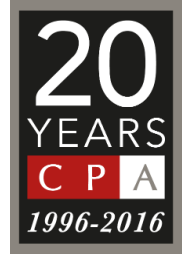



# THE MAKING OF A WORLD CLASS CITY: DISPLACEMENT & LAND ACQUISITION IN COLOMBO






CENTRE FOR POLICY ALTERNATIVES  
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# The Making of a World Class City: Displacement & Land Acquisition in Colombo

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Centre for Policy Alternatives  
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## Introduction

This report explores the process of making Colombo a world class city, begun post-war under the Rajapaksa regime and its continuity under the yahapalanaya government. The luxury spaces being developed and the lifestyles being promised, however, hide the heavy price that the working class poor continues to pay, as well as raises serious questions about the acquisition of land for development.

The previous government's Urban Regeneration Programme (URP), which is being continued by the present Government, aims to beautify the city and create a slum-free capital. This has, resulted in large scale eviction and relocation of working class poor away from the city center. The rushed evictions under the previous regime paid scant regard to the rights of affected persons and to the practical impact of evictions on their lives including lack of access to services, loss of shared community, increase in physical and material vulnerability, disruption of education and loss or reduction in livelihood options. While there is no official data available on evictions from 2010 – end 2014, the Urban Development Authority (UDA) website states that approximately 5000 persons have been relocated to date. CPA has documented and continues to work with approximately 11 evicted communities from the Greater Colombo area and 1 community in Dambulla. Although the concept of relocation implies a voluntary act, it is complicated in the context of post war land acquisition and the role played by the military in evictions under the previous regime and their continued presence within the UDA.

The lack of transparency and accountability is an overriding concern. The difficulties of obtaining information and in the language of the person affected and misinformation in attempts to prejudice the rights and interest of the affected family, continue to be the main areas of dispute with the Urban Development Authority. On the substantive questions involved there is a clear lack of state policy that accounts for and seeks to serve the interests of those affected. The lack of such policies compound problems arising out of a state-centric understanding of eminent domain, an expanding 'public purpose' in state acquisitions of land and the entrenched vulnerabilities of affected persons. This vacuum is filled by practices of arbitrary and unilateral state action, bureaucratic red tape, undignified treatment of those affected and incompetence. This report also highlights the urgent need for the National Involuntary Resettlement Policy to be updated and enshrined in law. The need for national and provincial policy guidelines, criteria for participation, transparency, accountability, promotion of in-situ redevelopment and upgrading, elimination and minimising involuntary resettlement as well as adequate compensation prior to and during land acquisition and resettlement processes is evident when looking at the experience of communities forcible relocated.

## The Urban Development Authority under yahapalanaya

The attitude and conduct of the previous Government towards the urban poor mirrored its approach to governance in general and lack of respect for the sovereign rights of the people. The change sought through the yahapalanaya government therefore was a paradigm shift in the manner in which the State would conduct itself in its interactions with citizens and the recalibration of that relationship along constructive lines.

This requires the removal of elements of the old system, including militarisation of civilian institutions, politicisation and hostility to public engagement and dissent. The culture of fear, highhanded and opaque government must be replaced with a more rights aware executive bound by the Constitution and the law. It requires a legislature willing to give legal effect to policies such as the National Involuntary Resettlement Policy (NIRP) and a judiciary capable of interpreting and upholding laws and rights in a fair and independent manner.

President Sirisena's election manifesto made specific reference to urban evictions stating that "Relief will be provided to all citizens who were illegally evicted from their houses and land under various grounds. Property of citizens of Colombo who were deprived of their houses and land will be reassessed and their value will be deducted from their present housing loan.<sup>1</sup>" This was also explicitly stated in the 100 - day program of the new President and Government<sup>2</sup>. The delinking of the UDA from the Ministry of Defence was a crucial first step. The UDA is currently under the Ministry of Megapolis and Western Development. The interim budget presented in January 2015 detailed that in recognition of the "grievances of the people who had to leave their loving homes and native places in the precincts of Colombo just because of the relocation programme stubbornly implemented by the previous government" the government would bear the initial advance of Rs.100,000/- per family and also Rs.250 per month of the rental due<sup>3</sup>.

The following section will analyse this Government's record vis-a-vis affected persons including those who have already been evicted and relocated to high-rise buildings, those still awaiting alternate housing and/or compensation in lieu thereof as well as persons who managed to hold out against the previous regime and continue to battle for the right to remain on their land.

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<sup>1</sup> [www.president.gov.lk/wp-content/uploads/2015/01/Manifesto-EN.pdf](http://www.president.gov.lk/wp-content/uploads/2015/01/Manifesto-EN.pdf), Manifesto - Compassionate Government Maithri, A stable country, p.25

<sup>2</sup> [www.president.gov.lk/wp-content/uploads/2015/01/100-Days-Program-EN.pdf](http://www.president.gov.lk/wp-content/uploads/2015/01/100-Days-Program-EN.pdf), 100 Day programme

<sup>3</sup> [www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201501/InterimBudget2015-20150129-eng.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201501/InterimBudget2015-20150129-eng.pdf), Interim Budget 2015, p.17

## Failure to address the grievances and violations caused by past evictions

Despite recognising the forcible nature of relocation to the UDA high rise buildings and consequent disruption to the lives of evicted persons and injustice caused by the previous regime, the present government has made very little headway in providing redress and/or improving the living conditions of those who have been forcibly relocated or those who are still awaiting housing or compensation after being made to leave their homes. They have also not taken seriously advice from qualified practitioners to consider alternate systems, including at a minimum in situ housing which would cause the least disruption to the lives of affected persons. There have been no measures to compensate affected persons and/or provide other incentives that would make up for what they have been forced to undergo.

For instance title-holders such as the residents of Mews Street<sup>4</sup> have not been compensated for the value of the land they owned. Their 6 year court case ended with a settlement in September 2016 and they were not provided any relief or redress to correct the injustice caused by the military violently evicting them from their homes in May 2010, as well as their effective disenfranchisement<sup>5</sup>. While the Mews Street residents do not have to pay the Rs 1 million towards title, this is not the case for many of the evicted persons who either had legal title or a clear basis to their claim to the land including long term occupation, the payment of rates and taxes and utilities from that location. Residents of Lakmuthu Sevana and Methsara Uyana (two UDA high-rise complexes) have also faced difficulties in obtaining school admission two years in a row<sup>6</sup>.

Furthermore, despite public statements that evictions in Colombo will be stopped until the policies including on resettlement are evaluated, persons living in areas ear marked for development continue to battle the UDA to remain on their lands. For example, in Velupillaiwatte in Rajagiriya, residents were asked to leave their homes by the UDA in 2015. The majority of residents have lived on the land for several generations. At least 6 families have deeds of title. The residents were informed that the land was acquired by the State several years ago but no further information has been provided as to the basis on which they are being moved. After several failed attempts to negotiate with the UDA for in situ housing or to be given land in a closer location the majority have opted to move out and take alternate

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<sup>4</sup> 33 families living in 17 houses were evicted by the Ministry of Defence and Urban Development on May 8, 2010. The families all had title deeds to their property and due process in the land acquisition was not followed. See [CPA's April 2014 report 'Forced evictions in Colombo: the ugly price of beautification'](#) for more information.

<sup>5</sup> Interview with Mews Street residents, November 2016

<sup>6</sup> Those who would have got 10 marks for location are not awarded marks at all for this category or are awarded only 2 marks as they have not been living in their new apartment for more than five years. However for all the residents of Lakmuthu Sevana and some residents of Methsara Uyana, their move was to the adjoining plot of land from their original location and their relocation was involuntary. However, despite pressure from the UDA, various Ministers and civil society, the Education ministry has still not rectified the injustice caused when it comes to new school admissions for affected families.



housing in a government built high rise in Maligawatte. Those that have moved complain about the living conditions in the high rise building including access to services and the lack of security. As of October 2016, 23 families remained and continue their struggle to remain on the land. They are under continuous pressure from the UDA to leave. They have asked for and been repeatedly denied even a meeting with UDA officials to discuss alternate options including the in-situ housing<sup>7</sup>.

Significantly Deputy Minister Harsha de Silva chose a public meeting at Velupillaiwatte in June 2015 to announce that there would be no further forcible evictions under the *yahapalanaya* government and that the Agreement between the UDA and relocated persons (discussed in detail in Chapter 3 below) had been rescinded<sup>8</sup>.

In Castle Street in Borella, although the majority of residents left their land in 2013 and took allotted apartments in UDA high-rises, the few remaining families with title are being harassed by the UDA to leave the premises. The UDA has now taken the position that the remaining families are not entitled to the land as the ownership of the land is currently before court in a partition case and therefore they must leave with minimum compensation<sup>9</sup>.

### ***Militarisation and it's impact on the UDA***

Past CPA reports have focused on the critical role of the military in the forcible eviction of persons from their homes in Colombo. The use of the military by the previous Government and the response of civilians to force or the mere threat of force must be understood in the context of the war, its aftermath and the level of power and impunity afforded to state security forces.

For instance in Mews Street as well as 34 watte<sup>10</sup>, the military were heavily involved in forcing people out and demolishing homes. Eventually all persons in 34 watte were evicted except for four petitioners in case bearing No. [CA (Writ) 283/14] before the Court of Appeal. They remained in situ despite threats and harassment by the military who broke down adjoining houses, water connections and sewage lines in the middle of the night in an attempt to force

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<sup>7</sup> Interview with residents, December 2016

<sup>8</sup> Changes in Government's approach to resettlement of communities in Colombo, CPA statement on 3 June 2015

<sup>9</sup> Interview with residents, December 2016

<sup>10</sup> Residents of 34 watte in Wanathamulla also had title deeds to their homes and due process was not followed in the acquisition of their land. They were first informed of their relocation in December 2013 and due to military intimidation and harassment, by end July 2014 majority of the residents left their homes and moved to their allocated UDA apartments in the adjoining property. However in mid August, 4 residents chose go to court. For more information please see CPA's May 2015 report 'Forced evictions in Colombo: High-rise living'.

them to leave<sup>11</sup>. The experience of 91 families living alongside St. Sebastian's Canal in Maligawatte in 2014 is another example of people being forced to move due to threats and intimidation by the military. In an interview with CPA, a former resident described how he was forced to move at gun point and that the community was told that their houses would be demolished irrespective of whether or not they moved. The military experience is egregious because the relocation took place due the rehabilitation of the St. Sebastian Canal under the the World Bank's Metro Colombo Urban Development Project (MCUDP)<sup>12</sup>. Despite the existence of documents provided by the UDA that the Bank's safeguards and relocation guidelines were followed, the community's experience tells a completely different story. CPA brought this to the attention of World Bank officials in a meeting in June 2015 and the officials stated that they had no information regarding this aspect of the relocation and assured that they would follow up. To date the St Sebastian Canal residents have not been met by any World Bank representative and continue to deal with the UDA official assigned to them.

Although delinking the UDA from the Ministry of Defence is a positive step under the *yahapalanaya* government, the process of de-militarising the UDA and the mindset of public officials and civilians alike requires a sustained political commitment. The authors' own experience in dealing with the UDA and experiences of affected families indicates that the old practices, officers and mindsets continue even under the current UDA. The main difference is that military officers now dressed in civilian clothes, continue to make decisions and liaise directly with the public.

By training, discipline and competence, the military lack the skills and mindset required of a civilian administrator. The influence of the military has undermined the transparency, accountability and responsiveness of the UDA as a civilian institution to the needs of affected families. It has also negatively influenced the conduct of civilian public officers who for nearly half a decade have grow accustomed to dealing with citizens, emboldened by the political and military might of the Ministry of Defence.

### ***Broken promises***

Between 2010 - 2014, in the rush to remove families from their homes and relocate them outside the lands earmarked for private development, UDA officials and military officers made several promises to families facing eviction, including promises of additional housing. The violent protests following the attempt to demolish shacks in Thotalanga in January 2016, was

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<sup>11</sup> For more details on the eviction of 34 watte see - 'And they all fall down', Groundviews, 18 September 2014 (<http://groundviews.org/2014/09/18/and-they-all-fall-down/>)

<sup>12</sup> 'Iromi Perera, Evicted under the World Bank's watch', The Sunday Times, May 24 2015 (<http://www.sundaytimes.lk/150524/business-times/evicted-under-the-world-banks-watch-149983.html>)

a result of people demanding that promises for housing made by the UDA be met, without which they would be rendered homeless.

In Lakmuthu Sevana (Mayura Place in Wellawatte), 180 families that lived on land occupied by the former Wellawatte weaving mills (now Havelock City apartments) were promised a house per family in the high rise built on the adjoining property. However only 116 apartments were finally built by November 2014 and apartments were allocated primarily on the basis of a house for a house and not a house for a family as promised. Those that were not given apartments were forced to leave and had their houses demolished with their possessions still inside. The residents were also promised a play ground for children on nearby land that has not been made available to date.

In late 2013 when residents of Java Lane and Station Passage in Kompanyaveediya (Slave Island), majority of whom had title deeds, handed over the possession of their land to the UDA following their respective court cases, it was with the understanding that their new in-situ apartments would be ready in 18 - 24 months<sup>13</sup>. More than two years later, the construction of apartments for Java Lane residents have not even begun, while the apartments for Station Passage (which were supposed to be ready in 2014) are still under construction<sup>14</sup>.

None of the affected families (except for Station Passage) have any agreement in writing that confirms the promises made. This makes it impossible for individual communities to hold the government or specific officials accountable for the promises made. However, taken as a whole, the experience of each community detailed above, paints a picture of systemic misinformation and false assurances made by public officers in their official capacity in order to mislead affected families in furtherance of the State's policy of acquiring commercially valuable land.

Good governance and accountability require that this government honours the assurances given and respects the legitimate expectation created in the minds of the people by the words and conduct of public officers who remain on the Government pay roll. If returning lands is no longer an option, the minimum response of responsible government is to make good on public assurances already made.

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<sup>13</sup> Several families in Java Lane (around 500 were affected in total) and 119 families at Station Passage filed cases in the Supreme Court against the acquisition of their land as they all had title. It was following their respective cases that the UDA was required to offer in-situ housing or compensation for the residents. For more information on the Java Lane case please see CPA April 2014 report on evictions in Colombo.

<sup>14</sup> Interviews with Java Lane and Station Passage residents, September - December 2016

### ***Difficulties faced by Affected Families in dealing with the UDA***

The authors' own interactions with the UDA officers and the narrative of affected families is that they face numerous obstacles in dealing with the UDA to address grievances and deal with the daily challenges of life post evictions. Key obstacles to relief include the absence of a clear system in place to deal with relocations, past and ongoing, and the lack of continuity between the different power holders. For instance promises made and assurances given under the previous Chairman of the UDA Mr. Ranjit Fernando have completely stalled following his resignation in mid 2016. Another major obstacle is the stereotyping and the anti-poor bias by the majority of civil servants within the UDA towards those subject to evictions or involuntary relocation. This has been clearest during negotiations between the UDA and the authors' on the draft agreement dealt with in Chapter 3 below.

Families that are currently fighting to remain on their land also state that they face insurmountable difficulties in gaining access to UDA officers even to have a meeting to discuss options. The UDA continues to negotiate and strike deals with affected persons in a most undemocratic manner, by relying on fear, financial need, desperation and uncertainty that is fuelled by the uneven balance of information and levels of literacy. Strong-arm tactics to compel people to sign agreements renouncing compensation and/or to hand over possession of their land cannot be part of good governance.

### ***The return of Rs.100,000/- to affected families under the 100 day interim budget***

Under the interim budget in January 2015, the government undertook to return Rs.100,000/- already paid by affected families in recognition of the hardship suffered due to forced evictions and involuntary relocation to high rise buildings. People were forced to pay this money at the point of being allocated a house. Rs.50,000/- of this sum was intended for the maintenance fund and the remainder towards the total cost of the unit.

While the move to return Rs.100,000/- to affected families is a welcome move, the UDA has adopted a disturbing strategy in implementing the budgetary provision. Affected families complain that the UDA has forced them to sign agreements with the UDA as a condition for returning the money<sup>15</sup>. The terms of this agreement are discussed in detail in Chapter 3 below. There have also been instances where the UDA has deducted arrears in utility or monthly instalment payments from the 100,000/- which according to residents is unfair and

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<sup>15</sup> Interviews with residents in Methsara Uyana and Sirisara Uyana, May to October 2016

without clear basis<sup>16</sup>. Further in reality, the money will not be returned but set off against the total amount owed. The views of families who want the money returned in cash are not considered highlighting the continued lack of consultation with communities. The return of money intended for the maintenance fund is also a matter of concern, if it results in a reduction or depletion in the monies set aside for maintenance. The government must ensure that along with the refund, it also replenishes the maintenance fund with an equivalent sum to ensure sufficient funds to meet maintenance needs as they arise.

### ***Evictions and land acquisition in Dambulla***

Even in Dambulla, between 2013 - 2014 the UDA used military force to evict residents and acquire land for development activities of the “sacred area development plan” as per Gazette No. 300/14 dated 8 June 1986. The Secretariat for Muslims has extensively documented the sequence of events that led to the eviction of 107 families in 2013 who were initially promised land close to their original location and then after a few months of discussions found themselves evicted and their houses bulldozed in broad daylight<sup>17</sup>. The events in Dambulla mirror experiences in Colombo - lack of due process, threats and harassment, broken promises and evictions.

Part of the land that was acquired by evicting residents from the Padeniya village was developed into a lake and car park for the Rangiri Dambulla temple. Other land remain unutilised while residents remain in uncertainty about the future of their land. The affected families have organised themselves and have filed cases in the Court of Appeal as well as the Human Rights Commission. Even under the *yahalapanaya* Government, the evicted families are still waiting any form of compensation or land. They have met with the previous UDA Chairman and continue to meet with government officials and politicians and have not received any clear information, and continue to live on rent with great difficulty and strain. Those who were not evicted but were informed that their land has been acquired also continue to exist in uncertainty as they do not have adequate information about the acquisition, the current position of their tenure or what future plans the UDA have in the pipeline<sup>18</sup>.

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<sup>16</sup> In interviews with those who have arrears in their utility bills, residents claim that they have not settled bills where they have been charged for usage during a period when they were not in possession of the units, or bills where they felt the charges were unreasonably high and were not in proportion to their usage. CPA has previously reported on complaints regarding unusually high water and electricity bills which subsequently the UDA also has admitted are due to faulty meters. Either way, the UDA should adopt standard procedures to recover overdue amounts instead of unilaterally withholding monies that should be returned in full.

<sup>17</sup> 'Of Sacred Sites and Profane Politics: Tensions over Religious Sites and Ethnic Tensions' Vol 2, Secretariat for Muslims, October 2015 (<http://sfmsl.org/wp-content/uploads/2015/11/Of-Sacred-Sites-and-Profane-Politics-Vol-II.pdf>)

<sup>18</sup> Interviews with affected residents in Dambulla, October 2016

## High-rise living

In July and August 2016, CPA conducted a survey among 1222 families who were involuntarily relocated or forcibly evicted from their homes by the UDA and are currently living in 3 UDA built high-rise complexes in Dematagoda (Colombo North)<sup>19</sup>. The three complexes selected for this survey were Mihindusenpura, Sirisara Uyana and Methsara Uyana, all located in Dematagoda. The three complexes were selected because residents were moved there prior to November 2014 which meant that they had been living in the buildings for more than one and half years.

The findings raise many concerns about the future of those living in the UDA high-rise complexes and demands a complete review of the URP. In less than three years of occupation, we see a considerable deterioration in the quality of life, income mismatch leading to debt, widespread desire to move and disconnect with the built environment. For communities who in fact did not live in slums or shanties previously, and thrived on their social networks, organically formed over decades of residing in Colombo, high-rise living was something that was imposed upon them with no consultation or due process<sup>20</sup>. Those with title to their land were not compensated and also have to pay Rs one million for their new apartment over 20 - 30 years.

The three survey sites present issues common to each complex, as well as ones unique to each based on location and the variety of populations now forced to live together. The conditions of Methsara Uyana and Sirisara Uyana, two complexes that CPA has extensively documented since they were opened in 2014 have rapidly deteriorated in the two years with reports of crime, drug abuse and drug peddling, filthy and unkept public areas, breakdown of maintenance including that of the lifts that service 12 floors - all indications of the creation of vertical slums. While survey data and CPA's own qualitative work does show that relocation has improved the housing conditions and lives of some families, the negative effects experienced by others is extremely disturbing.

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<sup>19</sup> Iromi Perera, 'Living it down: Life after relocation in Colombo's high rises', Centre for Policy Alternatives, December 2016 (<http://www.cpalanka.org/living-it-down-life-after-relocation-in-colombos-high-rises/>)

<sup>20</sup> See 'Forced evictions in Colombo: the ugly price of beautification', Centre for Policy Alternatives, April 2014 ([www.cpalanka.org/forced-evictions-in-colombo-the-ugly-price-of-beautification/](http://www.cpalanka.org/forced-evictions-in-colombo-the-ugly-price-of-beautification/))

## ***Myth vs reality***

The findings of this survey question many narratives created around the working class poor of Colombo living in “underserved settlements” as described by the UDA. That the affected communities lived in slums and shanties, in unhygienic flood-prone environments surrounded by drug dealers were narratives that served the purpose of the previous Government looking to “liberate” commercially valuable property in Colombo by relocating communities to high-rise complexes built by the UDA across Colombo since 2010<sup>21</sup>.

Looking at the survey findings, 24.4% had lived at their previous location for 1-10 years, 26.8% for 11-20 years, 20.9% for 21-30 years and 25.8% for more than 30 years. 23.8% had houses that were 100-500 square feet, 41% had houses that were 501-1000 square feet and 10% had houses that were 1000 - 2500 square feet. While most (77.5%) were single storey houses, 18.3% had two storey houses. 48.8% had indoor bathrooms while 23.3% had bathrooms that were shared by the community. 78% of houses had pipe borne water while 90.4% had electricity from the national grid. 54.4% said that they never experienced floods while 21.6% said they experienced several times a year and 9.8% said twice a year. 62.7% have never suffered from mosquito borne diseases while 77.3% said their family had never suffered from diarrhea as a result of their living environment.

If the upliftment of the communities was really at the heart of the project, the Urban Regeneration Project (URP) should champion a people centred approach to housing that Sri Lanka is not a stranger to, if one takes programmes like the Million Housing Programme and the relocations in Lunawa and Badowita in the past decade into consideration. Unfortunately the URP lacks a comprehensive framework of entitlements and an involuntary resettlement policy in line with national and international standards, essentially making accepting relocation to a high-rise apartment a pre-condition for access to better housing and services. The absence of the directly affected in planning is clearest when looking at housing preference of the respondents - 77.2% prefer to live in detached house while 14.4% would prefer to live in a low-rise apartment that doesn't require elevators. Only 6.9% of respondents said that they would prefer to live in a high-rise apartment.

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<sup>21</sup> As outlined in the Mahinda Chintana 2010, the previous Government's development policy framework, a key goal of urban development is “improving under-served settlements in the city of Colombo through private developers and liberate (sic) prime lands for commercial activities. Through this process, under utilised urban prime lands will be utilised for development and commercial purposes by private sector.” (Mahinda Chintana: A Ten year Horizon development Framework 2006-2016, Discussion Paper, p. 115.)

## ***Relocation process***

While the process followed by the UDA when relocating communities looks voluntary on paper, the reality is that majority of those currently living in the UDA complexes were involuntary relocated or forcibly evicted there. Irrespective of occupation status or what kind of house they had - whether permanent or semi-permanent, communities were given very little time to relocate and had no say whether or not they wanted to move to a high-rise. Only 26% of surveyed respondents stated that they were fully informed prior to relocation regarding moving, terms and conditions, nature of the house or where they would be moving to. 35.4% said they were somewhat informed and 25.3% said that they did not have enough information.

94% of the respondents had paid the Rs 100,000/- payment that had to be made to the UDA prior to moving in. When asked how they put together this amount, respondents gave a variety of answers. 22% said that they borrowed from a money lender, 13.3% from their monthly income, 13.2% borrowed from family members, 12% borrowed from friends or neighbours, 11% pawned jewellery and 10% used their savings. Almost 80% of respondents said that they did not get any financial assistance from the UDA or any organisation to help pay the moving costs.

## ***Apartment life***

An apartment in every UDA complex is 400 square feet in size, with a living room, kitchen, bathroom and 2 bedrooms. The policy of the Urban Regeneration Project is a house for a house, and not a house for a family nor does it take into account the size of the previous home. This means that families who had houses bigger than 400 square feet or those with houses occupied by more than one family living, as was usually the case, were entitled to only one apartment. CPA has met several households that have more than 6 people living together due to this policy.

In this survey, respondents were asked if their apartment has sufficient space to accommodate all their family members. 50.2% said yes while 49.2% said no. When asked what problems they have with the quality and design of the apartment, 46.5% said that the size of the apartment was too small. 26.8% said that the walls are already cracked, 14.3% was not happy with the design of the kitchen while 13.3% had a problem with the fact that toilet is next to the kitchen.

68% of respondents said that they have access to place of worship at a convenient distance while 31.1% said that they do not. Looking at those who do not have access to a place of worship at a convenient distance, 50% from Methsara Uyana and 34.4% from Sirisara Uyana



said that they do not have access. Interviews done with residents of Methsara Uyana and Sirisara Uyana revealed that relocated Muslim communities have been badly affected as there is no mosque close by. The closest mosque in Borella is not within walking distance and not everyone is able to afford daily trips to the mosque and back.

36.7% of respondents are happy living in the UDA complex with almost 12% saying that they are very happy. Overall satisfaction living in the UDA complex is rated higher at Mihindusenpura when compared to Methsara Uyana and Sirisara Uyana. At Methsara Uyana, almost 50% say that they are unhappy living at the apartment, with 15.6% being very unhappy. Almost 40% of respondents say that the relocation has deteriorated the quality of life of their family, with 13.2% saying that it has greatly deteriorated. 32.4% say that there has been no change while 17.9% say that their quality of life has somewhat improved.

### **Security**

For the communities relocated to the UDA complexes, high-rise living is a completely different way of life that disturbed or changed life as they know it - whether it was their social networks, their built environment or the security that their neighbourhood provided. Survey respondents were asked a series of questions regarding their sense of security about their immediate surroundings as well as of the larger built environment. For most of the communities, the community or *watta* they had lived in previously brought with it its own system of security and surveillance, which was what enabled most of them for example to leave their front doors open during the day, for their children to play freely outdoors after school. Its very rarely that a stranger can walk around without someone asking who they had come to see. This system also helped them keep their community crime and drug free - something that they were very proud of - despite the stereotype that all *wattas* are dens of drugs, crime and prostitution.

Compared to their previous location, 39.1% of respondents say that they feel somewhat safe in their current location while 27.3% feel very safe. 32% say that they feel unsafe out which 17.9% said they feel very unsafe in their current location. Almost 40% of respondents feel somewhat safe being out alone in the parking lots, the lawns, streets and sidewalks right outside their building at night and 23% feel very safe.

In the last 6 months, 41.8% of respondents were aware of incidents of theft where someone's purse, wallet or jewellery had been snatched from them. Reports of theft are highest at Methsara Uyana (53.5% saying yes to theft in the last 6 months) followed by Sirisara Uyana at 45.6%. 55.8% of survey respondents stated that to their knowledge no one was threatened or beaten up in their apartment complex in the last 6 months while 39.4% said that someone was threatened or beaten in the past 6 months. Reports of people getting

threatened or beaten up in the last 6 months is highest in Methsara Uyana and Sirisara Uyana with around 50% of respondents saying yes.

Another issue that was highlighted is that of drugs and among the survey respondents, almost 60% said that people using drugs was a big problem in their apartment complex 17.4% said that it was not a problem. Issues with people using drugs is high in Methsara Uyana and Sirisara Uyana with around 73% stating that it is a big problem. 55.8% of respondents also stated that people selling drugs is a big problem, with this figure being as high as 68.1% in Methsara Uyana and 74.1% in Sirisara Uyana.

The petty tyrannies experienced by residents also exacerbate the dissatisfaction they feel and heighten their desire to move. For example, in Methsara Uyana last year the UDA officials in charge of the complex issued notice to residents that they were not allowed to carry garbage bags or gas cylinders in the elevator. In a building that has 12 floors and no garbage chute or a gas connection connected to every apartment these instructions are unrealistic. Furthermore the daily garbage collection truck does not come at a particular time every day and residents cannot be expected to be home all day and walk down 12 flights of stairs to dispose of their garbage. This has led to people throwing their garbage from their balconies or from various corners of the buildings late at night. In Lakmuthu Sevana the residents requested a main gate that can be closed at night and post boxes for every apartment to be placed on the ground floor. The residents even offered to pay for these themselves but was denied by the UDA. Across all the buildings, for any repair in the apartment the residents have to notify the UDA officials and some times takes an unnecessarily long time to sort matters out.

### ***Learning from the global high-rise experience***

High-rise buildings as a solution to house the poor has been experimented with globally, from the United States to the United Kingdom to India to Nigeria. The 1960's saw the failure of high-rise as a public housing model in the US and UK, leading many to be demolished as housing projects became ghettos with high levels of drugs, crime and poverty. There is enough evidence and multi-disciplinary research of more than five decades that documents experience of the high-rise model globally. The Sri Lanka experience detailed above, echo those of many other countries around the world who have experimented with relocating the urban poor in high-rise apartments.

The development of the defensible spaces approach in the US in the 1970's and its application in public housing arose from architect Oscar Newman's work in the infamous

Pruitt-Igoe public housing project in St Louis (since demolished)<sup>22</sup>. Newman found that the public spaces of the project were filthy and crime ridden but the apartment interiors in sharp contrast, were well maintained. Through Newman's work on the defensible spaces approach in public housing, some of the key take aways were that regardless of the social characteristics of inhabitants, the physical form of housing matters, the larger the number who share a communal space the more difficult to identify it as theirs or to feel as if they have a right to control or determine the activity taking place within it - especially if they don't know the others sharing the space, criminals make use of the large anonymous spaces created in these situations.

Singapore remains a favourite model for Sri Lankan policy planners, especially when looking at urban housing and high-rise apartments. Singapore's public housing model is a success story worldwide but it is important to understand why it worked well in Singapore, and not in Sri Lanka or many other countries to realise that several other factors have to be taken into consideration. One key factor is that Singapore's Housing Development Board's (HDB) approach to public housing has not only been about building apartments, but more about creating liveable communities. Speaking at a launch ceremony in November 2000, the Minister for Home affairs at that time in Singapore explained reason behind the consultative process in the HDB's estate upgrade was to ensure that the resulting design was one that enhances the living environment, but also endows it with an identity and a community spirit all of its own<sup>23</sup>. As Yuen (2007) writes of the Singapore experience;

*"In Singapore, high-rise living is the familiar housing for the majority---84% in public sector and 6% in private sector. Right from the outset, it has carefully and comprehensively planned its public high-rises to provide quality living environment. The public high-rises are well-serviced by facilities, maintained and upgraded with resident input to provide responsive environments. Creating a bond between resident and high-rise is critical. In consequence, these high-rises have not degenerated to vertical slums but present a continuing solution to the expanding population, suggesting alternative means of living in the city and designing socially acceptable towers."*<sup>24</sup>

In studies done on the lived experience of public housing in Singapore to see what factors have led to the occupants' appreciation and satisfaction of high-rise living, the importance of self-selection and willingness to live in high-rise buildings is significant, as well as facilities such as playgrounds, library, schools, shops and markets being within walking distance and

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<sup>22</sup> Henry Cisneros, 'Defensible Space: Deterring Crime and Building Community', US Department of Housing and Urban Development, December 1996.

<sup>23</sup> Speech by Mr Wong Kan Seng, Minister for Home Affairs, at the upgrading and launch ceremony for Indus Precinct on Friday, 24 November 2000

<sup>24</sup> Belinda Yuen, 'Singapore high-rise a sustainable housing model', Conference on Sustainable Building South East Asia, November 2007, Malaysia

other communal facilities such as public spaces that encourage neighbourliness and community life<sup>25</sup>. That all of this is part of the public housing experience in Singapore has led high levels of satisfaction, with surveys done by the HBD over the years showing an increasing number of people who voluntarily have selected to live in high-rise apartments, as well as people who have expressed willingness to always living in public housing.

The design and models of public housing in Singapore has also evolved over the years, with more consideration given to the common areas and shared space, as the buildings go higher and higher, with the intention of creating 'villages in the sky', where residents do not feel isolated or disconnected from their built environment, irrespective of which floor they are on or how big the apartment complex is.

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<sup>25</sup> Yuen et al, 'High-rise Living in Singapore Public Housing', Urban Studies Vol.43, March 2006

## Legal status & rights of relocated residents living in UDA complexes

The State's messaging on the URP from 2010 to date has been based on the need to uplift and liberate the working class poor from shanties and slums by providing them alternate housing with better amenities and a better standard of living. The '*Ida denna*' campaign run on private and state media exemplifies this campaign. The state openly courted private development for 'under-utilised land', previously occupied by poor/working class communities, on the ground that the money received from commercial enterprise would fund alternate housing and amenities for the poor. This report has already highlighted above the disruption, ongoing and long term difficulties caused to the civil, political, social and economic rights of the poor by forced evictions, as well as the difficulties posed by involuntary relocation to high rise buildings through a process that has failed to take into account the resident's own views and grievances in blatant disregard of the law, constitutional rights and safeguards.

This chapter analyses the legal status of residents in the UDA complexes, complicated by the conduct of the State vis-a-vis the residents in terms of a lack of basic transparency and accountability, failure to adhere to existing statutory safeguards made available to condominium dwellers and the impact on the rights and entitlements of relocated residents. Practically, the issues discussed in this chapter have a direct bearing on the material and physical security of residents, their quality of life and long -term prospects.

In keeping with the practice of not putting anything agreed to or promised to the communities in writing, the State for several years, levied rental, taxes and collected utility payments from the residents, including the Rs.100,000/- without any binding document or agreement. The lack of any written agreement has been used to renege on promises made and to add more onerous terms than what were agreed orally and at public meetings.

In May 2015, CPA obtained a copy of a draft agreement the UDA was asking all relocated residents to sign. Word of the agreement first got around when residents of 34 watta complained that they were under pressure from the UDA to sign a document and that the UDA refused to share a copy of the document. As a result, there was no opportunity for residents to consult among themselves or obtain legal advice on its terms.

Equally problematic was that the agreement was available only in Sinhala and there was no attempt to either translate or explain its contents to the residents, many of whom were Tamil speaking and therefore unable to read Sinhala text and some of whom were also illiterate. One of the first residents to sign this agreement was in fact illiterate and was not explained the content of the document she signed. She was refused a copy of the signed agreement.

The conduct of the UDA was in blatant violation of basic principles of equity and natural justice and the reasonable conduct expected of a public official. It also violated the constitutional rights of residents to equality and due process. The petitioners of 34 watte who were supported by CPA in 2014 and the residents of Mayura Place refused to sign the agreement until they were given time for further consultation. CPA only obtained a copy of the agreement when a resident of one of the communities succeeded in making a photocopy of the agreement despite UDA pressure.

A bare reading of the UDA agreement (hereinafter referred to as the original agreement) raises several questions, which may be why the UDA sought to suppress circulation of the document or any form of consultation or expert comment thereon. Some of the problematic aspects of the draft agreement included the lack of recognition of type of previous occupation and the failure to grant title or security of tenure in the new allotment to the resident. In fact the tone and spirit of the entire document was that of a rental agreement with the UDA as the landlord, rather than one in which the resident has possession and ownership over the new house, including -

- 1) All common elements are the property of the UDA (Clause 19) and in the absence of a management corporation are under the management of the UDA, when under law the residential unit holders are entitled to a undivided share of the common elements in according to the use of the said condominium under the Apartment Ownership Law, specifically Section 13(3) of Act No.39 of 2003;<sup>26</sup>
- 2) Restrictions on the right of the resident to freely deal with the property as (s)he sees fit, including to rent, lease or in any way transfer the property or even to keep the house closed up if they so wish (Clause 13);
- 3) The power given to the UDA to enter a residence with prior notice to the resident (Clause 15).

Other onerous features included, the requirement that the resident renounces all claims to compensation for the old land (Clause 2), provision for penalties for delays in rental payment

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<sup>26</sup> The registration of a condominium property is mandatory under the Apartment Ownership Law (Apartment Ownership Act No. 39 of 2003). Several legal rights of unit holders including the creation of the Condominium Management Corporation and legal title to the specific units are triggered upon registration. At the point of drafting the UDA Agreement (referred to herein) the UDA informed the authors that none of the condominium properties built by the UDA had been registered.

(Clause 7), granting of unreasonable and unilateral power to the UDA to change the terms of the agreement and/or terminate and evict the resident (Clause 29), clauses that were contrary to law and practice when it comes to condominiums including the failure to register the building with the Condominium Management Authority (CMA) to date, or set up the Condominium Management Corporation (CMC) referenced at Clause 8, existence of a responsibility vacuum especially with regard to maintenance where there is no clear obligation on the State to carry out repairs. (See copy of Original Agreement as Annexe A)

Civil society and residents lobbied against the original agreement and called for revision of key terms affecting the rights and legal status of residents. At a meeting on June 10th, 2015 facilitated by Deputy Minister Harsha de Silva with Prime Minister Ranil Wickremasinghe, UNP MPs for the Colombo district - Eran Wickramanayake, Ravi Karunanayake and Rosy Senanayake and the then recently appointed UDA Chairman, Ranjit Fernando, the problematic nature of the draft agreement was explained. Following this meeting it was decided that the draft agreement would be rescinded and a new one drafted keeping in mind the shortcomings of the present document.

This meeting established a working relationship between the authors and the UDA Chairman, and the next several months were spent drafting a new agreement. Some of the key changes we were able to influence in the new draft agreement was to provide title in five years as opposed to the current 20-30 years, to provide for and recognise joint ownership, to recognise previous ownership and create two separate agreements - one for previous title holders and another for non-title holders, to reduce the value of the land from the Rs 1 million rupee payment imposed on those who had title previously. The changes were compromises and were sometimes far from ideal from the wishes of the affected communities, especially those who had title previously.

The new draft agreements were translated to Sinhala and Tamil while discussions were ongoing in order to share with affected communities and get their feedback. However, towards the final stages of the drafting process, the then UDA Chairman felt some of the changes suggested in the draft agreement required board approval and the process spilled over to 2016. Furthermore, all throughout 2015 and 2016, there were separate meetings and engagements with the UDA, in addition to working on the draft agreement, to address specific issues and grievances of communities that surfaced as the authors continued documenting the hardships experienced by the communities.

In May 2016, the UDA revealed to the communities a new revised Agreement, which was different to the Agreement drafted and proposed by the authors but was still a vast improvement on the original Agreement. Features of the revised Agreement (hereafter referred to as the current Agreement) are discussed in detail below. As already referred to above, the

UDA used the signing of this current Agreement as a condition to the return of the Rs. 100,000/- to residents as per the interim budget provisions of January 2015. Many signed unwillingly since the current Agreement did not capture or secure their rights and entitlements fully but believed that the UDA would follow through, especially with respect to the setting up of a CMC for each building and ensuring proper maintenance of the buildings. Furthermore, an agreement in the Tamil language was only provided after complaints were made by individuals from the community and CPA directly to the then UDA Chairman Ranjit Fernando.

### ***Constitutional Right to official communication and documents in the Tamil language***

Article 22 of the Sri Lankan Constitution

(1) Sinhala and Tamil shall be the languages of administration throughout Sri Lanka...

(2) In any area where Sinhala is used as the language of administration a person other than an official acting in his official capacity, shall be entitled :

(a) to receive communications from and to communicate and transact business with, any official in his official capacity, in either Tamil or English ; ... (c) where a document is executed by any official for the purpose of being issued to him, to obtain such document or a translation thereof, in either Tamil or English ;

The following issues addressed and/or that arise out of the current Agreement;

#### ***a) Recognition of Previous Ownership***

The current Agreement does not recognise previous ownership or title. Clause 2 speaks only of possession and the obligation of the relocated resident to provide vacant possession of the old property, which he/she possessed to the UDA within 3 days of taking possession of the new house. The authors own formulation submitted to the UDA in 2015 which was later abandoned in favour of the current Agreement, recommends two separate agreements for title and non-title holders, expressly recognising the legal status of title holders.

#### ***b) Right to Compensation***

The current agreement does not recognise a right to compensation over and above the allocated new house. Clause 2 only states that the new house is allotted in return for the previous property held by the relocated resident. The failure to provide adequate compensation has been a main ground of complaint by the residents. The allocation of a house in a high rise building often in low-income neighbourhoods, does not take into account the value of their previous property held in the heart of the city.

In their formulation, the authors recommended that in the case of title holders, the UDA shall pay compensation to the relocated resident, which amount shall be set off against the



Nominal Purchase Price of the new unit (at Clause 3 of the new agreement). The limiting of compensation to title holders is a product of the need to reach a compromise with the UDA and does not reflect the authors own view that all persons including non-title holders must be compensated for the loss of property, which amount must be set off against the price of the new house or paid directly to them.

*c) Obligation to hand over vacant possession*

Clause 2 obliges the relocated resident to breakdown any existing house and handover vacant possession of the land to the UDA. Given the long delay in executing such an Agreement, the majority of the residents have already handed over possession and moved out of their old properties well in advance of what is required. However for those still occupying their property, the agreement places an unfair burden and cost of breaking down the existing house, which should be the responsibility of the UDA.

*d) Nominal Purchase Price*

Clause 3 of the current Agreement speaks of the nominal purchase price of Rs.1 million for the new residential unit. There has never been a transparent formulation or independent valuation (that we are aware of) of the true value of the new residential unit. The authors in their negotiations with the UDA have recommended sharing the basis on which the value of the property has been assessed with the residents in a transparent manner as well as a scheme to take into account the capacity of the residents to pay the monthly rental and maintenance payment and a concession scheme for those whose incomes do not support such a payment.

*e) Restrictions on Freedom to Deal with the New Property*

Although a vast improvement on the original version, the current agreement continues in spirit to mirror a rental agreement rather than one which vests title and ownership in the relocated resident. Clause 4 prohibits the resident from freely dealing with the property including to rent, lease, sublet, mortgage, sell or transfer the property without the prior approval of the UDA.

In negotiations with the UDA, a frequent concern raised by UDA officials, especially the military was that “these people” were selling or renting allotted houses and moving out. The agreement in fact attempts to make ‘illegal’ exercise of natural rights over property. Removing a family from their home for which they had full proprietary rights and forcing them to occupy a new residential home on the grounds that their lives are thereby uplifted, is convoluted logic.

The UDA must also bear in mind that people were relocated without prior consent or consultation. In terms of aesthetic, convenience, security and privacy these new units may not be the resident's preference for a home. The house for a house policy also does not accommodate the multiple families that lived together before eviction, who cannot be accommodated in the small apartments. In such light, there is no rational reason why, a resident who wishes to sell, rent or lease their property should not have the freedom to do so, provided the UDA continues to get the monthly installment or in the case of a sale, payment in full of the nominal purchase price.

#### *f) Title - Security of Tenure*

The current Agreement falls well short of passing title in the new building to the relocated resident. Clause 4 states that until title/ownership is transferred to the resident by way of title deed, the resident cannot deal or encumber the property.

While calling for title and security of tenure to be assured to the relocated residents immediately, the authors note that the current Agreement is a vast improvement on the terms of the original Agreement on the issue of title. Under the previous system, a resident would only get title when he/she finished paying the full nominal purchase price at the end of 20 or 30 years depending on their payment scheme. Even in the case of residents who were able to pay the full price up front, the UDA officers were reluctant to pass title until at least five years had passed out of concern that people would sell and move out of their new residences. The approach of the UDA to the issues of title as well as the rights, choices and freedom of the working class poor, clearly expose their own bias and stereotypes and highlights the dangers of laws and policies being framed by decision makers who have little respect for and/or awareness of the lived reality of 'the other'.

#### *g) Ownership of Common Elements*

Under the Apartment Ownership Law in Sri Lanka the ownership of common elements vests in the residential unit holders in proportion to the extent of the unit owned by them. The original agreement vested ownership of common elements in the UDA, which was contrary to law. In a title vacuum such as created under the current Agreement it is unclear as to who owns the common elements. Unlike in the case of individual houses, ownership and management of common elements is a critical issue in high-rise living since it has a direct bearing on the living conditions of residents and value of the property as a whole.

#### *h) Failure to set up the Condominium Management Corporation*

The State failed to abide with the provisions of the Apartment Ownership Law including the requirement to register the Condominium Plan with the Condominium Management Authority

as well as the requirement of setting up the Condominium Management Committee in every complex for the maintenance and management of the high rise, especially the common elements. The legal vacuum in terms of title has in part contributed to the lack of a CMC. By law, the CMC is comprised of the owners of the various units in the building. At present the residents do not own the units in which they live and therefore cannot legally form part of the CMC. The absence of the CMC has a bearing on the collection of maintenance funds, and the sinking funds and also leaves a gap in who is responsible for maintaining the property. The new agreement does not clearly place an obligation on the UDA to maintain the property.

i) Termination of the Agreement/Eviction of Residents

Clause 12 of the current agreement has a wide termination clause, which enables the UDA to terminate on account of the violation of any of the clauses in the agreement. Such sweeping powers would enable to the UDA to take unilateral action and would unfairly prejudice the residents and increase their sense of vulnerability. A distinction must be made that the Agreement can only be terminated for the violation of material clauses to the contract, which must be clearly identified in the body of the Agreement. A procedure for termination must also be clearly set out.

Memorandums of Understanding for Allocation of Apartment and for Monthly Rentals  
– The Station Passage Experience

In around November 2013, the residents of Station Passage who were compelled to leave their homes on account of the UDA's Slave Island Redevelopment Project Stage II entered into a memorandum(s) of understanding (MOU) with the UDA and the developer for the allocation of an apartment (housing MOU) and for the payment of monthly rentals (rentals MOU). The MOUs arise out of the Order of the Supreme Court dated 12.11.2013 in the fundamental rights case bearing No. SCFR 294/2013. The Court in its final order, outlined two options for the residents -

- 1) to accept a house in the new development in lieu of their premises with a provision for monthly rental payments to be made until the said apartment is built and handed over
- 2) for the payment of compensation in terms of the Land Acquisition Act with provision of rental until the compensation is finalised, not exceeding a period of 1 year.

The two MOUs provide an interesting counterpoint to the more generic UDA agreement, the original version of which was being pushed on evicted/relocated residents in other areas of Colombo at around the same time the MOUs were signed, by the UDA.

Unlike the generic UDA Agreement, the MOUs on allocation of a house, contains several positive features including the recognition of previous ownership as well as recognition of the types of premises owned whether residential or business premises (Clause 1 read with Clause 3 of the MOU on Housing). Further, Housing MOU also provides that the new premises shall take into consideration the existing floor area of the property owned by the resident and that the new houses in terms of space and value shall be of similar or greater value to the original premises (Clause 2 read with Clause 4 of the MOU on housing).

However in contrast to the generic UDA Agreement, which speaks only in terms of the obligations of the relocated residents to the common elements, the Housing MOU at Clause 10, sets out a positive obligation on the developer to provide certain common elements. Clause 11 also obligates the developer to provide a unit containing at a minimum the features set out therein including infrastructure facilities. The main concern for residents has been the delay in completing the new development (which under Clause 12 was due to be completed in 18 months), and now three years later and after several negotiations with the UDA they have been promised the apartments will be completed by December 2017.

Overall the MOUs in contrast to the generic UDA Agreement provide for; 1) recognition of previous ownership 2) recognition of different types of premises and an obligation to replace same in the new development whether housing or business premises; 3) obligation on the UDA and the developer to ensure that the new premises are similar or of higher value to the previous property; 4) related to this is the promise of an increased floor area to the area previously owned; 5) the focus on quality of construction and the requirement of supervision by a local consultancy agency before handing over to the resident (Clause 13 of the Housing MOU and Clause 2 of the Rentals MOU); 6) the direct reference to the Apartment Ownership Law which protects the rights of residents and their ownership including over the common elements (Clause 3 of the Rentals MOU and Clause 4 of the Housing MOU) and 7) the rental MOU recognises not only the requirement of rental payment but also an additional payment to compensate for expenses incurred on account of being compelled to vacate the premises with immediate effect.

The introduction of the developer is an important model for the future. By putting the developer in direct contact with the affected community and imposing obligations on the developer for the construction of the new development, it creates a more equal and enabling environment for the community and also releases the UDA from the obligation of building and transferring the new development to the residents.

The MOU on housing does not expressly state that title to the new premises will pass to the relocated resident although that was what was promised. However unlike in the case of the UDA Agreement, the idea of title passing is implicit in the spirit and terms of the document.

Crucially, the MOUs do not require the residents to make any payment towards the new premises and also places no obligations or restrictions on the ability of residents to deal freely with their new property. Clause 4 of the Rental MOU specifically states that apart from the statutory dues there will be no further charges when handing over the new premises. The Agreement as per Clause 18 of both MOUs shall cease to have effect upon the handing over of the relocation house/business premises to the resident.

What makes the Station Passage experience one worth highlighting is that it shows a UDA capable of a more humane approach to relocation. The negotiations with the UDA, the community's ability to affect even the design of their apartment (from layout to size to the number of apartments they were allocated), to having all what was agreed upon given to them in writing, all took place under the previous regime. Comparing their experience and the agreements drafted for them detailed above with the extremely problematic generic UDA agreement discussed in this chapter therefore begs the question as to why this same approach and time taken to consult with the community was not afforded to all other communities whose post relocation life has been badly affected not only by the process but also by the disconnect with their new built environment as discussed in Chapter 2.

## Eminent Domain and Public Purpose

Eminent domain refers to the power of the state to take over privately held land on the grounds of public interest, subject to payment of compensation. The doctrine, which travelled extensively through colonialism, has influenced jurisprudence across many different contexts and legal/political terrains.

Gelbspan and Nagaraj identifying the doctrine of eminent domain as one of the most significant obstacles to advancing a human rights approach to land comments, “The principle of eminent domain signifies the authority vested in the state to exercise its role as a guardian of larger public interest. For instance, the doctrine provides a legal foundation for expropriation of lands in the context of land reforms, land redistribution or restitution, such as in Brazil, India or South Africa, in ways that acknowledge people not as subjects but rights-holders and conceives of the State as a guarantor of rights and not as absolute sovereign. However, a notion of eminent domain that links the power of expropriation solely to the exercise of sovereign authority sits at odds with a human rights-informed understanding of the relationship between the state and people (one of duty-holder and rights-bearers.) Overall, there exists a real tension between the full spectrum of human rights safeguards and principles (including equality before the law; participation; accountability; free, prior and informed consent; access to remedies etc.) and the way that eminent domain has generally been understood<sup>27</sup>.”

### A brief examination of eminent domain in Sri Lanka

Eminent domain is linked to monarchic power or ‘great power’ as denoted by the use of the word ‘eminence’. In Sri Lanka eminent power in relation to land as exercised historically by kings based on the assumption that the king maintains control over all land. The king’s prerogative to waste and jungle lands is described as serving the vital purposes of developing new areas, extending settlements, rehabilitation of settlements devastated by war or natural disaster<sup>28</sup>. There was no recognition of an antecedent right to private property by an individual. In fact a form of absolute ownership was only recognised in relation to monastic holdings of property. There was also recognition of grants of land as conferred by the king. The eminence of the power exercised is rooted in autocracy.

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<sup>27</sup> Working paper by Thea Gelbspan and Vijay K. Nagaraj, Seeding Hope? Land in the International Human Rights Agenda: Challenges and Prospects, International Network for Economic, Social and Cultural Rights, September 2010

<sup>28</sup> K M De Silva, “A History of Sri Lanka”, 1981 University of California Press, at page 37

The question of legal possession of property is a product of colonised rule. The concept of 'crown land' is introduced using the language of encroachment by the Crown Lands Encroachment Ordinance of 1840 and the Waste Lands Ordinance of 1897. The Crown Lands Encroachment Ordinance has the effect of establishing as Crown lands all forest, waste, unoccupied and uncultivated lands<sup>29</sup> and sets out a process by which all occupied lands is deemed encroached unless proof of title can be established<sup>30</sup>. This effectively dispossesses and deems occupied lands as crown land unless otherwise proved which is not a burden easily discharged. Simply put, these pieces of legislation created landlessness; legalises or recasts in law the eminence of power of the crown over land.

Since this time and in recognition of the problems caused by landlessness, there have been attempts to reverse the impact of these colonial laws. The first Land Commission report of 1929 led to the Land Development Ordinance of 1935 that introduced the notion of government alienation of Crown land. The alienation of land too became embroiled in governmental agenda and policies that for example favoured Dry Zone areas to improve irrigation works, increasing security of tenure for paddy cultivators and from time to time programs for 'rural upliftment'. Alienation of state lands today is primarily through grants or permits.

Looking at the power of eminent domain with historic specificity reinforces an understanding of the continued eminence of the power of the state in relation to land. This continued eminence was described as "Traditionally there were two parties, and only two, to be taken into account; these parties were the ruler and the subject, and if a subject occupied land, he was required to pay a share of its gross produce to the ruler in return for the protection he was entitled to receive. It will be observed that under this system the question of ownership of land does not arise; the system is in fact antecedent to that process of disentangling the conception of private right from political allegiance which has made so much progress during the last century, but is not even now fully accomplished ....."<sup>31</sup>. Therefore Sri Lanka's claims practicing democratic rule and constitutionally recognised that sovereignty lies with the people of this country, the question is whether the exercise of eminent domain reflects this. The constitution is explicit on the question of sovereignty that is recognised as the sovereignty of the People as exercised by the legislature. The power of eminent domain must therefore also necessarily be recast from its traditional notions of eminence to a power drawing legitimacy in democracy. The socialist ideology also attaches to this power by virtue of Sri Lanka identifying itself as a socialist republic.

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<sup>29</sup> Section 7 of the Crown Lands Encroachment Ordinance of 1840

<sup>30</sup> Sections 2 and 3 read together with and 9 and 10 of the Crown Lands Encroachment Ordinance

<sup>31</sup> Moreland is quoted by H.W. Codrington in *Ancient Land Tenure and Revenue on Ceylon*, pp. 5-6

The commodification of land together with the fact that the state holds to itself this commodity by virtue of colonial legislation intensifies the magnitude of the power of the state in relation to land. The Sri Lankan constitution currently does not recognise the right of an individual to property. At the time this report was drafted the Fundamental Rights Sub Committees appointed by the Constitutional Assembly to propose reforms to the constitution had proposed that the fundamental right to property be guaranteed. Thereby constitutionally recognising the commodity of land. In this landscape, eminent domain must be interrogated with the understanding of the power imbalance in relation to land in mind. The power of eminent domain is recognisable in many laws, mainly the provisions of the Land Acquisition Act<sup>32</sup>. The power itself has not been the subject of judicial scrutiny to understand how its exercise has been evaluated against democratic practice. It is the concept of public purpose and the connected concept of the doctrine of public trust have received some judicial attention and therefore will be examined next.

## Public Purpose and the Doctrine of Public Trust

In the exercise of the power of eminent domain in Sri Lanka the requirement of public purpose is the only criteria discussed. The requirement of public purpose draws legitimacy from the notion of democratic governance. Jurisprudence in Sri Lanka does not consider other requirements such as efficiency and justice, which have been highlighted in academic works<sup>33</sup> on eminent domain in the United States.

The requirement of public purpose is a duty to disclose the public purpose<sup>34</sup> and to uphold the doctrine of public trust in interpreting 'public purpose'. The "Public Trust Doctrine" is based on the concept that the powers held by organs of government are, in fact, powers that

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<sup>32</sup> De Silva v. Atukorale, Minister Of Lands, Irrigation And Mahaweli Development And Another 1983 1 SLR 283 at page 291

<sup>33</sup> The requirements of efficiency and justice are discussed as two most important goals of a proper eminent domain regime by Michael A. Heller & James E. Krier, Deterrence and Distribution in the Law of Takings, 112 HARV. L. REV. 997, 998 (1999) ("In a vast and otherwise contentious literature, whether judicial opinions or scholarly books and articles, there appears to be virtual consensus that the purposes of just compensation are essentially two[:] . . . 'efficiency' and 'justice[]' . . . "); Frank I. Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law, 80 HARV. L. REV. 1165, 1214–24 (1967) (Michelman, in this enormously influential work on the subject, preferred the terms "utility" and "fairness")

<sup>34</sup> Manel Fernando and another v D.M Jayarathne, Minister of Agriculture and Lands. In this case Justice Mark Fernando held that "The minister cannot order the issue of a Section 2 notice unless he has a public purpose in mind. Is there any valid reason why he should withhold this from the owners who may be affected? Section 2(2) requires the notice to state that one or more acts may be done in order to investigate the suitability of that land for that public purpose: obviously that public purpose cannot be an undisclosed one. This implies that the purpose must be disclosed. From a practical point of view, if an officer acting under Section 2(3)(f) does not know the public purpose, he cannot fulfill his duty of ascertaining whether any particular land is suitable for that purpose"



originate with the People, ... and with the sole objective that such powers will be exercised in good faith for the benefit of the People of Sri Lanka<sup>35</sup>.

In locations acquired under the LAA the public notice merely states that they are under acquisition for 'public purpose' and the practice is that the Gazette notification, publicly announcing intent to acquire, only states the reason for acquisition as 'public purpose'. There is no instance where the purpose is disclosed. Accountability and transparency are not prerequisites for state acquisition. The evictees interviewed all echo sentiments of uncertainty of the purpose when the acquisition was first made known. Speculation and manipulation of information, particularly by state officials is a common shared experience. Often times there is little or no information on which any challenge to the acquisition process can be made. Judicial pronouncements have held non disclosure of the public purpose to be fatal to the acquisition. The decision in Manel Fernando v. D M Jayarathne was upheld in 2008 by a judgment which stated "the failure to specify a public purpose is fatal to the acquisition proceedings and the subsequent vesting of the land in the Urban Development Authority does not cure the defect in the notice given under Section 2 of the Land Acquisition Act."<sup>36</sup> This has been followed by later decisions.<sup>37</sup>

What constitutes public purpose is a separate question. For Station Passage, it later came to light that the 'public purpose' was the building of a luxury condominium and mall complex. The fact that a luxury condominium and mall complex are justified as public purpose means public purpose is interpreted widely. When the purpose is for the direct benefit of the public at large, such as public highways or public marketplace, public purpose has a clear narrow scope. When the intended purpose is a luxury mall that is not accessible by the public at large, the interpretation of public purpose is overly broad.

The Water's Edge judgment<sup>38</sup> specifically refers to the purpose of a golf course as distinct from serving the general public and instead serving the "elitist requirements of the relatively small segment of society in Sri Lanka." The judgment goes on to state "The enactment of laws to allow for such land acquisition was only done because of a legislative belief that private ownership in Sri Lanka is subject to the paramount, essential and greater need to serve the general public, a significant segment of who lack even basic living amenities like running water, electricity, and housing." Thereby upholding a narrow interpretation of 'public purpose'.

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<sup>35</sup> S. C. (F/R) No. 352/2007

<sup>36</sup> Mahinda Katugaha v Minister of Lands and Land Development and Others 2008 1 SLR at page 285

<sup>37</sup> Horana Plantations Ltd. v. Hon. Minister of Agriculture and 7 Others 2012 1 SLR at page 327 and Namunukula Plantations Limited V. Minister of Lands and 6 Others 2012 1 SLR at page 365.

<sup>38</sup> Mendis et al. v. Perera et al. S.C. (FR) No. 352/2007

By this judicial standard acquiring land for the building of a luxury mall could not be defended. The acquisitions of land in the Northern Province of Sri Lanka in 2013 as reported by CPA<sup>39</sup> provide yet another example of an overly broad understanding of public purpose and a lack of a policy and legal framework by which such purpose can be evaluated. In practice the trend of exercising eminent domain for commercial purposes has been increasingly observed under this regime. In September 2016 it was reported that the UDA had acquired land identified by Cargo Board Development Company, a public listed company, for a multi-storey car park. In November 2016 it was reported that state officials were measuring large tracts of residential and paddy lands in the Hambantota District for the development of an investment zone had alarmed residents.<sup>40</sup> In early January 2017, a protest by hundreds of residents in Hambantota against the acquisition of 15,000 acres of land in the projected industrial zone for Chinese investors turned violent with police using tear gas and water cannons and 21 people being injured and 52 arrested<sup>41</sup>. The residents were against the acquisition on account of it being their agriculture land and land that was the most fertile. The situation was exacerbated by the fact that there was very little information available to the villagers about the Government's plans or why the land was being surveyed<sup>42</sup>.

#### Favouring procedural propriety over substantive concerns

Case law demonstrates that Courts in Sri Lanka have been willing to recognise the infringement of fundamental rights where procedure has not been followed. The Supreme Court in *Mundy v. Central Environmental Authority*<sup>43</sup> held that "If it is permissible in the exercise of a judicial discretion to require a humble villager to forego his right to a fair procedure before he is compelled to sacrifice a modest plot of land and a little hut because they are of "extremely negligible" value in relation to a multi-billion rupee national project, it is nevertheless not equitable to disregard totally the infringement of his rights: the smaller the value of his property, the greater his right to compensation." This attitude of completely failing to acknowledge the resultant hardships, sacrifices and the connections people build with their surroundings in their chosen place of residence is reflected in the manner in which

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<sup>39</sup>Fonseka, B and Jegatheeswaran, D, Policy Brief on Politics, Policies and Practices with Land Acquisitions and related Issues in the North and East of Sri Lanka, 2013 (<http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/>)

<sup>40</sup> Daily Ceylon, 30th November 2016 accessible at <https://youtu.be/jEdStntIHJl>

<sup>41</sup> Channa Kumara, 'Sri Lanka launches China-led investment zone amid protests', Reuters, January 7 2017 (<http://www.reuters.com/article/us-sri-lanka-china-investment-idUSKBN14R0JG>)

<sup>42</sup> Amantha Perera, 'China's Billion-Dollar Re-entry in Sri Lanka Met with Public Protests', Inter Press Service, January 9 2017 (<http://www.ipsnews.net/2017/01/chinas-billion-dollar-re-entry-in-sri-lanka-met-with-public-protests/>)

<sup>43</sup> SC Appeal No. 58/2003<sup>50</sup>

executive decisions and administrative actions are carried out before and during displacements caused by state acquisition.

However facts relating to the actual impact of dispossession or eviction have not been recognised. The judgment in *D.F.A. Kapugeekiyana v. Minister of Lands and Others*<sup>44</sup> states, “Yet, in the process of carrying out greater good for the public of the country, one must not unduly neglect the owner of the land. It would be overly harsh to forget the ties a landowner has to his property. Therefore, it is necessary for the Minister and/or any authority acquiring the land, to have a clear and distinct public purpose for which the acquisition is commissioned.” In *Mundy Vs. Central Environmental Authority* the Court of Appeal<sup>45</sup> held “...While development activity is necessary and inevitable for the sustainable development of a nation, unfortunately it impacts and affects the rights of private individuals, but such is the inevitable sad sacrifice that has to be made for the progress of a nation. Unhappily there is no public recognition of such sacrifice which is made for the benefit of the larger public interest which would be better served by such development. The Courts can only minimize and contain as much as possible the effect to such rights...”.

The unjust results of the exercise of eminent domain are reflected in this lack of consideration of the real hardship and loss faced by affected persons. The loss of investment in the land, loss of ties to social networks including schools, employment and places or communities of worship, the loss of opportunity to plan and develop their lives and homes, the lack of information and resultant uncertainty, the delays in providing meaningful alternative lands or accommodation are all factors that result in inefficiency and injustice. Efficiency and justice ought to be goals in the proper exercise of eminent domain.

In conclusion this Chapter has traced the underlying socio-legal practice in relation to land acquisition by tracing the understanding of eminent domain, public purpose, public trust in the Sri Lankan context. It is evident that debates on powers pertaining to land acquisition, the objectives that drive these powers and the controls exercisable on such power are very much in its developmental stages. Even from the brief investigation of the current legal framework, it is evident that the law pertaining to this area is in urgent need of review and development for the benefit of those affected.

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<sup>44</sup> S.C. Appeal No. 161/2010

<sup>45</sup> CA Application No. 688/2002

## Moving forward: The right to the city

Among almost every person interviewed in the affected communities for the last few years there has been one common message - people have no objection to giving up their land for development but what they demand from the authorities is that due process and fair consultation is followed in the acquisition of their land. It is the absence of this that forces communities to oppose the acquisition, to seek redress through any available system. People do not want the only alternative to their current home to be a 400 square foot apartment in Dematagoda. Previous chapters have highlighted the problematic approach to dealing with the working class poor and the effects of that, but what is also equally problematic is the narrow lens through which tenure is viewed. Using the UDA approach as the classic example, communities are viewed as either title-holders or non title-holders. Under the previous regime, sometimes even title-holders were disregarded in the acquisition process and the LAA was not followed. While this has changed under yahapalanaya, there must be a more equitable process when acquiring land held by the working class poor where legitimacy is as much a consideration as legality.

This is necessary because communities derive claim or sense of ownership to their land (often intertwined with idea of citizenship - “we were born here and so were our parents and grandparents”) through various factors in addition to/ and even in the absence of title. These range from inclusion in electoral lists from that address, lifetime exercise of the franchise on this basis, receipt of municipal council cards, bills for rates and taxes and utility bills that bear the address of the house. This legitimacy on paper has also been recognised by authorities over time who have issued identity cards, recognised voting rights, serviced them by improving infrastructure by way of roads, water and electricity connections. This includes families who have built houses alongside railway tracks and have upgraded their houses over time to now what are now permanent houses.

Communities also invest based on this claim to the land, irrespective of title. Most do not fall into the category of slum and shanty and have improved their houses over time, spending significant sums of money. Even though UDA figures claim that a total number of 68,812 families live in 1,499 community clusters (underserved settlements) which “do not have a healthy environment for human habitation and access to basic infrastructure facilities such as clean water, electricity, sanitation etc”, according to the Underserved Settlements Survey 2012 conducted in the Colombo district by the Colombo Municipal Council and Sevanatha, 54.4% of settlements in Colombo fall into the category of ‘upgraded’ and 39.3% fall into the category of ‘fully upgraded’ - which means that almost 94% of the settlements in Colombo

are of satisfactory conditions and do not fall into the categories 'underserved' (5.9%) or 'extremely poor' (0.3%).

Gautam Bhan writing about bastis in Delhi, India also refers to this existence and investment of that existence on paper and the same observation can be applied to the communities in Colombo as well - "The basti thus is a site where different and often contradictory orders and temporalities of claims, governmental forms and rationalities seemed to co-exist, for years and even decades. A de facto security of tenure grows amidst layers of an emerging and dense urban life making the legibility and enforceability of the de jure 'illegality' of the occupation fade though never entirely disappear."<sup>46</sup>

Because of the very involuntary nature of the relocations, it is important that policies look beyond occupation on land and also take into consideration the other benefits that location affords the communities, such as access to good schooling and livelihood. Because most of the affected communities have worked and lived in Colombo all their life, having to travel a longer distance to their workplace, place of worship or that children cannot walk to school anymore, that those engaged in home based informal income generating activities like supplying neighbourhood shops will lose that income avenue completely must be factored into the relocation process. Policies like NIRP take all this into consideration, including when it comes to compensation, which is why legislating NIRP is a must.

### From Island to Continent

"The citizens of Colombo deserve a better deal than a land scam under the guise of development. Firstly, all of them must be taken into confidence and consulted in preparing plans. Secondly, there must be a place for everyone including the low-income earners as well as the Sinhalese, the Tamils, the Muslims, the Burghers and other minorities. Thirdly, the wishes of the residents must be respected. In the last four years the UPFA has failed to do. What we are witnessing is not the development of Colombo but forced evictions, demolished homes, and the unheeded heartbreak of displaced citizens. The UNP will turn this around by making you the stakeholders of Colombo. Together let us make Colombo the preeminent city in South Asia."

This is an excerpt from an article "Colombo is Colombo" written in September 2011 by Prime Minister Ranil Wickremesinghe when he was the Leader of the Opposition. In this article he details the vision for the CESMA plan, what is now the current Government's flagship Megapolis plan. In the article he also criticises the approach to urban development and land acquisition of the Rajapaksa regime and finally promises an approach that champions a right to the city and not the right over the city. It is unfortunate that this vision to include all city dwellers in consultations has not materialised in the same spirit. The public consultations that

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<sup>46</sup> Gautam Bhan, In *The Public's Interest - Evictions, Citizenship and Inequality in Contemporary Delhi*, 2016

has taken place so far about the Megapolis project has been more along the lines of presentations about the project and what it will deliver. Communities being displaced under projects under the Ministry face little or no consultation or even information regarding their relocation and their experience is no different to those under the previous regime - the only difference being the absence of the military.

The working class poor continue to be seen as impediments to development and growth and continues to be vilified publicly by officials. Furthermore the uncertainty surrounding their future is exacerbated by the fact that they continue to be categorised into broad labels of 'unauthorised' and 'illegal' simply based on where they live and other factors being completely disregarded. For example, following the May 2016 floods, government officials stated that "unauthorised settlements and reclamation of lands have led to the disaster situation" and that the President instructed officials not to allow any unauthorised dwellings<sup>47</sup>. The fear among many communities following the floods was that authorities would use this rationale as a reason to remove them from their homes without due process.

### Safeguarding the right to the city

With the continuation of the Urban Regeneration Project under the current Government's Western Region Megapolis Ministry, there will be development activities and projects that will continue to relocate people to high-rise complexes, rewriting of the socio-economic DNA of the affected communities<sup>48</sup>. Despite several demands over the years for a complete review and change in approach and thinking of the URP, we see no effort to do so from this Government either. What is required from policy makers and implementing authorities is not just a change in their approach or even conceptualising of these projects, but a change in also how they view the working class poor. It is not only the demonstrated attitude towards the affected communities that betray this mindset, but even official documents as well. For example the Housing and Relocation of Administration chapter of the Western Region Megapolis Master Plan states "The underserved community regeneration programs are urgent; specially to release the economic corridors occupied by them"<sup>49</sup>, continuing to see the working class poor as impediments to development and growth with no consideration of spatial injustice and social equity.<sup>50</sup> Furthermore it is also worth highlighting that according to

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<sup>47</sup> Flood, landslide areas declared High Security Zones, The Daily News

<sup>48</sup> Anushka Wijesinha, Colombo's Urban Regeneration Could Rewrite the 'Socio-economic DNA' of Entire Communities, August 2014. (<https://thecurionomist.wordpress.com/2014/08/25/colombos-urban-regeneration-could-rewrite-the-socio-economic-dna-of-entire-communities/>)

<sup>49</sup> Western Region Megapolis Master Plan, Page 47. ([http://www.megapolis.gov.lk/pdf/Master%20Plan\\_Launched%20in%20January/Megapolis%20Plan\\_Jan16\\_English.pdf](http://www.megapolis.gov.lk/pdf/Master%20Plan_Launched%20in%20January/Megapolis%20Plan_Jan16_English.pdf))

<sup>50</sup> Vijay Nagaraj, Mega questions over the Megapolis master plan, Daily FT, January 2016. (<http://www.ft.lk/article/521518/Mega-questions-over-the-Megapolis-master-plan>)

the UDA, “Over fifty percent of the Colombo city population lives in shanties, slums or dilapidated old housing schemes, which occupied nine percent of the total land extent of the city” - indicating that even though 50% of the city population occupy only 9% of the land, even that is too much for them and therefore should be further densified in order to release these “economic corridors occupied by them”.

These changes mentioned above alone will not strengthen communities’ right to the city and their right to be heard and consulted in development plans that will transform Colombo in the years to come. In addition to legislation of the NIRP, a long overdue promise of this Government, the current constitutional reform process is an opportunity to strengthen the rights of people, and the case of Colombo’s working class poor and their experience of dispossession and relocation is a good example of why a new Bill of Rights that guarantees right to property, right to privacy, and right life and human dignity can demand a more transparent and accountable Government in the acquisition of land and development planning. As mentioned in Chapter 4, eminent domain is not something that affects only the poor, and the development plans in the pipeline and the absence of adequate safeguards in the acquisition and relocation process under current law will require more than one avenue to even secure a place at the consultation table for some. Not only will the inclusion of the rights to life and human dignity, privacy and property make the Sri Lankan constitution in compliance with the International Covenant on Civil and Political Rights<sup>51</sup>, it would also make the protections to affected persons better and make a stronger case than the current Fundamental Right to equality under the current constitution.

The inclusion of these rights could enable citizens to demand a more respectful and inclusive way of public decision making. Right to property for example can make way for acts and policies against illegal eviction and security of tenure, while the passing of legislature such as the UDA Special Projects Act would be more difficult. When acquiring land not only would those with a diversity of tenure and occupation need to be recognised to some extent at least, it will also for example make it possible to demand from the State to explain what the public purpose and what its benefit is. There is a higher threshold of explanation and quality of public accountability that a right to property brings, in addition to placing a responsibility on authorities to implement policies in a way that enables informed participation of all people as well as access to effective remedies and redress for grievances.

Looking at comparative international property rights, the South African Bill of Rights’ right to property (Section 25) is a good model to learn from, especially with regard to compensation. Section 25(3) uses a factor-based test to determine the amount of compensation due to anyone whose land is expropriated. Section 25(3) reads: “The amount of compensation and

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<sup>51</sup> CPA Working Papers on Constitutional Reform No 8, Rohan Edrisinha and Asanga Welikala, Civil and Political Rights in the Sri Lankan Constitution and Law: Making the new Constitution in compliance with the ICCPR, November 2016

the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—(a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation.”

Countries have had their property rights influenced by the decision of whether or not to include a provision for compensation in their constitutions<sup>52</sup>. This choice has often been tied to “the public purpose” of that country’s property rights. In Singapore, a property clause was purposefully left out of the constitution for fear of the escalating costs associated with the constitutional guarantee to compensation. Ghana sought the inclusion of compensation in its constitution in order to address the lack of compensation, which originally characterised its eminent domain law. The Ghanaian constitution went even further, and included a provision that required displaced residents to be resettled on land, which considers “their economic well-being and social and cultural values.”

The provision of compensation and how it is formulated is important when taking current practices in consideration. Compensation is not considered in the URP as a UDA high-rise apartment is meant to be lieu of compensation, irrespective of title. It is in very rare instances like in the case of Java Lane that the Supreme Court gave a choice of compensation for those did not want an apartment. Even when compensation is calculated, the amount offered to communities is only market value and not replacement value, making even voluntary relocation difficult. While affected communities may occupy valuable land in the city, they only occupy small amounts of land - sometimes not more than one or two perches, and yet have a permanent and sometimes multi storied house built on it. With compensation only based on market value, while a family could be entitled to a few million rupees, it is in no way enough to start over - to buy land and build a house in a location in close proximity that causes minimum disruption to their lives or in a location that affords the same benefits given the land scarcity and high prices.

Continuing to use the case of Colombo’s working class poor, the fact that affected communities have no say or choice in their housing in the relocation process - whether it be location, type of housing or even in the way the housing is branded by the State (the URP calls the high rises housing for “low income slum and shanty dwellers” when most relocated persons certainly do not fall into that category) is inconsistent with the right to life and human dignity. The layout of the 400 square foot apartments and the house for a house policy which has resulted in more than one family being forced to occupy a single apartment affects and

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<sup>52</sup> Patricia E. Salkin and Daniel Gross, *International Comparative Property Rights: A Cross-Cultural Discipline Comes of Age*, October 2011



threatens family life. Even in housing design, there is no consultation with communities which results in apartments that do not take into consideration security, privacy, individual habits or even cultural appropriateness in housing. Using Station Passage as a good example of the benefits of a consultative process, when the community was in discussion with the UDA regarding the design of their apartment, they were able to influence a key change in the layout of their new apartment - they requested that instead of having the toilet and the shower area in one bathroom, that the apartment is designed with them as two separate rooms as their bathing and toilet areas were separate in their old location and that was what they were used to.

The experience under the previous regime and the very clearly identified gaps in current legislation demands that we make the most of this opportunity for reform brought on by yāhapalanaya to strengthen the laws and policies for the future, ensuring that they are in line with international laws and best practices. This also requires an enlightened judiciary that is able to navigate and interpret the diversity of land use and occupation in Sri Lanka and will also not accommodate a Government's abundant use of its eminent domain power. Of course the public expectations of what the courts or even the constitution can deliver must be managed, especially in a demonstrated situation of very poor legal literacy when it comes to land rights, but this means the capability and capacity of the judiciary and the efforts to strengthen it must be contemporaneous to land and policy reform.

## Recommendations

### In the immediate term:

1. Initiate a thorough review of the Urban Regeneration Project to ensure that communities are substantially better off in all respects and attain higher living standards rather than just acquire newly built apartments in high-rises. The procedures to achieve these objectives must be aligned with national and international standards and policies to safeguard the rights of those affected.

2. Make public all the documents and information related to the Urban Regeneration Project in Colombo, especially all aspects pertaining to:

- Acquisition of lands and resettlement including results of surveys, sites identified for redevelopment, demarcations of private and state land, as well as scheduling of proposed acquisition and relocation
- Agreements with private developers from Sri Lanka and abroad to build resettlement housing or to develop lands taken from communities.

3. Take immediate measures to redress grievances of specific affected communities, in particular:

- Ensure that Mews Street residents who were forcibly evicted in 2010 are given compensation for their previous home and the grievances caused in the 6 years following their eviction.
- Provide written guarantees for grant of in-situ housing to all Kompanyaveediya (Slave Island) residents whose lands have been taken for the TATA Project; and to those who chose compensation instead of in-situ housing, ensure immediate payment of the same at fair and accurate market rates.
- Together with the Education Ministry, resolve the school admission issue faced by many residents living in the high-rise, where they are unable to get adequate marks for the school of their choice due to their new location.

#### For the longer term

1. The Policy Principles of the National Involuntary Resettlement Policy must be reviewed, brought up to date with national and international standards and be enshrined in law and made applicable to all future instances of land acquisitions involving relocation.

2. Explore all possible options with regard to housing of low-income communities, including and especially in-situ redevelopment and upgrading, to eliminate and minimise involuntary resettlement.

3. Enshrine in law the best principles of the National Housing Policy and adopt a consultative, participatory and bottom-up process for providing housing for the urban poor. The NHP calls for “families who are able to build their own houses to be directly assisted by way of regularizing the land, providing basic (sic) amenities and releasing housing assistance on concessionary interest rates with necessary technical guidance.” It also specifically calls for “[s]trengthening community based organizations to promote community participation in housing development and guiding poor communities on decision making processes.”