIII prescribe the procedure for cancellation of permits and Grants. The DS/ADS has the power to cancel the permit and take over the possession of the land alienated under the LDO if, there is no person entitled to succeed or the person entitled is not willing to succeed the land.²² In a similar scenario, the President has the power to cancel the grant.²³ If it appears to the DS/ADS

¹⁰ The powers of GA are replaced to DS by Transfer of Power Act No.58 of 1992

¹¹ Section 23(3) of the LDO

¹² Section 4 of the LDO

¹³ Upon the satisfaction of the conditions by the permit holder for a period of 3 years, the DS can convert the permit into grant.

¹⁴ Issuing of the grants for the state land under the LDO commenced in 1982 and so far been four different types of deeds namely Swarnabhoomi, Jayabhoomi, Ratnabhoomi and Ranbima have been granted.

¹⁵ Section 46 and 47

¹⁶ See Section 5 of the Land Development (Amendment) Act, No. 22 of 1993 and Land Development Regulation 2016 by Extraordinary Gazette No. 1992/8 dated 07/11/2016.

¹⁷ 'Protected holding' means a holding alienated by grant in which is inserted a condition prohibiting the disposition of the holding except with the prior permission in writing of the Government Agent.

¹⁸ Section 44

¹⁹ Section 51 provides restriction to nominate a successor

²⁰ Section 71

²¹ Section 85

²² Section 105

that the Permit holder has breached a condition of the permit, the DS/ADS may issue a notice of warning on cancellation of the permit²⁴ if the permit holder fails to comply with the notice to pay fine.²⁵ The DS/ADS has the power to cancel the permit²⁶ if the permit holder fails to appear on the date as specified in the notice issued under section 106, or appears but fails to show why his/her permit should not be cancelled. Moreover, the DS/ADS has the power to order cancelling the permit if he/she is satisfied, after inquiry, that there has been a breach of any of the conditions of the permit, despite the permit holder appearing as per the notice issued under section 106 or 109(2) and show cause on why his permit should not be cancelled. A person aggrieved by an order made by the Government Agent under Section 110 may appeal²⁷ to the Land Commissioner within a period of 42 days from the date of the order²⁸.

THE IMPLICATIONS ON THE APPLICATION OF THE LDO IN THE POST-ARMED CONFLICT IN NORTHERN PROVINCE

Although the land policies in Sri Lanka have a long history and diverse objectives, the challenges in implementing the objectives make such policies ineffective. As observed by (Herath J., 2006) that *most dry zone farmers are subsidized and are close to the poverty line. So one can argue that the land policy in recent years at the macro level has not benefitted the poor.*

The main objective of the LDO is to preserve the peasantry. In order to prevent the undue disposition of the alienated land such as “*improvident alienation*,”²⁹ the legislature provides protective conditions/rules on subdivision or fragmentation of land. Despite these protective conditions, illegal transactions did take place in some settlements including the Mahaweli Development project (CM Madduma et.al, 2010).

Thus, it is pertinent to look upon the land rights as recognized in the core international instruments for the understanding of how the concept of Eminent Domain in LDO has deprived the land rights and led post-armed conflict land issues. The land rights including right to own property alone or in association with others³⁰; right to adequate standard of living including right to housing³¹; right to equal treatment in land and agrarian reforms as well as of land resettlement scheme; right not to be discriminated on the ground of sex³²; equal right in respect of the ownership, acquisition, inheritance, management, administration, enjoyment and disposition of property³³; right not to be forcefully evicted without adequate protection³⁴; right not to be arbitrarily deprived of property³⁵; right to compensation in case of forceful eviction and arbitrary deprivation are vital in a post-armed conflict context to strengthen the national peace building process.

One consequence of continued State monopoly of lands has been the high incidents of “encroachment” on State lands by landless people who often have no option other than encroaching the State lands. Hence the study (Herath J. L., 2014) observed that increasing politicization of land in settlement schemes³⁶, the successive governments resorted to regularize the irregular encroachments. *Significantly, it should be noted that the largest proportion of government-alienated land today is due to encroachment regularization.*³⁷ Due to the lengthy procedure in obtaining permits under LDO, people find that the encroachment as an informal way to get lands speedily. This leads to corruption and abuse of power by administrative officials.

Another significant obstacle in implementing the Ordinance is the discretionary power vested on DS/ADS in relation to selection or rejection of the application and cancellation of the permit/protected holding. Although, the Ordinance and government circulars provided guidelines for selection of recipients, in practice, the process is non-transparent, ineffective and prompting the beneficiaries to bribe the administrative officials for getting permit/grant (Raji, 2017). Despite the establishment of the Provincial

²³ Section 104

²⁴ Section 106 (2)

²⁵ Section 106 (1)

²⁶ Section 109 (1)

²⁷ Section 113

²⁸ Section 114

²⁹ Alienation of the lands for a low value due to the poverty.

³⁰ Universal Declaration of Human Rights (UDHR), art.17 (1)

³¹ UDHR, art.25; International Covenant on Economic, Social, and Cultural Rights (ICESCR), art.11(1); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iii); Convention on the Rights of the Child, art. 27(3)

³² ICCPR and International Covenant on Civil and Political Rights (ICESCR), art.3

³³ CEDAW, art.16(h)

³⁴ ICESCR, art.2(1) and ICCPR, art. 17

³⁵ UDHR, art.17(2)

³⁶ It was highlighted in the focused group discussion that the person must belong particular ethnic group or political party in order to get the permit/ grant.

³⁷ *Ibid*, p.224

Councils and the Office of the Provincial Land Commissioner to administer the alienation of the State lands, the successive governments retain the State monopoly over the State lands through the District Secretariat, formerly described as Kachcheri, from which the process of alienation of State lands starts. Since the LDO does not specify the grounds on which the advice of the Provincial Land Commissioner is required³⁸, the process involves abuse of power (Raji, 2017). Another factor that led to the improper granting of land or giving Government assistance such as allocation of free houses under the 50 house scheme in the Grama Sevaga of the area who in certain instances cause the land/assistance given to relatives and friends of the GS denying the local person who genuinely needs a land and housing assistance. Further, the land officials under the LDO are employed by the Provincial Council but work under the direct control and supervision of Divisional Secretariat.³⁹ Hence, centralized land powers and the confusion in the chain of command make the land alienation arbitrary, unaccountable and not transparent.

The LDO is much criticized for the order of succession as provided in Rule No.1 of the third schedule to the Ordinance. It discriminates women as it prefers⁴⁰ male relatives over female relatives in succeeding the property. Binna (1995) viewed that the independent ownership of economic resources, especially land, can thus be of crucial importance in promoting the well-being and empowerment of women. Although there is an argument in favour of the LDO that *the purpose of this law is to restrict the disposal rights of the grantee to prevent him and his descendants from again falling into the landless state and not to perpetuate discrimination based on gender*, it makes much difficulties for the post-armed conflict women headed families, to get the income from the land for their survival, just because of the preferential right to succeed the land is given to son. The study (Mohan, 2011) emphasized the importance of women in rebuilding the peace after the conflict and the opportunity for gender reforms as the women are forced to lead their households and to take on other leadership roles of men, simply because of the absence of the men in the post-conflict context. The LDO specifies that the person entitled for the land shall take possession of the land within six months of the death of the holder. Thus, due to the displacement by war, the spouse or nominated successor failed to enter into possession within six months from the date of the death of the permit-holder or grantee, the land is reverted back to the State, as per the provisions of the LDO. However, in post-armed conflict context, the land officials do not strictly comply with the time limit provided in the LDO for the nominee or successor who were displaced by the war.⁴¹ However, in the case of *Gunawardana v. Rosalin*,⁴² the judiciary by adhering the provisions of LDO, failed to protect the successor's right to succeed the land. The strict adherence to the time limit to succeed the land by the land officials and judiciary in this case, has negatively impacted on the rights and interests of the parties concerned.

A Bill to amend the LDO was placed before the parliament which named the relatives as 'children, grandchildren, parents, siblings' etc, instead of 'son, daughter' and etc. The main purpose of the proposed Bill was to fulfill the responsibility arising from ratification of the international instruments.⁴³ However, the Bill was not passed and the proposed amendment has no effect.

The alienation of State lands under LDO is to promote the agriculture and enhance the economic stability of the country by transferring the full ownership to the allottees. However, the State reserved its monopoly under the shield of *improvident alienation*, unnecessary fragmentation and multiplicity of ownership. Due to the armed-conflict, people migrated and settled

³⁸ The Assistant Land Commissioner of Northern Province who was interviewed by the author of this paper on 30th May 2019, was of the view that once the DS/ADS selected the recipients for the permit/grant, s/he will call for the meeting in which the representatives of Rural Development Society, Farmer's Organization, Grama Niladhari, Land officers, DS/ADS and Provincial Land Commissioner will participate and finalize the selection list. Once it approved at the meeting, the DS/ADS has to notify it to general public. If anyone object of such selection on a reasonable ground, the DS will forward the objection to the Provincial Land Commissioner if it is for a Permit or to the Commissioner General if it is a Grant.

³⁹ *Ibid*, p.10

⁴⁰ When the LDO was enacted in the pre-independence era, the household income generated by most families came from agriculture. Sri Lanka, then Ceylon, was one of the South Asian countries rooted with patrilineal families and it was a common practice among rural agricultural families that upon the demise of the father, the elder son would take over the father's role. This is why the legislature preferred male next-of-kin to inherit land in the absence of nomination rather than female next-of-kin.

⁴¹ The Assistant Land Commissioner of Northern Province was interviewed by the author of this paper on 30th May 2019 where he pointed out that the non-compliance of the provisions is based on equity and he emphasized that the reformation of LDO must address such issues in the post-armed conflict.

⁴² In *Gunawardana v. Rosalin* (1960) 62 NLR 213, the Supreme court interpreted the word 'fails to succeed' as refuses to succeed or does not enter into possession of the holding within a period of six months reckoned from the date of the death of the owner of the holding.

⁴³ In 1979 Sri Lanka ratified Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which by Article 5 (a) requires state parties to take all appropriate measures to modify social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Sri Lanka progress to promote gender equality and women empowerment as provided in Goal.3 of the Millennium Development Goal

down in foreign countries. Due to this forced migration many alienated lands under grants are not cultivated and remain unoccupied as the life interest holder/ nominee/ successor is settled down in a foreign country. Cultivation or occupation of the land is made impossible due to the restrictions on alienation of the State lands.

The LDO mandates the permit-holder or grantee to comply with the conditions attached to the permit or grant. Since the conditions are connected with the land, the owner/ nominee/ successor are bound by them. The Ordinance does not provide the procedure for non-compliance of the conditions due to displacement by war, natural disaster or any other circumstances beyond their control. And hence, in the post-armed conflict, the permit or grant of the holder, who did not comply with the conditions due to the displacement during the war can be cancelled by DS/ ADS after holding an inquiry. Further, the LDO failed to recognize the holder's right to compensation in the event of cancellation of permit/grant and denied reimbursement of the economic resources of the people in the post-armed conflict.

CONCLUSION AND RECOMMENDATIONS

Land is a sensitive subject and needs to be handled with care irrespective of any discrimination or differences.⁴⁴ However, the concept of Eminent Domain which is incorporated through the policies and laws by successive governments, is a serious threat to protect and promote the human rights including land rights. Hence, it is obvious from this study that the incorporation of the concept of Eminent Domain under the LDO has resulted in negative implications in implementing the Ordinance. As the LDO is one of the colonial laws and implemented in the post-armed conflict context without accommodating the changes in the ground situations such as socio, economic and legal field, this paper proposes the following: -

1. A due process which includes transparent, equality, equitable and accountability in the selection of recipient is needed.
2. Devolution of the land powers to the Provincial Councils and establishment to independent body of experts specialized in State land administration to effective land administration at provincial level.
3. The absolute power over the lands for development purposes in Sri Lanka is somewhat similar to Malaysia where the procedures related to land laws restrict the facility to earn income and much needed shelter to its citizens. In Malaysia also, the State has an absolute power in alienation of lands as prescribed in List II to the Federal Constitution and National Land Code 1965 which prescribes the procedure for administering the lands in Malaysia. Due to the absolute power, the State is "not obliged to refer to the technical agencies and professional parties for views before making any decisions to alienate land or otherwise" (Dahlan, 2019). The failure on the part of the State authority to carefully exercise this power thrusts the housing projects' developers to abandon the housing projects in Malaysia. Thus, devolution of the land power to an independent body of experts would enhance the land administration in both countries.
4. The restriction on alienation, mortgage and lease of State lands should be lifted and permitted such transactions in the post-armed conflict in order to increase the land access, paying attention to prevent abuses, as a result of lifting the restriction.
5. In Malaysia, the restrictions placed under the National Land Code *inter alia* of restricting the foreigners from buying lands categorized as 'agriculture' and 'building' but not 'industrial' lands with approval of the State Authority, reduce the demand for certain land to be released for foreigners (Omar, 2002). Hence, a uniform land policy addressing the economic, environmental and technological changes in the society to be adopted to enhance the development activities in both countries.
6. Since the recipients of the permit/ grant are generally men and their wives have limited rights upon the death of the holder unless they have been nominated. Moreover, the gendered hierarchy in succeeding the property in the absence of nomination has adversely impacted on women who head their family due to the death or disappearance of their husbands during the armed-conflict. Thus, this paper proposes a joint ownership of husband and wife over the land alienated under the LDO.
7. The order of succession under the third schedule also must be gender equal in devolving the land rights.
8. The procedure for the non-compliance of the conditions due to displacement by war, natural disaster or any other circumstances beyond the control of the holder must be adopted for the effective implementation of the Ordinance and to provide provisions for the payment of compensation in case of cancellation of the permit/grant.
9. Although the LDO was enacted in the colonial period, the policy behind the enactment of this Ordinance was to strengthen the country's economy which was primarily based on the agriculture. It is believed that giving due attention to the socio, economic and legal changes in the post-armed conflict context will further strengthen the implementation of the Ordinance.

⁴⁴ Land Ownership and the Journey to Self-Determination, *Supra* note.24, p.231

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