




APRIL 1, 2016

MEMORANDUM
SUBMITTED BY
THE CENTRE FOR POLICY ALTERNATIVES
ON
THE WESTERN REGION MEGAPOLIS MASTERPLAN
AND
THE MEGAPOLIS AUTHORITY



INTRODUCTION

On the 23rd of April 2015, the Cabinet of Ministers approved the proposal to commence the drafting of plans for the Western Region Megapolis Planning Project¹. Following this decision, the Ministry of Megapolis and Western Development has published several versions of the Western Region Megapolis Master Plan (WRMMP), with the most recent version; the 7th Version, being published on the 29th of January 2016.² The 7th version of the WRMMP is thus far the most comprehensive policy document prepared by the Ministry on the Western Region Megapolis Planning Project, and contemplates sweeping reforms in the agenda and policies concerning the economy & industry, infrastructure development, city planning, housing & relocation, and social welfare in the Western Province. Additionally, a draft bill of the Western Region Megapolis Development Authority of Sri Lanka Act (Megapolis Bill) is presently in circulation.

The Centre for Policy Alternatives (CPA) has, over the years, monitored and engaged with the State on several development and reform policies. Considering the sheer scale of the policies and plans contemplated to be implemented under the WRMMP, CPA has prepared this memo highlighting some of the key constitutional, legal, governance, human rights concerns and implications that would arise from the implementation of the WRMMP.

CPA strongly believes that the agenda for economic development and social reform must be formulated and implemented based on principles on constitutionality and democratic governance, thereby ensuring respect for the human rights and social welfare of the public. Failure to formulate and implement policies in this manner could result in unconstitutional centralization of power, erosion of recognized principles of democratic governance and administration, violations of fundamental rights, and further exacerbate discrimination and marginalization.

It is in this light that CPA has prepared this memo based on the WRMMP and the Megapolis Bill, highlighting some of the key legal concerns that could arise. It is the intention of CPA to create public awareness and initiate a dialogue on the WRMMP and the Megapolis bill and to ensure that the concerns raised in this memorandum feed into the development policy to be implemented in the Western Province. It must, however, be noted that this memo is by no means intended to be an exhaustive commentary of the WRMMP and the Megapolis Bill, and must be treated as only a preliminary study of some of the most pressing legal, governance and social issues that may arise when implementing the WRMMP. Several other issues concerning livelihood, gender equality, education, housing, environment and health are yet to be fully explored and discussed.

This memorandum will focus on three aspects of the WRMMP and the Megapolis Bill. The three aspects are; 1) the constitutional implications, 2) governance and accountability, and 3) land consolidation.

*** FOR ANY FURTHER QUESTIONS OR QUERIES PLEASE CONTACT: legal@cpalanka.org

¹ Decisions taken at the Cabinet Meeting held on 22nd April 2015, found at <<http://www.news.lk/cabinet-decisions/item/7304-decisions-taken-at-the-cabinet-meeting-held-on-22nd-april-2015>>, accessed on 28th March 2016

² Ministry of Megapolis and Western Province, *Western Region Megapolis Master Plan* (Version 7, 29th January 2016), found at http://www.megapolis.gov.lk/pdf/Western%20Megapolis%20Version%207_with%20Cover.pdf, [herein after WRMMP], accessed on 28th March 2016

Constitutional Implications

The WRMMP envisages the creation of the Western Region Megapolis Planning Authority (Megapolis Authority) by the Megapolis Bill. CPA has come to learn that the Megapolis Bill has been drafted and is currently under consideration by the Cabinet of Ministers for observations and approval.³ The Authority's affairs will be controlled and administered by a Board of Management comprising a Chairman and Director General, along with the Chairmen of several other government authorities.⁴

Upon analysis of the clauses pertaining to the powers and functions of the Megapolis Authority as stated in the Megapolis Bill, it is evident that the Megapolis Authority will have substantial powers concerning the planning, development and rehabilitation of the infrastructure of the Western Province, as well as powers to see to the rehabilitation and welfare of communities in the Province.

Article 154G(1) of the Constitution grants all Provincial Councils the authority to pass laws and policy in respect of any matter set out in the Provincial Council List (List I of the Ninth Schedule of the Constitution).⁵ It is the view of CPA that many of the powers that are vested in the Megapolis Authority, given its role in the implementation of the WRMMP, will almost certainly infringe on the powers vested in the Provincial Council of the Western Province under Article 154G of the Constitution.

RELEVANT ITEM ON THE 9th SCHEDULE – (LIST I of the CONSTITUTION)	PROPOSED POLICIES AND PROJECTS TO BE IMPLEMENTED BY THE WRMMP
Planning – Implementation of provincial economic plans (Item 2)	<p>1) Planning and zoning “cities” within the Western Province⁶</p> <p>2) Formulate Capital Improvement Projects and Programmes in such areas in conformity with the WRMMP⁷</p> <p>3) Prepare at the request of any Government Agency or Local Authority development projects and planning schemes on behalf of such agency, and to coordinate and supervise the execution of such projects and schemes⁸</p>

³ Pursuant to meeting the Ministry of Megapolis and Western Development on 23rd March 2016

⁴ Western Region Megapolis Development Authority of Sri Lanka (Final Draft) [herein after Megapolis Bill], Clause 6

⁵ *Article 154G(1) of the Constitution* - Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule.

⁶ Megapolis Bill (n 4), Clause 11(a); WRMMP (n 1), 76 (Figure: 9.3), 98

⁷ Megapolis Bill (n 4), Clause 16(21)

⁸ Megapols Bill (n 4), Clause 16(10)

<p>Provincial Housing and Construction (Item 5)</p>	<p>1) Large scale housing projects (underserved, middle class and luxurious)⁹</p> <p>2) Relocation of underserved communities to newly constructed condominium properties¹⁰</p> <p>3) Carry out building, engineering and other operations and undertake any work in connection with infrastructure development¹¹</p>
<p>Roads and Bridges (Item 6)</p>	<p>1) To provide an operate integrated transport systems¹²</p> <p>2) Expansion of road capacity and road widening¹³</p> <p>3) Construction of new Expressways¹⁴</p>
<p>Social services and rehabilitation; Rehabilitation of destitute people (Item 7)</p>	<p>1) Mahamaga Mithuro Project (social welfare project to rehabilitate beggar folk and equip them with vocational skills¹⁵</p> <p>2) Provide for the advancement of children and disabled persons with regards to access to buildings, transport services, thoroughfares, pavements, crossings, walkways, hospitals, schools, places of entertainment and all places to which the public has access¹⁶</p> <p>3) To provide such amenities and services in a superseding way for the socio, economic and environmental benefit of the community in the Western Region¹⁷</p>
<p>Regulation of road passenger carrier services (Item 8)</p>	<p>1) Regulation and improvements on Taxi services¹⁸</p> <p>2) Relocation of bus stations¹⁹</p>

⁹ WRMMP (n 2), 47-51

¹⁰ WRMMP (n 2), 48

¹¹ Megapolis Bill (n 4), Clause 16(5)

¹² Megapolis Bill (n 4), Clause 16(23)

¹³ Ibid

¹⁴ WRMMP (n 2), 40

¹⁵ WRMMP (n 2), 54

¹⁶ Megapolis Bill (n 4), Clause 16(27)

¹⁷ Megapolis Bill (n 4), Clause 16(24)

¹⁸ WRMMP (n 2) 37

	3) Introduction of priority services for High Occupancy Vehicles ²⁰
Rural development (Item 10)	1) Causing the redevelopment of underserved areas in the designated area ²¹ 2) Constructing integrated housing settlements in rural and suburban areas on the Western Province ²²
The power to promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income-generating projects, within the Province (Item 21)	1) Industrial complexes in Mirigama and Horana ²³ 2) Establishing science and technology hubs in the Malabe and Homagama areas focusing on electronic and technologic product manufacturing with strong export orientation ²⁴ 3) Enter into contracts or agreements with Government Agencies, Public Corporations, Provincial Councils, Local Authorities, Body Corporates or any other persons to undertake and execute any development projects or schemes, and regulate such projects or schemes. 4) Formulate Capital Improvement Projects and Programmes in such areas in conformity with the WRMMP ²⁵
Development, conservation and management of projects to generate electricity (Item 34)	1) Proposed Wind, Solar and Waste-to-Energy power plants ²⁶ 2) Establishment of Dendro-Thermal power plants ²⁷ 3) Conversion of overhead electricity distribution to the underground electricity distribution in Colombo ²⁸

¹⁹ WRMMP (n 2), 36

²⁰ Ibid

²¹ Megapolis Bill (n 4), Clause 16(8)

²² WRMMP (n 2), 47

²³ WRMMP (n 2), 81-83

²⁴ WRMMP (n 2), 85-87

²⁵ Megapolis Bill (n 2), Clause 16(21)

²⁶ WRMMP (n 2), 41

²⁷ WRMMP (n 2), 43

²⁸ Ibid

<p>Theatres and dramatic performances, music, cinemas, entertainments and amusements, excluding the sanctioning of cinematograph films for exhibition and public performances (Item 29.1)</p>	<p>1) Development of centers for performing arts, Establishment of galleries²⁹</p>
<p>Protection of environment within the Province to the extent permitted by or under any law made by Parliament (Item 37)</p>	<p>1) Declare certain areas as Eco Zones, Environmental Conservation Zones, and execute required environmental conservation programmes in consultation with the Central Environmental Authority and other agencies³⁰</p> <p>2) Demarcation of buffer zones with mixed conservation and development activities, Establishment of the Eco-Habitat and Plantation City³¹</p> <p>3) Formulate, develop and implement environmental standards and prepare schemes for environmental management, conservation and improvement³²</p>

At the outset, the Megapolis Bill does state that the “development of the Western Region as a Megapolis shall be a National Policy on All Subjects and Functions as specified in List II (Reserved List) of the Ninth Schedule of the Constitution”.³³ However, it must be noted that, using the functional test used by the Supreme Court in determining whether a Bill actually does lay out National Policy or impedes the jurisdiction of the Provincial Councils, it is evident that several functions of the Megapolis Authority come within the purview of List I of the Ninth Schedule of the Constitution.³⁴

Therefore, it is evident that there is a danger of the Megapolis Authority usurping or seizing the power of the Provincial Council of the Western Province to formulate policies and implement development projects and schemes on subjects within its jurisdiction and competence. This poses the risk of significantly limiting the ability of the elected members of Provincial Councils to serve their constituents, and to make the Provincial Council, in effect, redundant.

Furthermore, it is imperative that Parliament strictly follow the procedure laid down in Article 154G of the Constitution when introducing legislation. Article 154G(3) of the

²⁹ WRMMP (n 2), 95

³⁰ Megapolis Bill (n 2), Clause 16(9)

³¹ Ibid

³² Megapolis Bill (n 2), Clause 16(16)

³³ Megapolis Bill (n 2), Clause 3(3): The development of the Western Region as a Megapolis shall be a National Policy on All Subjects as specified in List II (Reserved List) of the Ninth Schedule of the Constitution

³⁴ Special Determination on the Water Services References Bill (SC Special Determination 24/2003 and 25/2003); Special Determination on the Divineguma Bill (SC Special Determination 01/2012)

Constitution provides for Provincial Councils to be consulted and their views taken on board if a Bill contains matters set out in the Provincial Council List.³⁵ As revealed by the above table, the Megapolis Authority contemplates the formulation of policy on several matters with the jurisdiction of the Provincial Council of the Western Province. Hence, the present Bill can be enacted into law by Parliament only after the Provincial Council of the Western Province is sent the Bill and is permitted to express its views of the same.

While it is recognized that development in terms of infrastructure, industry, housing and social welfare is needed to attain Sri Lanka's development goals, CPA urges that policy reform is introduced recognizing the constitutional framework and the mandate provided by the citizens of Sri Lanka to their elected representatives.

Governance and Accountability

Two aspects of the constitution and powers of the Authority, as established by the Megapolis Bill, which must be addressed are 1) powers of the Authority, and 2) finances.

Powers of the Authority

The Authority will have a Board of Management which comprises a Chairman and a Director General, as well as the Chairmen or Director Generals of the Urban Development Authority, National Housing Development Authority, Central Environmental Authority, Sri Lanka Land Reclamation and Development Corporation, and Road Development Authority. The Board will also include the Chief Minister of the Western Province, two nominees of the Minister of Megapolis and Western Development, and two nominees of the Secretaries of the Ministry of Finance and the Ministry of Megapolis and Western Development.³⁶

While CPA welcomes an inclusive Board of Management, the Megapolis Authority could create a number of governance issues. The primary issue is that it centralizes all power in terms of development and rehabilitation within the Megapolis Authority. As stated in Clause 16(6) of the Megapolis Bill, no person or State agency is permitted to carry out any development activity without the prior consent of the Megapolis Authority.³⁷ Thus, all development activity, whether private or public, will need to be approved by the Megapolis Authority, resulting in the centralization of a significant amount of power within the Megapolis Authority and the Minister, given that the Western Province is the hub of Sri Lanka's socio-economic activity and development. Such a centralization of power could lead

³⁵ *Article 154G(3) of the Constitution* - No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and -

(a) where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting ; or

(b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82:

Provided that where on such reference, some but not all the Provincial Councils agree to the passing of a Bill, such Bill shall become law applicable only to the Provinces for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting; *Supreme Court Determination on the Divineguma Bill* (n 34), 25-26

³⁶ Megapolis Bill (n 2), Clause 6

³⁷ Megapolis Bill (n 2), Clause 16(6): No person or any State Agency including Local Authority should carry out any development activity within the designated area without the consent of the or approval of the Authority and other relevant agencies.

to an erosion of democratic values such as accountability and transparency, and may also lead to a misuse/wastage of public resources.

A secondary issue is with regards to the autonomy and independence of the other State agencies. Clause 34(1) states that the Minister may, in accordance with the WRMMP, give to the Authority written directions as to the performance of the duties and the exercise of the powers of the Authority,³⁸ while Clause 43(2) states that the Bill will prevail over any other existing law or Act.³⁹ These clauses, read with Clause 16(6) of the present Bill, effectively give the Minister the power to control all the activities of other State agencies, regardless of their legal frameworks and policies. It is conceded, however, that the Megapolis Authority only exercises its jurisdiction in the Western Province and therefore State agencies will still be able to function autonomously and independently in other provinces. But, given the scale of the development activities planned under the WRMMP, it is certain that State agencies will have to divert a significant portion of their resources towards development in the Western Province, and this will be under the sole control of the Megapolis Authority, thereby eroding the ability of State agencies to act autonomously and independently in accordance with their policies.

Although CPA was initially informed that the Megapolis Authority will only perform supervisory and regulatory functions, upon studying the Bill,⁴⁰ it is clear that ministries and authorities such as the Ministry of Lands, Ministry of Environment and Renewable Energy, the Road Development Authority, the Urban Development Authority, the Board of Investments, Waste Management Authority, and the National Housing and Development Authority, will be brought under the control of the Megapolis Authority.

CPA, therefore, urges that the Megapolis Bill ensures that such a centralization of power in the Megapolis Authority is prevented by adding sufficient safeguards to protect the public from arbitrary decision-making and the erosion of democratic values.

Finances of the Authority

As per the present Bill, the Megapolis Authority shall have its own Fund in which shall be deposited (1) all monies as shall be granted from time to time by Parliament, (2) all revenue derived from property vested in the Authority, (3) all monies in the form of charges and fees levied by the Authority for its services, (4) all donations, grants, and loans made to the Authority, and (5) all sums of money accruing to the credit of the Authority.⁴¹ This Fund shall be subject to the provisions on auditing in Article 154 of the Constitution,⁴² and the Authority shall be required to keep books of all its accounts.⁴³

³⁸ Megapolis Bill (n 2), Clause 34(1): The Minister may in accordance to the Master Plan approved by Parliament give to the Authority in writing general or special directions as to the performance of the duties and the exercise of the powers of the Authority and the Authority shall carry out such directions.

³⁹ Megapolis Bill (n 2), Clause 43(2): In the event of any inconsistency with the provisions of this Act (including regulations made thereunder) and any other Law, or regulations made under any other Law, the provisions of this Act and the regulations made there under shall prevail so far as they are applicable to the exercise of the powers and functions of the Authority.

⁴⁰ Pursuant to meeting with the Ministry of Megapolis and Western Development on 23rd March 2016

⁴¹ Megapolis Bill (n 2), Clause 23

⁴² Megapolis Bill (n 2), Clause 25(2): The provisions of Article 154 of the Constitution relating to the audit of accounts of public corporations shall apply to the audit of the accounts of the Authority.

⁴³ Megapolis Bill (n 2), Clause 25(1): The Authority shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Authority.

However, the Megapolis Bill does state that the Authority shall have, with the approval of the Minister, the power to make rules relating to the withdrawal of any monies from the Fund.⁴⁴ The Megapolis Bill makes no mention whether such rules will be subject to Parliamentary approval, which could lead to a situation where Parliament has no financial oversight of the operations of the Megapolis Authority, which may result in unreasonable and arbitrary usage of public funds.

As stated in the *Supreme Court determination on the constitutionality of the Divi Neguma Bill*, no government department should be allowed to maintain their own funds.⁴⁵ This is in keeping with Articles 148, 149 and 150 of the Constitution, which vests the control of public finances with Parliament and states that no sum may be withdrawn from the Consolidated Fund without a warrant from the Minister in charge of the subject of Finance.⁴⁶

Therefore, CPA urges that the Megapolis Bill include further safeguards regarding the raising and withdrawal of funds from the Megapolis Authority Fund which are in full compliance with the Constitution and ensure full accountability of its finances.

Land Consolidation

Under the WRMMP the Western Province would be categorized into “cities” or “zones”, each earmarked for a specific purpose.⁴⁷ To achieve this, the WRMMP states that the Megapolis Authority will take steps to acquire “state and undeveloped lands” in specified areas.⁴⁸ Areas around the Beira Lake, Pettah, Maligawatte, Dematagoda, Horana, and Ratmalana have specifically been named as economically viable areas from which land is to be consolidated for the purposes of the WRMMP.⁴⁹

The WRMMP is silent with regards to its policy in determining how such “state and undeveloped lands” will be acquired. Special emphasis must be placed on “undeveloped” lands, as it could even be possible for the Megapolis Authority to acquire private lands which are classified as “undeveloped”. The WRMMP makes no mention of a policy which

⁴⁴ Megapolis Bill (n 2), Clause 23(1)(i): The Authority shall have with the approval of the Minister the power to make rules relating to the withdrawal of any monies from the Fund and no sums whatsoever shall be withdrawn from the Fund except in accordance with the rules.

⁴⁵ *Supreme Court Determination on the Divineguma Bill (2)* (SC Special Determination No. 04/2012), 35

⁴⁶ *Article 148 of the Constitution* - Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law.

Article 149 of the Constitution - (1) The funds of the Republic not allocated by law to specific purposes shall form one Consolidated Fund into which shall be paid the produce of all taxes, imposts, rates and duties and all other revenues and receipts of the Republic not allocated to specific purposes.

(2) The interest on the public debt, sinking fund payments, the costs, charges and expenses incidental to the collection, management and receipt of the Consolidated Fund and such other expenditure as Parliament may determine shall be charged on the Consolidated Fund.

Article 150 of the Constitution - (1) Save as otherwise expressly provided in paragraphs (3) and (4) of this Article, no sum shall be withdrawn from the Consolidated Fund except under the authority of a warrant under the hand of the Minister in charge of the subject of Finance. (2) No such warrant shall be issued unless the sum has by resolution of Parliament or by any law been granted for specified public services for the financial year during which the withdrawal is to take place or is otherwise lawfully, charged on the Consolidated Fund

⁴⁷ WRMMP (n 1), 76 (Figure: 9.3), 98

⁴⁸ WRMMP (n 1), 99

⁴⁹ WRMMP (n 1), 78, 80 (Figure 9.4), 82 (Figures 10.1 and 10.2), 76 (Figure 8.10)

states the criteria for determining a parcel of land as “undeveloped”. The lack of a clear and definite policy in this regard must be treated with extreme caution, owing to its possibility of it laying open the public to arbitrary decisions where land acquisition is concerned. The right of citizen’s to hold and control land with tenure security is essential for the welfare and social progress of communities, and thus, it is imperative that any development projects that seek to curtail these rights be proportionate and be in accordance with the law.

As per the present Bill, there are two mechanisms by which the Megapolis Authority can vest land in itself. Firstly, as per Clause 21(1) the Authority can cause notice to displayed in a conspicuous part of the land in question,⁵⁰ following which officials can enter the said land for whatever purpose.⁵¹ Secondly, as per Clause 21(4) the Minister can, by way of an Order published in the Gazette, cause any portion of land to be vested in the Authority.⁵²

However, Clause 21(5) explicitly states that an action taken by the Minister under Clause 21(1) shall be conclusive and not be questioned by any court of law. Further, Clause 21(15) which states that any person who is affected or who apprehends that he will be affected by an order under Clause 21(4) shall not be entitled to any relief by a court of law other than compensation and damages; no injunctions or orders of any other kind can be prayed for.⁵³ Further writs against orders made under Clause 21(4) can only be prayed from the Supreme Court, and all such applications must be brought within one month of the cause of action.⁵⁴

CPA is concerned that those who will be affected by land acquisitions due to the implementation of the WRMMP will have little or no redress. Given that many lands that are

⁵⁰ Megapolis Bill (n 2), Clause 21(1): Where th Minister of the opinion that any land located in the Western Region is needed for the purposes of the Authority in accordance with the Master Plan he may direct the acquiring officer of the division in which the land lies to cause a notice, in accordance with Section 2 of the Land Acquisition Act to be exhibited in some conspicuous place in that land.

⁵¹ Megapolis Bill (n 2), Clause 21(3)

⁵² Megapolis Bill (n 2), Clause 21(4): Where the Minister is satisfied that land or any interest in land situated in the Western Province is required by the Authority for any purpose of the Authority the Minister may be Order published in the Gazette vest such land or interest in such land in the Authority with effect from such date as shall be specified in the Order, subject to such conditions if any as may be specified in the said Order.

⁵³ Megapolis Bill (n 2), Clause 21(15): No person aggrieved by an order made or purported to be made under Section 21(4) of this Act or affected by or who apprehends that he would be affected by any act or any step taken or proposed to be taken under or purporting to be under this Act or purporting to be under any other written law, in or in relation to any land in any area, shall be entitled;

- i) to any remedies, relief or redress in court other than by way of compensation or damages
- ii) to a permanent or interim injunction, an enjoining order or stay order, or any other order having the effect of restricting or impeding the Authority in respect of
 - i. Any acquisition of any such land
 - ii. The carrying out of work on any such land
 - iii. The implementation of such project in any manner whatsoever

⁵⁴ Megapolis Bill (n 2), Clause 21(16)(a): The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall, in relation any particular land or any land in any area in respect of which an Order under or purporting to be under Section 21(4) of this Act has been made, be exercised by the Supreme Court and not the Court of Appeal.

Megapolis Bill (n 2), Clause 21(16)(b): Every application invoking the jurisdiction referred in subsection(1) shall be within one month of the date of the commission of the act in respect of which or in relation to which such application is made and the Supreme Court shall hear and finally dispose of the application within three months of the filing of the application and the provisions of this sub-sections shall be deemed to be mandatory and not directory.

to be acquired are in areas where several low income communities reside, it is difficult to contemplate how members of such communities will be in a position to seek redress, as the remedies available require both financial and legal assistance.

Therefore, CPA urges that any act of land acquisition for the purposes of implementing the WRMMP – be it under the provisions of Clause 21(1) or Clause 21(4) – must be transparent, while ensuring full compliance with the safeguards recognized by legislation and jurisprudence of the apex courts. In this regard, the Megapolis Authority must follow the judgments in *Waters Edge case*; where the Supreme Court held that the purpose of acquiring land has as its primary object, public utility and benefit of the community as a whole, and *Manel Fernando v. D. M. Jayaratne, Minister of Agriculture and Lands and Others*, where the court held that it was mandatory that notice given prior to the acquisition of lands also be accompanied with the public purpose for which a parcel of land is to be acquired.⁵⁵ Further, persons affected must be allowed access to reasonable remedies if they are affected by land acquisitions, and thus, it is urged that the one month time bar and limited jurisdiction of the courts be reconsidered.

It is also important to note that the State must also be prepared to compensate those who are affected by land acquisitions. In the past, many of the State's land acquisitions have been marred with numerous accounts of compensation being valued at very low levels. CPA urges the government to take this into consideration and ensure that all persons affected by acquisitions of land by the State be adequately compensated in adherence to the prevalent safeguards.

The provisions of Clause 21(9) of the Megapolis Bill, which states that persons living in underserved communities shall be treated in a fair and equitable manner and not be impoverished due to development processes is commendable, and it is noteworthy that Schedule E of the Bill introduces a comprehensive compensation scheme. The scheme allows those affected to make representations on what they believe is an appropriate value of compensation to Land Acquisition and Resettlement Committees (LARC), which thereafter shall be finalized following a hearing before the LARC.⁵⁶ The LARC will also take into consideration factors such as loss of livelihood, loss of business, loss of wages of employment, existence of vulnerable purposes, as well as replacement costs and ex-gratia payments for buildings and other improvements.⁵⁷

Although this compensation scheme does contemplate payment of compensation based on numerous factors, CPA is concerned that the Megapolis Bill does not contain adequate safeguards to ensure the participation of those affected by land acquisitions.

Therefore, CPA urges that the Megapolis Bill contain provisions that prevent arbitrary decision-making and enforce existing legal and policy safeguards regarding land ownership and compensation, including the policy principles enumerated in the National Involuntary Resettlement Policy.⁵⁸

⁵⁵ *Mendis and Others v. Perera and Others*, [2008] 2 Sri LR 339, 360; *Manel Fernando v. D. M. Jayaratne, Minister of Agriculture and Lands and Others*, [2000] 1 Sri LR 112, 126-127

⁵⁶ Megapolis Bill (n 2), Schedule E – Compensation in respect of land vested in the Authority, 1(1)-(7)

⁵⁷ Megapolis Bill (n 2), Schedule E – Compensation in respect of land vested in the Authority, See Sections (e), (f), (g), (h), (k), and (m)

⁵⁸ National Involuntary Resettlement Policy, (approved by Cabinet Members of the Government of Sri Lanka on the 24th of May 2001), found at http://www.rda.gov.lk/supported/noticeboard/publications/nhsp/resettlement_Imp_plans_2012/B207.pdf, see Annexure 2.1, accessed on 8th April 2016

