

## A POLICY BRIEF

### LEGAL AND POLICY IMPLICATIONS OF RECENT LAND ACQUISITIONS, EVICTIONS AND RELATED ISSUES IN SRI LANKA

BHAVANI FONSEKA  
CENTRE FOR POLICY ALTERNATIVES

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**Bhavani Fonseka**

Centre for Policy Alternatives  
November 2014



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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organization that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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## Acronyms

ADB	Asian Development Bank
BOI	Board of Investment
CPA	Centre for Policy Alternatives
DS	Divisional Secretary
GA	Government Agent
HSZ	High Security Zone
IDP	Internally Displaced Person
LAA	Land Acquisition Act
LARC	Land Acquisition and Re-settlement Committees
LDO	Land Development Ordinance
NHRC	National Human Rights Commission
NIRP	National Involuntary Resettlement Policy
UDA	Urban Development Authority
USDA	Urban Settlement Development Authority

## INTRODUCTION

Land has a central place in the post war debates involving resettlement, reconstruction, development and the search for a political solution. During the war and post tsunami, questions of ownership, access, control and zoning were frequently raised, highlighting the need for reform. With the ten year anniversary of the tsunami nearing and more than five years after the end of the war, many questions persist. There are continuing challenges to individuals being able to fully enjoy, access and use their lands and reside in their homes, due to restrictions placed in the name of security and development.

Media in recent months reported on several initiatives that have had an impact on changing the existing ownership, control, use and access to land in Sri Lanka. In October 2014 media reported of around 20,000 land permits alienated to individuals in the Northern Province, with questions raised regarding the politics of such an initiatives, scale of the land distribution, selection process and timing.<sup>1</sup> Similarly, there are also reports of the acquisition of private land across Sri Lanka.<sup>2</sup> Such acquisitions must adhere to the Land Acquisition Act (LAA), which provides that land can be acquired for a 'public purpose'. In practice, the gazettes publicly available indicate acquisitions for a range of purposes including military, development and tourism, raising the questions as to the standard of 'public purpose'. There are other instances where no acquisition notices have been issued, although private land is taken by State entities. Noteworthy also is the recent spate of acquisitions using the Urban Development Projects (Special Provisions) Act, which allows the Executive to issue orders for acquisitions on the basis of 'urgency' and for the 'welfare of the people' with very limited redress available for affected parties.

Despite the existence of a statutory framework, examples from across Sri Lanka abound of the complete disregard for statutory provisions in terms of land acquisitions, resulting in displacement, dispossession and evictions. The scale and nature of acquisitions and expropriation begs the question of whether these are in fact land grabs, couched in some instances within the legal framework and in other instances in complete violation of it. Research reveals that individuals who for decades resided in their homes or used lands for livelihood purposes are being prevented access and control of their land and evicted overnight. This, despite safeguards in place, to prevent such practices. This also demonstrates to the growing disconnect between what is provided in the legal and policy framework in terms of land and possessory rights in Sri Lanka, and actual

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<sup>1</sup> TNA Criticizes Distribution Of Land Permits In The North Without Consulting NPC, <http://asianmirror.lk/news/item/4151/4151>, last accessed 6 November 2014

<sup>2</sup> Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policy & Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, 2013; The Sri Lankan army is seizing land that could be worth \$2bn- <http://blog.srilankacampaign.org/2013/05/the-sri-lankan-army-is-seizing-land.html>; Nirmala Kannangara, Land Grabs Galore In Uva, <http://www.thesundayleader.lk/2014/09/28/land-grabs-galore-in-uva/>; Kalpitiya land grab for tourism, <http://www.sundaytimes.lk/130728/business-times/kalpitiya-land-grab-for-tourism-54035.html>.

practice. Furthermore, limited information and lack of transparency regarding acquisitions and alienations has in several instances resulted in the affected persons not being adequately informed of impending displacement and evictions.

Sri Lanka has a complex framework for legal and possessory rights in terms of land ownership, control and use. This legal and policy framework, covering both State and private land, is meant to provide tenure security for individuals residing and using the land and safeguards to prevent arbitrary displacement and dispossession. The legal and policy framework, despite its shortcomings and the need for reform in specific areas, is a basic starting point of a governance system as well as constituting recognition of the rights of those owning and in possession of land. Unfortunately, present practices and recent policy decisions undermine the framework in place and demonstrate a deliberate disregard and/or ignorance of what is in the books.

### **Trends, Practices and Implications**

The present brief examines the legal and policy framework in place in terms of acquisitions, evictions and related issues. Chapters 1, 2 & 3 discuss the constitutional, legal and policy framework respectively and highlight areas that require attention and reform. But prior to examining the framework, it is important to understand key trends and practices impacting land rights and related issues in post war Sri Lanka.

A key issue that must be noted at the outset is the **lack of awareness** among the public regarding their land rights and entitlements. CPA's research on land issues for over a decade highlights this as a key impediment to individuals fully enjoying the benefits of their land. Some believed that there is automatic claim and control over land due to residence on a particular plot of land for decades and improving it, despite prescription only applying to private land. There are also instances of the bona fide belief of owning land on the basis of fraudulent deeds, with some instances leading to contestation of ownership and competing claims. Due to both the war and tsunami, documents belonging to a significant number of individuals have been lost or destroyed and although initiatives post tsunami attempted to address this in parts of Sri Lanka, many in the war affected areas continue to lack valid documentation to claim ownership and control. The lack of awareness coupled with lack of valid **documentation** continues to be a key impediment to ownership and control over one's land.

Although many have taken for granted that having a deed is a form of protection, cases across Sri Lanka, of acquisitions, occupation and evictions demonstrate the inherent vulnerabilities attached. Exacerbated by a lack of awareness of as to whether land is State or private and in the absence of legally valid documentation to ensure legal and/or possessory rights, the situation is further compounded by the centralisation and militarisation evident across Sri Lanka. The extremely powerful Ministry of Defence and Urban Development plays a critical role in defining land ownership and access with little or no hope of challenging its decisions. Evidence demonstrates that such important decisions



which have significant implications on identity, homes and livelihoods of tens of thousands of people, are decided by a few with no regard for the framework in place.

The brief also questions practices used to provide a veneer of legitimacy to what is in fact arbitrary. For example, in Colombo, many who are threatened with eviction and those who have been evicted, have had to complete and sign a form from the Urban Development Authority (UDA), providing their householder information.<sup>3</sup> Those who did were under the mistaken assumption that the form had legal standing. Furthermore, there was also confusion among some communities threatened with evictions that sign boards outside private residences stating that the particular land was to be used for a specific purpose had legal basis. This, despite no steps being taken for acquisitions as provided for under the LAA. This is further compounded by a lack of awareness among the public of the legal framework, with some incorrectly assuming that any form of notice issued by a government entity has legal standing. The misconception of what is legal and what is not, comes down to the need for awareness raising of people's rights over both State and private land.

These trends are extremely dangerous in a context that provides for **limited options to challenge** illegal practices and unfair and unjust policies. Several parties are before courts and other institutions to challenge attempted acquisitions and evictions, some of which are highlighted in this brief. Although these cases are an indicator of the nature of problems faced by affected communities, they also highlight limited success when challenging arbitrary and unfair practices and the delays in terms of redress. For example, over 2000 individuals filed a case in the Court of Appeal in 2013 challenging the attempted acquisition of over 6000 acres of private land in Jaffna District, but no movement in respect of getting their land back has yet materialised.<sup>4</sup> Similarly, cases filed in the Supreme Court, including those for the proposed 'Special Zone for Heavy Industries' in Sampur, Trincomalee District<sup>5</sup> and the occupation in Ashraf Nagar, Ampara District<sup>6</sup> have yet to provide substantial redress. Affected communities from Mews Street in Colombo who were evicted in 2010 are still before the Supreme Court to obtain alternative housing.<sup>7</sup> It is not merely courts that have been slow or unable to provide timely and effective remedies. The National Human Rights Commission (NHRC) was unable to prevent evictions as seen in the 34 Watta Case in Wanathamulla, Colombo.<sup>8</sup> Here the affected parties complained to the NHRC and an undertaking was given by officials of the UDA

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<sup>3</sup> *L.B.P Nissanka and 3 others v. Urban Development Authority and 3 others CA (Writ) 283/2014*

<sup>4</sup> For more information, refer to Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policy & Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, 2013

<sup>5</sup> For more information, refer to Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policy & Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, 2013; Bhavani Fonseka & Mirak Raheem, Land in the Eastern Province: Politics, Policy and Conflict, CPA, 2010.

<sup>6</sup> Documentation by the Women's Action Network September 2014; M.T Hasan Ali, On Land Grabbing in Eastern Province, 3 January 2014

<sup>7</sup> Centre for Policy Alternatives, Forced Evictions in Colombo: The Ugly Price of Beautification, 2014

<sup>8</sup> *L.B.P Nissanka and 3 others v. Urban Development Authority and 3 others CA (Writ) 283/2014*

not to move the population without their consent. However, this undertaking was soon disregarded by officials. The increasingly politicised judiciary and ineffective NHRC compounded by an **administration that is centralised and militarised** does not bode well for individuals who may lose homes and lands, owned and occupied by them for decades.

In addition to highlighting the structural and systematic flaws, recent acquisitions and evictions across Sri Lanka also highlight the tools used to **consolidate power** and **influence electoral policies**. Serious concerns remain over military occupation and alienation of lands in the North leading to demographic changes that will subsequently influence electoral politics. The North was a predominately Tamil speaking area prior to the end of the war, but with the end of the war this is changing. The high military presence in the North with reports from the area of the establishment and expansion of Sinhalese settlements raises concerns.<sup>9</sup> In addition, the beautification and development of areas in Colombo, not merely changes the structural landscape but is also likely to move potential voters to areas outside the Colombo municipality which has in the past been a solid vote base for the United National Party (UNP). Furthermore, CPA has been informed of instances where the fundamental right to franchise is affected due to displacement and eviction from one's home and the inability to register in a new place.<sup>10</sup> With the likelihood of national elections in 2015, these issues need urgent attention by all political parties and other stakeholders.

In the North and East, CPA has in previous reports highlighted the **ethnicisation** of land acquisitions and alienations.<sup>11</sup> The events in the South including evictions in Colombo and attempts at acquiring lands in other parts of the country including in the Southern and Uva Provinces demonstrate that “**development**” is the key component of the Government's policy agenda. The answer to grievances in post war Sri Lanka is met with the construction of new roads and infrastructure. Lingering questions from the war- of finding out the fate of missing loved ones and the truth of what transpired during the war- are swept aside in the name of **beautification and urbanisation**. There is no space for discussion of the impact of such development. For instance, there is no discussion with affected communities, still displaced in the North and East due to the continued occupation of thousands of acres of land by security forces as seen

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<sup>9</sup> Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policy & Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, 2013

<sup>10</sup> Meeting with community groups and civil society, International Centre for Ethnic Studies, 1 October 2014

<sup>11</sup> Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policy & Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, 2013; Bhavani Fonseka & Mirak Raheem, Land in the Northern Province: Post War Politics, Policy and Practices, CPA, 2011; Bhavani Fonseka & Mirak Raheem, Land in the Eastern Province: Politics, Policy and Conflict, CPA, 2010

in the example of land occupied in Valikamam North DS.<sup>12</sup> CPA's research has also highlighted large scale occupation of lands by security forces in other areas in the North - in Killinochchi town, Iyakachchi, Mirusavil, Puthukuduiruppu, Mullikulam among others, raising questions as to why so much land is required for military purposes more than five years after the end of the war. The evictions in Colombo also reiterate the development agenda and militarisation. In the evictions in Colombo, military officials played key roles in the implementation of urban development policies including planning and evictions.

Another key issue is the status of **local government** in post war Sri Lanka and specifically in terms of land rights. The centralisation coupled with the development agenda has provided for an ever -expanding role for entities such as the UDA. In Colombo, the initiatives at beautification and development has led to the opening up of spaces such as the Independence Arcade, the Race Course and the Floating Market, all projects involving the UDA and military. As already mentioned, the human cost of the beautification and development in Colombo is the eviction of thousands of residents from their homes. The Colombo Municipal Council (CMC) with powers over land coming within its purview has in several instances been a bystander to the decisions taken and implemented by the powerful UDA. CPA was informed of individuals who had received lands from the CMC and who had resided in and developed such lands for decades being evicted or likely to be evicted, with questions raised with the process followed.<sup>13</sup> Another Central Government actor playing a key role is the Mahaweli Authority, which has a role in alienation of lands within the Mahaweli Areas. CPA has previously documented the role of the Mahaweli Authority in land alienation in the Mahaweli L Scheme of the Weli Oya area, which is presently within the Mullaitivu district.<sup>14</sup> This area, which includes cases of competing land claims between the Sinhalese and Tamil communities is an example of the primary role played by the Central Government and military, with a secondary role for local officials. In all of the above, there is extremely **limited transparency** with plans and policies. Affected communities and in some instances the local officials, are left in the dark.

A further aspect that requires attention is **compensation**. Although there is provision for compensation at market value in the existing statutory framework, cases documented by CPA raise concerns with the process and fairness in the payments made. Regulations issued under Section 63(2)(f) of the LAA provide

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<sup>12</sup> Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policy & Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, 2013; The Sri Lankan army is seizing land that could be worth \$2bn- <http://blog.srilankacampaign.org/2013/05/the-sri-lankan-army-is-seizing-land.html>; Dharisha Bastians, Military demolishes homes in former HSZ in Valikamam, <http://www.ft.lk/2013/10/30/military-demolishes-homes-in-former-hsz-in-valikamam/>

<sup>13</sup> Interviews with individuals who are in occupation of CMC lands, September & October 2014

<sup>14</sup> Interviews conducted with civil society in Mullaitivu district in November 2014. Also refer to- Bhavani Fonseka & Mirak Raheem, Land in the Northern Province: Post War Politics, Policy and Practices, CPA, 2011

for the Land Acquisition (Payment of Compensation) Regulations 2013<sup>15</sup>, which provides for compensation for 18 road projects across Sri Lanka<sup>16</sup> and for the establishment of Land Acquisition and Re-settlement Committees (LARC). While this is a start, questions still remain regarding land that is taken for other purposes and the process to be followed to decide on the amount of compensation to be paid. It is timely to conduct a comprehensive review of compensation schemes and ensure transparency, equity and fairness in the allocation of compensation. CPA has been informed of amendments being drafted for compensation that is meant to efficiently accommodate grievances of affected parties.<sup>17</sup> CPA welcomes the recognition that reform is needed in the area and the attempts at amending the present framework and urges authorities to be transparent and inclusive in this process.

The trends highlighted here are indicative of the deficit in governance in post war Sri Lanka. While CPA has documented many of these trends in the North and East in terms of land rights for years, attention is now moving to other parts of Sri Lanka, highlighting the scale and complexity of land issues. As with the North and East, developments in Colombo and elsewhere in the South, confirm that there is no easy answer. It is not a question of a development agenda vs. human rights, but of creating and implementing a legal and policy framework for development which benefits the people. Most importantly, this exercise also reminds us that away from the glitter of arcades, markets and resorts, fundamental questions must be asked: What is the role of Government? What are the rights of its citizens? Should not all of them have equal rights and remedies?

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<sup>15</sup> Gazette No 1837/47 dated 22 November 2013

<sup>16</sup> These project include the following: Colombo-Katunayake Expressway, the Colombo Outer Circular Highway, the Southern Transport Development, the Colombo-Kandy Road, the Orugodawatta-Ambatale Road, the New Kelani Bridge Approach (Kelanimulla to Angoda, Koswatta Road), the Mattakkuliya Bridge Approach Project, the Matara-Kataragama Railway, the Deduru Oya Reservoir project, the Ratnapura-Balangoda Road, the Balangoda-Bandarawela Road, the Padeniya-Anuradhapura Road, the Thambalagamuwa (Tampalakamam))-Kinniya, the Matara-Godagama Road, the Horana-Pamankada Road, the Southern Expressway-Madurugoda Road, the Kirulapone-Godagama Road and 5/2 Bridge Katugastota-Kandy-Jaffna Road.

<sup>17</sup> Interview with the Ministry of Land and Land Development, 31 October 2014

## CHAPTER 1: CONSTITUTIONAL FRAMEWORK

### **The Constitution of Sri Lanka 1978**

The Constitution contains provisions in its Fundamental Rights Chapter, which state that all persons are equal before the law and are entitled to equal protection of the law - Article 12 (1). Article 14 (1) (h) guarantees that every citizen is entitled to freedom of movement and the right to choose one's residence in Sri Lanka.

The Directive Principles of State Policy under Article 27 guides the Parliament, the President and the Cabinet of Ministers in enacting laws. However, these are not justiciable in a court of law. Article 27 (2) (c) of the Constitution states: *'the realisation by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities'*

Although the fundamental rights chapter does not specifically mention adequate housing, the Directive Principles of State Policy highlighted above does provide for this and thereby provide an implied protection from land grabs and evictions. The right to land, housing and property are provided in international instruments most notably the Universal Declaration of Human Rights<sup>18</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>19</sup> Furthermore, displacement and evictions result in specific human rights implications and violations of fundamental rights. Recent protests in parts of Sri Lanka which witnessed violence and where evictions occurred resulting in violence, bulldozing of properties and threats and intimidation are all of concern. These incidents can amount to violations of Article 12 and the freedom of expression as provided in Article 14(1)(a).

Although not specifically provided in the fundamental rights chapter, socio economic rights are usually affected as a result of displacement and evictions. For example, children may be unable to continue their education due to displacement and/or evictions. Similarly, employment and health rights can also be affected due to constant movement and lack of a permanent residence.

### **Thirteenth Amendment to the Constitution**

The Thirteenth Amendment was introduced to devolve certain powers to the Provincial Councils. The Amendment has divided all governmental subjects and functions in to three lists.

**Provincial Council List (List I)** - The provincial councils' subjects and functions.

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<sup>18</sup> Art. 25, para. 1

<sup>19</sup> Art. 11, para. 1

**Reserve List (List II)** - Items that the provincial councils do not have power to legislate falls within the preview of the Central Government.

**Concurrent List (List III)** – functions that can be legislated by both the Central Government and the provincial councils. In case of a conflict the Centre prevails over the provincial councils.

The Thirteenth Amendment lays out in the Ninth Schedule, Provincial Council List I. Item 18 of the list states:

*'Land- land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II'.* Thus, according to Item 18, rights over land, land tenure, transfer and alienation of land, land use and land settlement and improvement are reserved for the provincial councils.

It should be noted that State land continue to vest with the Central Government and State land may only be alienated by the seal of the President on the advice of the Provincial Councils. Further, the provincial councils are subject to other special provisions set out in Appendix II: State Land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d) and written law governing the matter.<sup>20</sup> The Appendix then sets out special provisions which would limit the Provincial Council's authority over land, but nonetheless it states: "Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following provisions."<sup>21</sup>

This must also be read with recent judicial pronouncements. The Supreme Court of Sri Lanka in a three member bench under the de facto Chief Justice, Mohan Peiris, rendered a decision on the question of whether Provincial High Courts had jurisdiction over issues concerning State lands as per the Thirteenth Amendment.<sup>22</sup> The three justices each wrote separate judgments but all decided that State land is a matter outside the jurisdiction of Provincial High Courts and in the process also severely limited the powers over State land held by Provincial Councils. Mohan Peiris J. articulates the role and powers of the Central Government as: *The 13<sup>th</sup> Amendment to the Constitution refers to State Land and Land in two different and distinct places. In my view the entirety of State Land is referred to in List II (Reserved List) and it is only from this germinal origin that the Republic could assign to the Provincial Councils land for whatever purposes which are deemed appropriate. It is therefore axiomatic that the greater includes the lesser (Omne majus continent in se minus) and having regard to the fact that in a unitary state of government no cession of dominum takes place, the Centre has not ceded its dominium over State Lands to the Provincial Councils except in some limited circumstances as would appear later in the judgment.*<sup>23</sup>

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<sup>20</sup> *Ibid.*

<sup>21</sup> Appendix II – Land and Land Settlement, Thirteenth Amendment to the Constitution

<sup>22</sup> SC Appeal No. 21/13, Decision by Mohan Peiris, J.

<sup>23</sup> *Ibid.*

He reaches the conclusion that since the land stated in the Provincial Council List only originates out of List II, Provincial Councils can only have power over State land that is given to them by the Central Government.<sup>24</sup> He then treats the special provisions in Appendix II as further limitations on the Provincial Council's power over state land.<sup>25</sup> He goes on to add: "*The consultation specified in this special provision would not mean that the Government has to obtain the concurrence of the relevant Provincial Council,*" and "*the advice of the Provincial Council is non binding.*"<sup>26</sup> This conservative thinking in terms of devolution of power over land is extremely worrying in terms of the resettlement and development projects underway that require land alienation and acquisitions. The position of the present judgement on the primacy of the Central Government undermines the necessity to engage with the elected representatives of the people and governance structures provided by the Constitution. Both Justice Sripavan and Justice Wanasundera in their separate judgements reiterate the position that the Central Government has control over State land with the Provincial Council only having powers provided in the Provincial Council List.

Further restrictions to devolution of land powers are seen through 3:4 which provides for the National Land Commission: "*In the exercise of the powers devolved on them, the powers shall be exercised by the Provincial Councils having due regard to the national policy formulate by the National Land Commission.*"<sup>27</sup> The National Land Commission is yet to be established and is required to have representatives from the Provincial Councils<sup>28</sup> but despite this, it is likely to be an entity largely determined by the Central Government.

A possible safeguard in the Thirteenth Amendment is the need for distribution schemes of State land to be conducted on the basis of national ethnic ratios.<sup>29</sup> However, importantly as a safeguard for areas predominantly and historically populated by minorities, it specifies that in allocating State land, distribution schemes should not seek to change demographic patterns or communal cohesiveness.<sup>30</sup> This provision must be factored in when monitoring the developments across Sri Lanka, but with specific reference to the North which has in the past had a predominantly large Tamil speaking community. Recent alienation of State land and reports of continued settlement schemes in the North must be assessed in terms of whether attempts are underway at changing demographics and thereby contravening the Constitutional framework.

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> SC Appeal No. 21/13, Decision by Mohan Peiris, J.

<sup>27</sup> Appendix II – Land and Land Settlement, Thirteenth Amendment to the Constitution

<sup>28</sup> Appendix II – Land and Land Settlement, Thirteenth Amendment to the Constitution

<sup>29</sup> Appendix II – Land and Land Settlement, Thirteenth Amendment to the Constitution

<sup>30</sup> *Ibid.*

## CHAPTER 2: LEGAL FRAMEWORK

The present chapter examines the legislation relevant to both State and private lands, focusing on key provisions relevant to land acquisitions, evictions and related issues. The legislation discussed is not an exhaustive list but selected on the basis of their use in recent times and relevance in the context of increasing trends of centralisation and militarisation. Some legislation such as the Requisitioning of Land Act, although not implemented in recent years, is still in the statute books to be used at a time of emergency. Such legislation is highlighted in this chapter due to the broad powers provided to acquire and control land and the limited safeguards provided to prevent possible arbitrary practices. The chapter also comments on selected case law relevant to some of the laws, examining the judicial pronouncements and their implications in terms of present day practices.

The laws highlighted in the present chapter demonstrate the wide powers with the Central Government and its agents to alienate, acquire and control both State and private lands. Despite safeguards to provide for legal and possessory rights, the legal provisions highlighted in this chapter are indicative of a powerful Government and its machinery that can deprive people of their homes overnight. The cases highlighted here are proof of the need for stronger safeguards and immediate reform.

The chapter is in two parts. Section I deals with laws governing State land with section II examining legislation relevant to private land.

### Section I: Laws Governing State land

This section examines six laws governing alienation and recovering possession of State land. Courts have in recent years confirmed that State land is held in trust for the people. The Supreme Court in the Land Ownership Bill determination stated the following: *“From time immemorial, land has thus being held in ‘Trust’ for the people in the Island; now a Republic. The principle that State land is held in public trust could be clearly seen in the Land Development Ordinance and the State Grants (Special Provision) Act, where land was allocated to landless persons while reserving certain control by the State over such land. Moreover, even the time of the establishment of Provincial Councils in 1987, although the subject of land was devolved to the Provincial Councils, it did not defer from the policy that the ‘land is being held in Trust for the people by the State’.”*<sup>31</sup> This coupled with more recent judicial pronouncements on State land, discussed in the previous chapter, is likely lead to further debate in this area in the future.

Noteworthy is that control over State land is vested via specific statutory provisions and the recovery of State land has to adhere to processes provided in

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<sup>31</sup> Land Ownership Bill, S.D No.26-36/2003 at p477



the law. These safeguards are provided to prevent unjust and arbitrary land grabs and other practices that may dispossess people of land-an important aspect given the present trends. Therefore, despite being the land being designated as State land, the drafters of these statutes recognised the importance of possessory rights and the need for safeguards to provide for rights and entitlements.

### **Land Development Ordinance No. 19 of 1935**

The Land Development Ordinance (LDO) provides for the development and alienation of State land. It provides for the issuing of permits and grants of land to persons. Under Section 19, alienation of state land to any person is granted by way of permit authorising the recipient to occupy the land by a payment of annual fees determined by the Divisional Secretariat (DS). The permit holder may apply to convert the permit to a grant that gives legal ownership to the land. According to Section 20, no land must be alienated by grant except at a Land Kachcheri. The selection of persons to whom State land shall be alienated under this Ordinance shall be made at a Land Kachcheri unless in specific cases.<sup>32</sup>

If it appears to the District Secretary/Government Agent that the owner of a holding has failed to observe a condition of ownership, the District Secretary/Government Agent can issue a notice to such owner that a recommendation will be made for the cancellation of the grant of such holding unless sufficient cause to the contrary is shown.<sup>33</sup> Section 91 states, if the owner of the holding or other person interested therein fails to appear on the date as stated in Section 88 or states that he has no cause to show why the grant should not be cancelled, the District Secretary/Government Agent can recommend the cancellation of the grant of such holding, but no such recommendation shall be made until after the expiry of a period of fourteen days from the date specified in the notice issued under Section 88. However, within a period of fourteen days the owner of the holding can demonstrate reasons against the proposal to cancel the grant. A person aggrieved by such an order made by the District Secretary/Government Agent can appeal to the Minister by written petition within a period of thirty days from the date on which the recommendation for cancellation of the holding or the order under Section 91 (2) was made.<sup>34</sup> Section 125 provides for an inquiry before the Magistrate and Section 126 provides an aggrieved party to appeal to the Supreme Court.

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- where the Land Commissioner is satisfied that immediate alienation of any land under this Ordinance is desirable in the interests of an applicant and that there are no other interests in the land in question which are likely to be prejudiced Provided, however, that no land exceeding eight acres in extent shall be alienated under this paragraph and
- where the Minister so directs in any particular case or class of cases if it is in the public interest to do so.

<sup>33</sup> Section 88 and 89 of the LDO

<sup>34</sup> Section 95 and 96 of the LDO

However, this Act does not provide for claims of compensation of any kind whatsoever by any court in the case that the grant of a holding has been cancelled. CPA was informed of amendments to be introduced in areas including succession in the near future but was unable to find anything in writing at the time of writing this brief.<sup>35</sup>

### **State Lands Ordinance No. 8 of 1947**

This Ordinance provides for disposition of State land through permits and leases, and for the management and control of these lands. The power to sell, lease or alienation such lands has been vested with the President and he has the power to surrender any land on behalf of the State. Where the land is vested in local authorities by the State, such authorities have the power of making permits or leases.

Grants that can be made under this Ordinance are:

- Special Grants (What is being issued under Section 6 of the Ordinance, for any charitable, educational, philanthropic, religious or scientific purpose or any other purpose approved by the President.)
- Free Grants (grants which are approved by the President)

A long -term lease is made after a public auction or by tender and is an agreement between the President and the lessee and signed by the President. These are the most common forms of land alienation by this Ordinance.

Section 17 states, where the District Secretary/Government Agent is of the opinion that the grantee of any permit or licence has failed to observe any condition attached to any such permit or licence, s/he may cancel such permit or licence and eject the grantee in accordance with the procedure prescribed in Sections 106 to 128 of the LDO. Furthermore, a grantee is not entitled to any compensation or damages by reason of cancellation of a permit or licence under Section 17.; No claim for compensation or damages shall in any such case be entertained by any court.

However, under this Act if the District Secretary/Government Agent has refused to issue a permit or a licence, an appeal can be made to the Minister provided that such appeal will be made within twenty-one days of such refusal, or imposition of condition, or prohibition.

### **Land Grants (Special Provisions) Act No. 43 of 1979**

Under Section 3 of the Land Grants (Special Provisions) Act the President may grant agricultural estate land to any citizen of Sri Lanka who is landless and has the capacity to develop it. In transferring any State land the President shall have regard to:

- (a) the fact that the prospective transferee does not own any land ;
- (b) the level of income of the family of the prospective transferee; and

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<sup>35</sup> Interview with the Ministry of Land and Land Development, 31 October 2014

(c) the capacity of the prospective transferee to develop such land.

This involves State land that is vested with the Land Reform Commission. These lands will be transferred only after being surveyed, and the instrument of disposition must be registered with the District Secretary/Government Agent. Section 5 stipulates any transfer of State land under this Act is subject to conditions. Where there is non-compliance with the conditions, the State is entitled to obtain a court decree cancelling the land transfer. Thereafter, the land goes back to the State free of encumbrances. The conditions attached to the transfer of State land go with the land and are binding on all successors. In addition, land can be disposed of only with the prior written consent of the Land Commissioner General. CPA was informed of amendments to be introduced including amendments to ensure freehold title limiting the control of the State including district officials.<sup>36</sup>

### **State Lands (Recovery of Possession) Act No. 7 of 1979**

Under this Act, the Central Government is given broad powers to recover possession of State lands but the processes provided for such recovery also results in safeguards from arbitrary practices. This Act allows for the recovery of possession of State lands from unauthorised possessors or occupiers. The Act interprets State land as land to which the State is lawfully entitled to or which may be disposed of by the State together with any building standing thereon, and with all rights, interests and privileges attached or appertaining thereto.

Section 3 of the Act empowers the Competent Authority, to serve notice (quit notices) on any person who is in unauthorized possession or occupation of such land, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date which shall be a date not less than thirty days from the date of the issue or the exhibition of such notice. Thus, Section 10 states, if failing to comply with such notice the Magistrate after inquiry will make an order directing such person and his dependants in occupation of such land to be ejected forthwith from such land.

The Act provides for safeguards to any person who has been evicted from a land under this Act. Action of vindication under Section 12 of the Act- any person who has been ejected from a land under the provisions of this Act or any person claiming to be the owner thereof from instituting an action against the State for the vindication of his title. It must be done within six months from the date of the order of ejectment. Under Section 13, where an action instituted under Section 12 by any person against the State for vindication of title to any land from which he has been ejected under this Act has been decided in favour of such person, s/he shall be entitled to recover a reasonable compensation for the damage sustained.

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<sup>36</sup> Interview with the Ministry of Land and Land Development, 31 October 2014

## **Sri Lanka Land Reclamation and Development Corporation Act No. 15 of 1968**

Under Section 2 (1) of the Act when the Minister is satisfied that any area of land is a low-lying, marshy, waste or swampy area and where such land is situated within the jurisdiction of any local authority, he shall in consultation with the Minister in charge of the subject of Local Government and the local authority or authorities within which such land is situated by gazette declare such area to be a Reclamation and Development Area. It further states that upon the publication of a Reclamation and Development Area, the Corporation established by this Act can reclaim and develop that Area.

Furthermore, Section 3A states where the Minister certifies that any State land which is low-lying, marshy, waste or swampy and falls within any Reclamation and Development Area declared by an order under Section 2 is required to be made available to the Corporation for the purpose of any reclamation and development project, the Minister may with the concurrence of the Minister in charge of the subject of State Lands by gazette vest such land in the Corporation. Such an order shall have the effect of giving the Corporation absolute title to any land specified in the Order with effect from the date specified and be free from all encumbrances. In any case, when acquiring land for the purposed set out in the Acts, such land must be acquired according to the LAA.

## **Land Resumption Ordinance No. 4 of 1887**

According to Section 2 of this Act, the State is allowed to take back any land that has been alienated by it and subsequently abandoned by the owners for eight years or more and where such owner or any person lawfully claiming under him cannot be ascertained. However, a person aggrieved by this Act can appeal to the District Court or the Court of Appeal to get redress and if the decision of the District judge, or of the Court of Appeal in the event of an appeal, shall establish such right, all further proceedings in respect of such land under this Ordinance shall cease. If such decision shall be that such right has not been made out by the claimant, it shall be lawful for the Minister to make order that the land shall be taken by the State, and it shall be vested in and become the property of the State free from all encumbrances.<sup>37</sup> Although there are safeguards in this Act, attention should be drawn to the situation of people who come within the purview of this Act but who were unable to reside and use lands in the North and East due to the war.

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<sup>37</sup> Section 6 of the Land Resumption Ordinance

## Section II: Legislative Framework Applicable to Private Land

This section examines selected laws applicable to private land with relevance to acquisitions, evictions and related issues. Selected case law relevant to the specific statutes is also highlighted here to indicate judicial thinking and safeguards provided to ensure legal and possessory rights are respected and protected. As indicated, there are processes for the acquisition of private lands including meeting basic standards of transparency and due process. Unfortunately these processes are in some instances disregarded and undermined by the Government and its agents in the name of national security and development.

Acquiring lands for public utility is not a new concept. The concept of eminent domain articulated by the Dutch jurist Hugo Grotius<sup>38</sup>, provides powers to the State under extreme necessity or public utility to take over private land with the premise that steps would be taken to provide redress and compensation. Jurisprudence in this regard has evolved to ensure that land required for a public purpose is in adherence to the safeguards provided. This concept is present in several jurisdictions and although it provides scope for the State to take land for public utility, processes are provided to prevent arbitrary and unfair practices.

Legislation discussed in this section provides a glimpse into the numerous ways the State can control lands including private land. Some provide for zoning as seen with the Board of Investment Act which provides for the creation of licensed zones and the UDA provides the Minister powers to demarcate urban development areas. Such provisions, while not having the powers to acquire land, provides the Government and its agents powers to control the use of and access to specific lands, thereby also having the implied powers to also prevent people from using and accessing the said land. Unlike the safeguards provided in the acquisition processes, zoning has limited checks and balances, providing the President or Minister (as provided in the specific Statute) broad powers at his or her discretion. In the present context where there are grave concerns with separation of powers and the rule of law in Sri Lanka, such broad and unchecked powers can result in situations where thousands can be dispossessed, displaced and/or evicted from their homes overnight with limited recourse.

Furthermore this section also attempts to dispel the myth that owning one's land and having a valid deed is unlikely to provide tenure security. CPA's research on land issues for over decade has indicated a significant number of people believing that owning private land provides greater security from displacement and evictions. While there are benefits to owning private lands, the present legal framework also provides many powers for the Government to acquire and/or

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<sup>38</sup> U. Ramanathan, A Word on Eminent Domain, International Environmental Law Research Centre, 2009; Ayesha Siddiq, Land allocation & the principle of eminent domain, 28 November 2010, <http://tribune.com.pk/story/82663/land-allocation-the-principle-of-eminent-domain/>, last accessed 6 November 2014.

control private land and thereby possibly vitiating security of tenure. Cases discussed in this section including the attempts to acquire thousands of acres of land in the North and East and the evictions in Colombo, demonstrate the fragility of tenure, the vulnerabilities faced by land owners and the flawed institutional framework that is meant to protect rights.

## **ACQUISITION OF PRIVATE LAND**

### **The Land Acquisition Act No. 9 of 1950**

The Land Acquisition Act (LAA) provides for the acquisition of private land by the Government for a 'public purpose' and sets out procedures that need to be followed. At the time of writing the present brief, the LAA is the most used statute to acquire private lands. According to media reports 582 proposals were sent by various ministries to the Ministry of Lands in 2013 to acquire properties under the LAA.<sup>39</sup> CPA was also informed of over 50 gazettes issued to acquire private land in the Jaffna peninsula for a period of 10 months in 2014.<sup>40</sup>

Following is a basic outline of the process provided in the LAA:

Section 2 of the Act states that notice of land acquisition to be publicly available (displayed in conspicuous places) and to be displayed in all three official languages. The Act states the process in which land can be acquired by the State for public purposes,

(1) Where Minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area.

(2) The notice referred to in subsection (1) shall be in the Sinhala, Tamil and English languages and shall state that land in the area specified in the notice is required for a public purpose and that all or any of the acts authorised by subsection (3) may be done on any land in that area in order to investigate the suitability of that land for that public purpose.

Section 4(1) of the LAA states where a Minister considers that a particular land is suitable for a public purpose, or that a particular servitude over a particular land should be acquired for a public purpose, he shall direct the acquiring officer of the district in which that land is situated to cause a notice in accordance with subsection (3) to be given to the owner or owners of that land and to be exhibited in some conspicuous places on or near that land.

(2) The Minister may issue a direction under the preceding provisions of this section notwithstanding that no notice has been exhibited as provided by section 2, and, where he issues such a direction to any acquiring officer, the provisions of subsection (3) of Section 2 shall apply in regard to the land to which that direction relates in like manner as those provisions would have applied if that

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<sup>39</sup> Namini Wijedasa, LARCs to decide on land acquisition compensation, Sunday Times, 1 December 2013

<sup>40</sup> Interview with Government official, Jaffna, October 2014

acquiring officer has caused a notice under Section 2 to be exhibited in the area in which that land is settled.

(3) The notice referred to in subsection (1) shall-

(a) be in Sinhala, Tamil and English languages;

(b) contain a description of the land or servitude which is intended to be acquired;

(c) state that the Government intends to acquire that land or servitude for a public purpose, and that written objections to the intended acquisition may be to the Secretary to such Ministry as shall be specified in the notice (hereafter in this section referred to as the “appropriate Secretary”); and

(d) specify a period within which such objections must be made, such period being not less than fourteen days from the date on which such notice is given.

After considering the objections, if the Minister is satisfied she/he can make a declaration in accordance with the criteria established by law that the said land should be acquired. The declaration is published in the Gazette. Then the land is surveyed by the Survey General’s Department and when land is valued for over 500/- notice will be published on or near land. At this point any person interested in the land to be acquired is given the opportunity to notify the acquiring office of the nature of his interest in the land and the particulars of his claim for compensation, including the amount of compensation.

Section 9 states an inquiring officer holds an inquiry into, inter alia, the market value of the Land, claims for compensation and the interest of the parties claiming compensation, and according to Section 17 an inquiring officer makes a determination as to the persons entitled to compensation, the nature of their interest and the amount of compensation.

Part III of the Act establishes a Board of Review to which a claimant can appeal on the grounds that the compensation determined under Section 17 is insufficient. Such appeal must be submitted within twenty one days of the date on which the order of the acquiring officer was received by the claimant. If the claimant is not satisfied with the decision of the Board of Review, he can further appeal to the Court of Appeal on a question of law.

In practice this procedure is not always adhered to in terms of land acquisitions. CPA has noted that lands taken over by the State and its agents prior to the completion of the process set out in LAA. However, this Act, though not perfect provides for safeguards to aggrieved persons. Furthermore, CPA was informed by the Ministry of Land and Land Development that all acquisitions required for State use must go through the Ministry and that notices for acquisition will be processed through the Ministry in accordance with the process provided in the LAA.<sup>41</sup> With reference to the evictions in Colombo where residents who owned private lands were evicted without any notices under the LAA, the Ministry informed that provisions provided in the LAA must be adhered to unless there was a specific project and an agreement to purchase the land, none of which were publicly available at the time of writing. Although CPA notes of adherences

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<sup>41</sup> Interview with the Ministry of Land and Land Development, 31 October 2014

to provisions of the LAA in some instances, several cases highlighted in this brief demonstrate disregard for the LAA and/or deviations from what is set out in the law.

### **Public Purpose**

The Act does not define 'public purpose' as stated in Section 2. However, in *Mendis et al v. Perera et al S.C. (FR) No. 352/2007* (known as the Water's Edge case), the judgment sets out the definition of public purpose to mean as a requirement imposed by law on the Government when trying to acquire land, to show that the purpose of acquiring land has as the primary object, public utility and benefit of the community as a whole. Further, the community to be directly benefited must include the local community to be affected, not just the community as a whole. Thus, public purpose must directly benefit the local community and the government must show that the purpose of the land acquisition directly benefits the local community. Furthermore, *Manel Fernando v. D.M. Jayaratne, Minister of Agriculture and Land and others 2000 (1) S.L.R. 112* states that Section 2 notice must state public purpose for which land is being acquired.

### **Public Trust Doctrine**

The Public Trust Doctrine is now a concept entrenched into Sri Lankan jurisprudence to prevent the abuse of power and exploitation of public resources. The first reference to the doctrine was in *De Silva v. Atukorale* by Justice Mark Fernando who cited the following passage from H.W. Wade: "*Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended.*"<sup>42</sup> Fernando J. speaking about the powers conferred on the Government by the LAA went on to say: "*It was a power conferred solely to be used for the public good, and not for his personal benefit; it was held in trust for the public; to be exercised reasonably and in good faith, and upon lawful and relevant grounds of public interest.*"<sup>43</sup>

The courts have in recent years used the Public Trust Doctrine to include the protection of natural resources. In *Bulankulama v. Secretary, Ministry of Industrial Development*<sup>44</sup> Amarasinghe J. refers to the nexus of Article 3 of the Constitution and public benefit, with the Government of the day being the temporary bearers of such power for the benefit of the People. "*The Constitution declares that sovereignty is in the People and is inalienable (Article 3). Being a representative democracy, the powers of the People are exercised through powers who are for the time being entrusted with certain functions.*"<sup>45</sup> Amarasinghe J. goes further by providing that organs of the State are guardians of such power and the notion of 'shared responsibility' of the executive, legislature and the judiciary.

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<sup>42</sup> *De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another*, 1993 1 SLR 283 at, p296.

<sup>43</sup> *Ibid*, p 297.

<sup>44</sup> [2000] 3 Sri L.R 243

<sup>45</sup> *Ibid* at page 253



This notion of shared responsibility therefore provides for the different arms of the State to take a role in the protection of natural resources.

The role of the judiciary in terms of the Public Trust Doctrine was set out in the case of *Mundy and Others v Central Environmental Authority and Others* by Fernando J: “...this Court itself has long recognized and applied the ‘public trust’ doctrine: that powers vested in public authorities are not absolute or unfettered but are held in trust for the public, to be exercised for the purposes for which they have been conferred, and that their exercise is subject to judicial review by reference to those purposes...Besides, executive power is also necessarily subject to the fundamental rights in general, and to Article 12(1) in particular which guarantees equality before the law and the equal protection of the law...”<sup>46</sup>

*Mundy* also states that the Public Trust Doctrine is a valid basis for a separate ground of review: “Administrative acts and decisions contrary to the ‘public trust’ doctrine and violative of fundamental rights would be excess or abuse of power and therefore void or voidable.”<sup>47</sup> This concept is reaffirmed in the *Water’s Edge* judgment, where Thilakawardene J. “holds that the Court can review any exercise of public power, even if an express provision of the law grants immunity to the exercise of that power.”<sup>48</sup> The Public Trust Doctrine as articulated by the judiciary is important to review whether Government policies are in the public interest and to ensure there is a safeguard to prevent abuse and exploitation. The Public Trust Doctrine coupled with what has been termed ‘shared responsibility’ as articulated by the judiciary are important in the present day context where large scale projects involving natural resources are underway with questions raised regarding the public benefit. In terms of land alienations and acquisitions underway, questions must be asked as to whether there is adherence to the Public Trust Doctrine.

## Urgency

Section 38 and 38A of the Act sets out procedures for acquiring land “urgently”. Section 38 (a) states where it becomes necessary to take immediate possession of any land on the ground of any urgency, at any time after a notice under Section 2 is exhibited for the first time in the area in which that land is situated or at any time after a notice under Section 4 is exhibited for the first time on or near that land. As per *Marie Indira Fernandopulle and Another v. E.L. Senanayake, Minister of Land and Agriculture 79 (II) N.L.R. 115*, the burden of proof concerning urgency lies with the government.

There are ambiguities as to what ‘urgent’ land acquisitions means and what constitute as a genuine need for which land must be urgently acquired. In the case of *De Silva v. Atukorale*, land was acquired under Section 38 of the LAA for immediate possession of the land. The acquisition was challenged by the landowner, and pending the case no action was taken to develop the land. On appeal, the Supreme Court held that: ‘the true intent of the amending Act was to

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<sup>46</sup> *Mundy vs. Central Environmental Authority and others* (SC Appeal 58/2003)

<sup>47</sup> *Ibid.*

<sup>48</sup> *Mendis et al. v. Perera et al.* [Supreme Court] S.C. (FR) No. 352/2007

*empower the Minister to restore to the original owner land for the acquisition of which there was originally no adequate justification, upon the fulfilment of the stipulated conditions. It is a power conferred solely to be used for the public good and not for the personal benefit it is held in trust for the public to be exercised reasonably and in good faith and upon lawful and relevant grounds of public interest.*<sup>49</sup> Thus, the Court ordered that the land be divested to the original owners.

The government must exercise its powers with great care and circumspection since urgent compulsory acquisition of land is likely to make the landowner landless. A safeguard to counter urgent acquisitions is in terms of action in court. In *Arunasalam Kunabalasingham and 1473 others v. A. Sivaswamy and 2 others CA (Writ) 125/2013*, the Petitioners are landowners in the Jaffna District, where the land in question was formerly in the High Security Zone (HSZ) with continuous occupation by the security forces. In the case, the Petitioners challenge steps taken by the Respondents to acquire approximately 6381 acres of private lands for a purported public purpose. The reason for the supposed land requirement is to establish a 'Defence Battalion Headquarters'. When the case was taken up in the Court of Appeal, counsel for the Respondents informed court of a Section 38A order for urgent acquisition being issued. The case is presently before the Court of Appeal.

Other gaps in the LAA are that in practice and in the Act itself, there is no requirement to assess whether the land to be acquired is for a 'public purpose'. Further, the lack of transparency in the process of acquisition of land for public purposes is a major concern. Currently, significant amounts of private land have been acquired or are in the process of acquisition without procedures provided by law, being followed. Another set of problems documented by CPA relate to compensation. Information provided to CPA by those evicted in areas in Colombo by the UDA and its agents, indicate that the compensation valued is very low and there is limited consultation in this regard. Although some regulations issued under Section 63(2)(f) provide for compensation, these need to be reviewed and a comprehensive scheme must be introduced which is applicable to all acquisitions underway.

#### **Evictions and the Lack of Adherence to Provisions in the LAA**

In *L.B.P Nissanka and 3 others v. Urban Development Authority and 3 others CA (Writ) 283/2014*, a group of Petitioners from "34 Watta", Wanathamulla, Borella filed a writ application [CA (Writ) 283/14] in the Court of Appeal against the UDA. The Petitioners challenged the directive issued by the Project Director, Urban Regeneration Project City of Colombo of the UDA that they should either move to the alternative location provided by the UDA or accept the compensation proposed by the UDA. The Petitioners had title deeds to the lands going back to 1979 and filed the case as they claimed that the UDA was acting outside the legal framework applicable when acquiring private lands that is the

<sup>49</sup> *De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another* 1993 1 SLR 283.

LAA. There were no notices issued in adherence to the LAA and the Petitioners were only informed of their imminent eviction through directives issued by military personnel within the UDA. There were also instances where the Respondents were threatened and force was used to make them agree to leave their residence, regardless of the failure to follow due processes provided under the LAA. Although there were no notices issued in adherence to the LAA, there was a large board constructed near the Petitioners' residences which indicated the land was to be taken by the UDA for a sports ground. The Petitioners also stated that they were asked to sign forms issued by the UDA similar to a householder list.

Furthermore, the Petitioners claimed that attempts to forcibly evict the Petitioners were contrary to the undertaking by the UDA before the NHRC that no person would be moved from their residence without their consent. The Petitioners were also unable to accept the compensation proposed by the UDA as it severely undervalued their premises and they were unable to accept the alternative premises provided because they would have had to make payment of Rs. 1,050,400 in order to gain ownership of premises, which are smaller than what they presently own. Subsequently, the parties agreed to a settlement where each of the Petitioners were given two condominium units valued at Rs. 2,000,000 from "Methsara Uyana" apartment complex. The parties agreed to pay for each such condominium unit a monthly instalment of Rs. 2,777 (i.e. an aggregate of Rs. 5,554) over a period of 30 years. In addition, the Petitioners agreed to make payment of Rs. 50,000 per condominium to the Condominium Management Authority in six equal consecutive monthly instalments of Rs. 8,333 each.

The above case is indicative of the lack of adherence to the LAA when acquisition of private land is required for development work by the State. Although the Ministry of Lands and Land Development stated that acquisitions adhere to the provisions of the LAA, the above is an example when there is clear disregard for the provisions of the law. The above case also highlights militarisation and the use of force in the land acquisition process and the eviction of land owners from their homes.

### **LEGISLATION FOR DEVELOPMENT AND RELATED PURPOSES**

The following laws have provision to acquire private land and control both State and private lands for development purposes. As highlighted with each law, there are processes in place that are required to be adhered to in the implementation of the law. Unfortunately, these processes are not always followed.

#### **Urban Development Authority Act No. 41 of 1978**

The Urban Development Authority Act as amended has given broad powers over land to the Urban Development Authority (UDA). The Act grants the UDA the power to acquire lands belonging to local authorities or private lands. The UDA

was established to promote integrated planning and implementation of economic, social and physical development of certain areas as declared by the Minister in charge of urban development.

Under Section 3 of the Act, the Minister has the power to identify any area suitable for development and declare it to be 'an urban development area' which initiates economic and physical development of said area by Order published in the Gazette. The definition of 'development activity' which covers the entire section of activity in relation to the development of land is set out in Section 29 of the Act: 'the parcelling or sub-division of any land, the erection or re-erection of structures and the construction of works thereon, the carrying out of building, engineering and other operations on, over or under such land and any change in the use for which the land or any structure thereof is used, other than the use of any land for purposes of agriculture, horticulture and the use of any land within the curtilage of a dwelling house, not involving any building operation that would require the submission of a new building plan.'

Further, Section 15 (1) provides that where the Minister certifies that any land or interest in land vested in a local authority is required by the Authority for any purpose of the Authority, the Minister may by gazette vest such land or interest in such land in the Authority subject to conditions. Such a gazette order shall confer the Authority absolute title to any land or interest in land, building and other structures on such land specified in the gazette order free of all encumbrances and no compensation shall be payable to any aggrieved person by the Authority in respect of such land or interest.

The UDA can acquire land for the Authority as set out in Section 16 of the Act which is via the use of the LAA. For the purposes of the LAA, such acquisition is deemed to be for a public purpose. In some instances, in paying compensation for the land acquired, the Act fails to provide for the payment of compensation based on the market value on the date of acquisition. It provides that in the case of an acquisition where the intention to acquire the land has been part of a development area, payment of compensation is as follows: the market value of the land on the date of declaring it as forming part of development area, increased by 50% of the difference between that market value, and

**(a)** in the case of any land or interest therein, in respect of which no Order under the proviso to Section 38 of the Land Acquisition Act has been made, the market value of the land or interest therein on the date of publication in the Gazette of the notice under Section 7 of that Act; or

**(b)** in the case of any land or interest therein, in respect of which an Order under the proviso to Section 38 of the Land Acquisition Act has been made, the market value of the land or interest therein on the date of publication of such Order.

This section deprives landowners fair compensation in respect of land acquired. Furthermore, Section 26 of the Act provides protection to the Authority against prosecution for any act done by the Authority in good faith. Thus, providing immunity to the Authority and allowing them to carry out their functions in respect of development.

The Act grants the UDA the power to clear slums and shanty areas to undertake development projects in such areas. However, it does not provide that the residents be provided alternate housing or to be paid compensation and fails to provide guidelines to be followed in clearing such slums and shanty areas. When the UDA carries out demolishing projects, often insufficient or inadequate notice is given that dwellings are to be cleared, as already highlighted. These issues must be taken on board immediately to ensure that individual rights are not undermined within the larger development agenda.

### **Urban Development Projects (Special Provisions) Act No. 2 of 1980**

Urban Development Projects (Special Provisions) Act provides an advanced method of land acquisition. Declaration of lands urgently required for urban development projects is set out in Section 2 of the Act. It reads as follows: 'Where the President, upon a recommendation made by the Minister in charge of the subject of Urban Development, is of opinion that any particular land is, or lands in any area are, urgently required for the purpose of carrying out an urban development project which would meet the just requirements of the general welfare of the People, the President may, by Order published in the Gazette, declare that such land is, or lands in such area as may be specified are, required for such purpose.'

Section 3 of the Act provides for the restriction of remedies available upon a declaration made under Section 2 which prevents an affected person from challenging an acquisition to obtain an injunction or stay order or any other to restrain the acquisition or carry out work on the said land. The Act further restricts action by affected parties to only action in the Supreme Court to those of obtaining compensation or damages.

According to Section 7 of the Act when carrying out any of the urban development projects, the government or any authorized body can take possession of any land by following steps under the provisions of the State Lands (Recovery Possession) Act No 7 of 1979.

The President, Minister in charge of urban development and the UDA have extensive powers to take over land vested with the local authority, alienate land, use land for development and management projects. This Act grants the President unlimited powers to issue a gazette to expropriate land. Unlike with the LAA, redress through courts is limited, raising further concern regarding the implications this Act can have if utilised on a regular basis. Furthermore, there are ambiguities as to what constitute 'urgent' and what is meant by 'for the welfare of the people'.

At the time of writing, CPA found 15 Gazettes<sup>50</sup> issued under this Act. Although some of these gazettes are available online, there is concern whether affected

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<sup>50</sup>Gazette Extraordinary No.1846/41 of 22<sup>nd</sup> January 2014; Gazette Extraordinary No.1859/4 of 22<sup>nd</sup> April 2014; Gazette Extraordinary No.1866/41 of 13<sup>th</sup> June 2014; Gazette Extraordinary No.1874/5 of 5<sup>th</sup> August 2014; Gazette Extraordinary No.1849/32 of February 2014; Gazette Extraordinary No.1849/6 of 10<sup>th</sup> February 2014; Gazette Extraordinary No.1853/46 of 14<sup>th</sup>

parties are aware that their land is likely to be urgently taken by the State with very limited options for redress. For example, CPA interviewed individuals who had resided for decades on private lands in 243 watta (ward 37) in the Kollupitiya area and were informed recently by the UDA that the land was needed by the UDA, but no other information was given to them regarding acquisition or for what purpose the land was to be acquired.<sup>51</sup> They had not seen anything in writing regarding acquisition of their land. Majority of the residents had lived in their homes for decades, developed the lands and had children who went to schools nearby. They had been informed by the UDA that they were to be given apartments in the Bloemendhal area located far from their present residence. These apartments however, were much smaller in size to their present homes and so far away that their children would face difficulty in continuing their education. During the research for this brief, CPA came across a gazette that acquired lands in 243 watta on the 26<sup>th</sup> of February 2014 under the Urban Development Projects (Special Provisions) Act.<sup>52</sup>

### **Urban Settlement Development Authority Act No.36 of 2008**

Urban Settlement Development Authority Act provides for the establishment of the Urban Settlement Development Authority (USDA) with the mandate of improving the living conditions of persons living in what has been termed underserved settlements by upgrading available housing units or by providing better housing facilities and access to minimum urban services in order to ensure a sustainable urban settlement development. The USDA has power to carry out several functions in this regard including providing financial assistance to slum and shanty communities for the improvement of their housing conditions, undertake implementation of urban housing development projects approved by the Government, to acquire land for the implementation of its functions and to also manage lands, flats, houses and other living accommodation and buildings or other property vested in or belonging to the authority.

Section 22 of the Act provides for the USDA to be able to acquire any land or interests in land vested in a local authority or public corporation if required by the authority for 'any purpose' of the authority. Therefore, the discretion is with the Minister, with the consent of the Minister in charge of local government and with the consent of such local authority or that public corporation, permitted to acquire such land. Concern is raised in respect of the application of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980 (discussed above). Section 24 provides that the President has the power to acquire land for an urgent matter in any area for the purpose of carrying out an urban development project that would meet the just requirements of the general welfare of the

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March 2014; Gazette Extraordinary No.1861/43 of 9<sup>th</sup> May 2014; Gazette Extraordinary No.1871/24 of 15<sup>th</sup> July 2014; Gazette Extraordinary No.1881/38 of 25<sup>th</sup> September 2014; Gazette Extraordinary No.1882/2 of 29<sup>th</sup> September 2014; Gazette Extraordinary No.1849/23 of 12<sup>th</sup> February 2014; Gazette Extraordinary No.1859/30 of 24<sup>th</sup> April 2014; Gazette Extraordinary No.1870/60 of 10<sup>th</sup> July 2014.

<sup>51</sup> Interview with residents, 1 August 2014

<sup>52</sup> Gazette Extraordinary No.1851/23 of 26<sup>th</sup> February 2014.

People. As already discussed, this law is extremely problematic -with the broad powers given to the Executive, with limited recourse available for affected parties.

Noteworthy is that the LAA is used to acquire private property as provided in Section 25, but as already highlighted the Act provides the USDA powers to acquire land for 'any purpose' as opposed to the much narrow term 'public purpose' provided in the LAA. In addition, it is disappointing that the present Act, which was enacted in 2008, was not drafted in adherence to the NIRP. The USDA also has power set out in Section 26 to alienate lands via permits or grants in accordance with the Land Grants (Special Provisions) Act and the Land Development Ordinance (both discussed previously).

### **Board of Investment Act No. 4 of 1978**

Board of Investment Act (BOI Act) also contributes to a legal framework that provides the Central Government with expansive powers over land, but nonetheless lays the foundation for certain limitations on the government's actions. This Act establishes the powers and role of the Board of Investment (BOI). Its main priorities are to attract foreign and domestic investment in the economy with the objective of bringing in capital, creating job opportunities and encouraging the development of new skills.

Section 22A of the Act enables the President to declare a licensed zone outside the area of the Authority which is set out in Schedule A of this Act in order to facilitate the functioning of the Board of Investment (BOI). The 'licensed zone' as stated under Section 22 does not give the right to acquire land and the LAA must be adhered to for any acquisition of land as provided in Section 28.

#### **Section. 28**

(1) Where any land or any interest any land is required by the Board for any of its purposes, that land or interest therein may be acquired under the Land Acquisition Act by the Government for the Board and the provisions of that Act shall, save as otherwise provided in subsection (2) of this section, apply for the purposes of the acquisition of that land, or interest therein. Such land or such interest therein shall, for the purposes of the Land Acquisition Act, be deemed to be required for a public purpose.

(2) In the case of any such acquisition where the public notice of the intention to acquire that land or interest therein is published as required by the Land Acquisition Act at any time within the period of three years commencing from the date of coming into operation of section 4 of this Law, notwithstanding anything to the contrary in the Land Acquisition Act, the market value of the land or the interest therein shall be deemed to be the market value which the land or the interest therein would have had on July 22, 1977, increased by a reasonable amount on account of improvements, if any, effected to such land, after that date.

In combination, Section 22A and Section 28 make it very clear that any zone demarcated by the BOI cannot be considered acquired land unless formal acquisition procedures as per the LAA have been followed. Consequently, any zones created by the BOI cannot in any way on their own preclude land owners from accessing and using their land in such zones. This is an important point to recall in the context of the Sampur case presently before the Supreme Court. In 2012 seven Petitioners challenged a gazette issued by the BOI to demarcate a 'Special Zone for Heavy Industries' in Sampur in *Nadarasa v. Basil Rajapaksa & others SC FR 309/2012*. The Petitioners challenged their continued inability to access private property in Sampur and Gazette Extraordinary No. 1758/26 (17 May 2012) which demarcated their properties in Sampur as a "Special Zone for Heavy Industries". Counsel for the Respondents has indicated to court the fact that alternative lands is likely to be allocated to the Petitioners, but there is yet to be a notice to acquire the land. The case is presently before court.

### **Strategic Development Projects Act No. 14 of 2008**

This Act was introduced to promote strategic development projects and to provide a tax free period in relation to identified strategic development projects. What constitutes a strategic development project is stated in Section 3 of the Act.

**(1)** The Board of Investment of Sri Lanka established by the Board of Investment of Sri Lanka Law, No. 4 of 1978, shall identify in consultation with the relevant Ministries, any proposed project as a Strategic Development Project.

**(2)** On a project being identified in terms of subsection (1) as a Strategic Development Project, the Minister in charge of the subject of Investment shall by Notification published in the *Gazette* publish the relevant information relating to each proposed project and the exemptions to be granted in respect of the same.

**(3)** On the expiration of a period of thirty days from the date of the Notification published under subsection (2), the Minister in charge of the subject of Investment, shall in consultation with the Minister in charge of the subject of Finance take such steps as are necessary to inform the Cabinet of Ministers of—

**(a)** the rationale for considering such project as a Strategic Development Project ; and

**(b)** the period of exemption proposed to be granted, and obtain the approval of the Cabinet of Ministers for the identification of the project as a Strategic Development Project and for the granting of exemptions to such Project in terms of section 2.

**(4)** If the Cabinet of Ministers grants approval for such Project to be considered as a Strategic Development Project and for the aforesaid exemptions to be granted to such Project in terms of section 2, the Minister in charge of the subject of Investment shall, within six weeks from the date on which the approval of the Cabinet is granted, by Order published in the *Gazette*, specify the name of the Strategic Development Project, the date of commencement of such Project and the date on which the exemptions from the enactments specified in the Schedule granted in terms of section 2 will become operative and the date from which the same shall cease to be operative.



Private land can be re-developed for different purposes including hotels, shopping complexes and casinos under the ambit of the Strategies Development Projects Act. Several gazettes have been issued for this year alone for strategic development projects.<sup>53</sup>

### **Road Development Authority No. 73 of 1981**

This Act gives the Road Development Authority (RDA) specific powers and functions with respect to any road development project. Section 8 states that the Minister after considering the requirements for local and national planning can expedite to regulate and control road development in any area by an Order published in the gazette and declare such area to be a road development area. Upon such declaration, no road development should be executed by any government agency or others except by a prior written approval by the Authority. As per Section 22, if any immovable property needs to be acquired for the business of the Authority by gazette, such acquisition is approved and it is lawful for the executive authority to acquire the land under the LAA for a public purpose. This Act ensures that the process provided in the LAA is adhered for any land acquisitions by the Government or its agents. Further, any sum payable for the acquisition of immovable property under LAA shall be paid by the Authority.

Where any immovable property of the State is required for the purpose of any business of the Authority, such purpose shall be deemed to be a purpose for which a special grant or lease of such property may be made under Section 6 of the State Lands Ordinance, and accordingly the provisions of that Ordinance shall apply to a special grant or lease of such property to the Authority.<sup>54</sup>

## **LAND & TOURISM**

A surge in tourism developments across Sri Lanka is evident in the post war period with large tracts of land demarcated for tourist areas including the construction of hotels, golf courses and others. In some instances there is concern that land given for tourist development is at the cost of displacing and evicting people who have had ownership and control of the land for years. In Jaffna, it is reported that hotels have been constructed by the military in areas that are privately owned and are yet to be acquired in accordance with the LAA.<sup>55</sup> Similarly, residents in Ragamwela, Shasthrawela, Ulla, Ulpassa, Egodayaya and Horewkanda areas have been displaced due to their land being taken for the

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<sup>53</sup> Gazette Extraordinary No.1879/14 of 11 September 2014; Gazette Extraordinary No.1872/9 of 22 July 2014; Gazette Extraordinary No.1846/52 of 24 January 2014; Gazette Extraordinary No.1847/35 of 30 January 2014; Gazette Extraordinary No.1847/36 of 30 January 2014.

<sup>54</sup> Section 23 (1) and (2) of Road Development Authority

<sup>55</sup> Bhavani Fonseka & Dharsha Jegatheeswaran, Politics, Policy & Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, CPA, 2013; The Sri Lankan army is seizing land that could be worth \$2bn- <http://blog.srilankacampaign.org/2013/05/the-sri-lankan-army-is-seizing-land.html>

‘Arugam Bay Special Tourism Promotion Zone’.<sup>56</sup> Despite such practices, there is a legal framework that provides for the demarcation of tourist zones and acquisition of private lands. The following laws are highlighted to demonstrate the processes in place and safeguards that can prevent arbitrary practices.

### **Tourist Development Authority Act No. 14 of 1968**

Section 2 of this Act provides for the compulsory acquisition of land for tourist development purposes which should be deemed a public purpose and acquired under the LAA. According to Section 47, where any land is vested in the Board under Section 2 or Section 9, or is made over to the Board by way of a special grant or lease under the Crown Lands Ordinance, read with Section 3 of this Act, or re-vests in the Board under Section 18, the Chairman of the Board may, in writing, order any person in possession or occupation of that land to vacate the land within the time specified in such order.

However, the Act provides safeguards to the people in occupation or possession of land. This is stated in subsection (2) Where any land is vested in the Board under any of the provisions of this Act and the Minister has reason to believe that as the result of any action taken or proposed to be taken by the Board or the Chairman of the Board any person or persons will be de-housed in such manner as to cause hardship to such person the Minister may take such steps as he deems necessary to provide alternative accommodation to such person or persons or to direct the Board to pay any sum or sums by way of adequate compensation to such person or persons out of moneys specially provided by Parliament to the Board for that purpose.

Under Section 73A, Minister may if of the opinion that the activities designed and carried out for the purposes of providing facilities and services to tourists in any area (not being an area comprising a national holiday resort) requires to be regulated and controlled, will make an Order declaring an area to be a tourist development area. Prohibition of construction, erections of buildings within the tourist development area without the approval of the Board given with the concurrence of the UDA and the local authority concerned are set out in Section 73C of the Act.

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<sup>56</sup> Camelia Nathaniel, *Panama Land Issue Politically Instigated?*, <http://www.thesundayleader.lk/2014/04/06/panama-land-issue-politically-instigated/>, last accessed on 6 November 2014; Gagani Weerakoon, *Legally bequeathed, illegally acquired*, <http://www.ceylontoday.lk/51-30929-news-detail-legally-bequeathed-illegally-acquired.html>, last accessed on 6 November 2014.

### **Tourism Act No. 38 of 2005**

Tourism Act No 38 of 2005 has incorporated sections of the Tourist Development Authority Act No 14 of 1968 with regard to land. Section 26 of the Act states that Minister may on recommendation of the Authority declare by gazette any area to be a tourist development area. The Authority may prior to making any recommendation conduct such public hearing after due notice to the inhabitants of that area or any other stakeholders, in such manner as shall be prescribed. Regulations may be made prescribing the tourist services and commercial and other activities which may be carried out within an Area. Such regulations may also include lists of facilities and places of historical or environmental interest which amount to tourist attractions, within such Area.

Section 27 (3) states 'upon the declaration of any area in terms of Section 26, the Authority may exercise, perform and discharge in relation to any such area declared in terms of Section 26 the powers, duties or functions conferred or imposed on or assigned to, any person, body or authority by any relevant written law, in so far as the same is necessary, in consultation with the relevant authorities specified in written laws and to the extent agreed'. Compulsory acquisition of land under this Act needs to follow the process provided under LAA. Section 70 states where any land or any interest in any land is required by the Authority for any of its purposes, that land or interest may be acquired under the LAA by the Government for the Authority and the provisions of that Act shall apply for the purposes of the acquisition of that land, or interest therein. Such land or interest shall for the purposes of the LAA be deemed to be required for a public purpose.

Interviews conducted in Jaffna indicated that a military run hotel titled 'Thalsevana Resort Hotel'<sup>57</sup> is constructed in the area which was previously a HSZ and where 2176 land owners are presently in the Court of Appeal challenging the acquisition notices. The purported notice provided the public purpose as a 'Defence Battalion Headquarters' but reports from the area indicate that the land is used for other purposes including a military run hotel.

### **LAND REQUIRED FOR OTHER PURPOSES**

#### **Town and Country Planning Ordinance No. 13 of 1946**

This Ordinance authorises the formulation and implementation of a national physical planning policy, the making and implementation of a national physical plan with the object of promoting and regulating integrated planning of economic, social, physical and environmental aspects of land. Under Section 6, the Minister may by gazette declare an urban development area for the purposes of this Ordinance. Part V of the Act provides for any person to make a claim within the time limit to recover compensation from the central authority the amount of which his property is decreased in value. According to Section 58, if

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<sup>57</sup> <http://www.thalsevanaresort.com/>, last accessed 6 November 2014

any plan authorises the acquisition of any land, it is lawful for the authority to acquire the land under the LAA.

In 2011 there was an attempt to amend the present law. In *The Centre for Policy Alternatives v. Attorney General (Town and Country Planning Amendment Bill) SC Special Determination 03/2011*, CPA successfully challenged the Town and Country Planning Amendment Bill which if enacted would have expanded the scope of the Town and Country Planning Act; expanded the powers of Ministers to regulate private property by defining areas to be “sacred areas”, “conservation areas”, “architectural areas” or “protection areas”; enable acquisition of properties falling within such areas and finally, deem all existing urban development areas to be sacred areas. CPA challenged Parliament’s authority to enact a Bill in respect of the subject of land without first obtaining the views of the Provincial Councils. A three judge bench of the Supreme Court upheld the objections of the Petitioner and declared that the Bill cannot become law until the views of the Provincial Councils were obtained and the court further held that the Bill could not have been placed on the Order Paper of Parliament before the President had first obtained the views of the Provincial Councils. The Court declined to examine the other grounds for challenge. The Bill was subsequently withdrawn from the Order Paper.

The attempt to bring in an amendment and the opportunities provided within the Ordinance for zoning are indicative as to possible ways of misusing power for political, development, religious and other reasons.<sup>58</sup> Although the Ordinance provides for any acquisitions to adhere to the LAA, concern remains with instances where individuals may be deprived of their land due to the misuse of power provided within the Ordinance. Equally worrying are possible attempts to bring in similar amendments as seen in 2011. These provide for the need for tighter checks and balances including transparency in the issuing of gazettes and regulations.

### **Requisitioning of Land Act No. 33 of 1950**

The Act allows the President to give power to allow a competent authority to take possession of any lands during times of emergency. Section 2 (1) of the Act states, any competent authority, with the prior approval of the President, can take possession of any land and give such written directions necessary to expedite the taking of possession of such land which is required,

- (a)** for the purpose of the maintenance of supplies or services essential to the life of the community; or
- (b)** for the purpose of implementing any such scheme as is approved by the President for the importation, storage or distribution of essential commodities by any governmental institution; or

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<sup>58</sup> Legal Framework Governing Places of Religious Worship in Sri Lanka, CPA, April 2012, <http://www.cpalanka.org/brief-note-legal-framework-governing-places-of-religious-worship-in-sri-lanka/>

(c) for the purposes of use or occupation by the armed forces or any visiting force.

Section 5 of the Act provides compensation payable in respect of the taking of possession and the occupation of any land, possession of which is taken under Section 2 of this Act.

However, no compensation will be payable to any damage done to land of which possession is deemed to be taken under Section 2 of the Act by reason of demolishing of any building or structure which was erected on that land before the appointed date by a competent authority or any person acting on behalf during the period of which that land was in the occupation of such competent authority or person under the Defence (Miscellaneous) Regulations.<sup>59</sup> However, compensation will be granted an amount equal to the market value of any land of which possession is deemed to be taken by virtue of Section 2 of the Act.

In any case, Section 12 allows for persons to make an appeal to the Board of Review constituted under Section 19 of the LAA if such person (claimant) is dissatisfied with the award made by the competent authority. Furthermore, Sections 22 (2) and (3) and Sections 23 to 28 shall apply in relation to any appeal referred. Section 17 provides compensation to be paid when land is to be acquired under the Land Acquisition Act.

There is no affirmation stated in the Act, whether such land can be used and be taken by such competent authority at any given time. Furthermore, the purposes for which the land can be acquired by the competent authority are very broad. Although this law is not used at present, there are concerns of its use during a period of emergency.

## **OTHER RELEVANT LAWS**

### **Prescription Ordinance No. 22 of 1971**

This ordinance relates to possession of private property through prescription, which means that individual ownership of immovable property belonging to another by proving uninterrupted possession. These rights are not subjected to State lands. In order to obtain prescriptive title, the Ordinance states under Section 3 that there needs to be proof of undisturbed, uninterrupted possession by the defendant of lands or immovable property for ten years by a title adverse or independent possessions which means possession unoccupied by payment of rent or performance of service or duty by the possessor from which an acknowledgment of a right existing in another person would fairly be inferred.

Section 4 states that where the owner of the land has been dispossessed of any immovable property otherwise than by law, the owner can bring possessory action against the person dispossessing him within one year of such action. The ordinance also protects owners with disabilities against claims of prescriptive title.

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<sup>59</sup>Section 6 (2A) of the Requisition of Land Act

A person in possession of land or goods is entitled to take action against anyone interfering with their possession. A person who is dispossessed of their immovable property may file a possessory action within one year and one day of it being possessed. A person ejected from possession does not need to prove title to the land, only that they were in exclusive possession of the property in question at the time they were ejected, and that the ejection was unlawful. For prescription, proof of superior title and the fact that the land belongs to a third party are defences to a possessory action.

Thus, Prescription Ordinance may result in unfairness to landowners who may be unable to defeat the adverse claims of the possessor and should immediately be amended. There are efforts to improve this law. An Amendment to the Prescription Ordinance titled Prescription (Special Provisions) Bill is presently before Parliament. The long title of the Bill seeks *“to enable special legal provisions to be made in respect of persons who were unable to pursue their rights or defend themselves in court for the recovery of any immovable property including land due to the activities of any militant terrorist group”*. The Bill is a much needed attempt to amend the Prescription Ordinance to take on board the hardships created as a result of the war and the inability of land owners to reside in and use their land. At the time of writing it was unclear when the Bill will be taken for debate.

## **Conclusion**

Despite the numerous laws provided for both State and private land, this Chapter highlights a slant within the legal framework providing greater powers to the Government to acquire and control land with less importance placed on the individual's ability to enjoy, control and access land. In the present context where there is a drive towards centralised and militarised development and weak independent institutions, such limitations to the protection of the individual's right to own, control, enjoy and access land is extremely worrying.

Although provisions such as ‘public purpose’ and ‘welfare of the people’ can indicate on the surface some form of benefit for the people, the reality is that public interest has a limited role, if any, in policy decision and implementation of projects. Recent cases demonstrate a disregard for safeguards provided within the legal framework. Ultimately it is the lack of due process and the collapse of the rule of law coupled with militarisation and centralisation that will impede the rights of individuals.

It is in this context that urgent reform is required, both in terms of legislative amendments and implementation of safeguards provided within the legal framework. While there are specific amendments to be brought in and revision of existing provisions, there is also a need to explore the fundamental principles that define the legislative framework. It is paramount that if reform is to be beneficial for the citizens of Sri Lanka, there must be a focus on the rights framework and an individual's right to own, control and access one's land that

must be given due attention and not be easily brushed off in the name of security and development.

## CHAPTER 3: POLICY FRAMEWORK

In addition to the Constitutional and legal framework, several policies relevant to land issues are in existence. The policies highlighted here although not exhaustive, is an indicator of the policy framework in place to address land ownership, control, use, resettlement and other issues. The policy framework, as discussed in this chapter, is more in sync with current needs and dynamics as opposed to the legislative framework with efforts underway to bring in new policies and amendments to existing documents.

Although the policy framework has gone through changes in recent times, there is still room for improvement in its content and application. Key issues to flag at the outset with the policy framework is to 1) streamline the policy framework to ensure information pertaining to the existing framework is available in all three languages and is easily accessible to the public; 2) ensure human rights is incorporated into the policy framework where individual rights are given prominence and 3) there is full implementation of the policy framework with all State sponsored initiatives. There must also be clarity in what encompasses the policy framework, as several Ministries, departments and authorities with relevance over land and related issues have their own documentation that can be construed as policy. Although Sri Lanka is yet to formulate a National Land Policy, the Ministry for Lands and Land Development insists that what is on their website amounts to land policy.<sup>60</sup> While the website has goals and objectives, there are concerns with the insufficient guidance on what the present Government policy is on land and that one needs to look at different documents and statements to piece together what is referred to as the national policy on land. Therefore it is paramount that information is freely available in one place to demonstrate present land policies of the Government and be clear on how it is to affect the rights of individuals to enjoy one's land.

This chapter briefly highlights key policies with relevance to the subject of acquisitions and evictions. Although this chapter is not an exhaustive commentary, it attempts to highlight key policies that should be studied to understand how land ownership and control could be curtailed via the policy framework.

### **NATIONAL INVOLUNTARY RESETTLEMENT POLICY (NIRP)**

In order to address the shortcomings in the LAA and to take measures to minimize risks endangered by the affected communities, Asian Development Bank (ADB) in corporation with the Ministry of Land and Land Development adopted a set of international best practices<sup>61</sup> in 2001 to address issues on resettlement, and the cabinet of Ministers approved the National Involuntary Resettlement Policy (NIRP) on 24 May 2001. NIRP applies to all development induced land acquisitions and also provides for the preparation of a

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<sup>60</sup> Interview with the Ministry of Land and Land Development, 31 October 2014

<sup>61</sup> Asian Development Bank, "Handbook on Resettlement – A guide to good practice", available at, [http://www.adb.org/sites/default/files/pub/1998/Handbook\\_on\\_Resettlement.pdf](http://www.adb.org/sites/default/files/pub/1998/Handbook_on_Resettlement.pdf)



Resettlement Action Plan when 20 or more families are affected. In case where less than 20 families are displaced, the NIRP still requires a Resettlement Action Plan with a lesser level of detail. NIRP applies to all projects irrespective of the source of funding.

NIRP is designed to ensure that (i) project affected persons are adequately compensated, relocated and rehabilitated; (ii) delays in project implementation and cost overruns are reduced; and (iii) better community relations are restored.<sup>62</sup> Apart from NIRP safeguards, ADB itself has its own safeguards<sup>63</sup> with regard to resettlement. World Bank (WB), also adopted their own safeguards on resettlement in the year 2001 and the policies were revised in September 2013.<sup>64</sup>

A comparative study<sup>65</sup> on the LAA and NIRP revealed several positive features of the NIRP. They include:

- The NIRP ensures that people adversely affected by development projects are fully and promptly compensated prior to the dispossession of the land. The LAA<sup>66</sup> provides compensation only on the market value of the land and there is no provision for the depreciated value of the land. Similarly there is less value given to the buildings erected on such land when compensation is assessed under the LAA.
- NIRP has safeguards on successful resettlement and reestablishment of the livelihoods of the displaced persons and the improvement of their living standards. LAA provides for compensation, subject to many restrictions and practical delays and therefore in reality very few are eligible to claim compensation under the LAA. In respect of resettlement, LAA provides for a “reasonable expenses” effecting any change of residence caused by the acquisition, which is indefinite and not expressly specified on what grounds the expenses are calculated or the duration of providing such compensation.
- In terms of NIRP, affected persons are given the opportunity to be fully involved in the selection of relocation sites and development options at the earliest opportunity. Replacement of land is an option for compensation in the case of loss of land; and in the absence of replacement of a land, cash compensation should be an option for all affected persons. The LAA is silent on this issue.

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<sup>62</sup> Land Acquisition and Implementation of the National Involuntary Resettlement Policy, A Guide for Public Officials on Good Practices, Ministry of Land and Land Development, 2013

<sup>63</sup> Asian Development Bank, “Safeguard Policy Statement – June 2009”, available at, <http://www.adb.org/documents/involuntary-resettlement-safeguards-planning-and-implementation-good-practice-sourcebook-d?ref=site/safeguards/publications>

<sup>64</sup> World Bank, Operational Manual- Involuntary Resettlement, available at, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

<sup>65</sup> For more information on the NIRP refer to: Gehan Gunathilleke and Vidya Nathaniel, “The National Involuntary Resettlement Policy: Dispelling Misconceptions and Assessing Compliance, Verite Research, September 2014, available at, [www.veriteresearch.org/download-pdf\\_spreport.cfm?pdf\\_id=28](http://www.veriteresearch.org/download-pdf_spreport.cfm?pdf_id=28)

<sup>66</sup> Section 46, LAA

- NIRP provides for those without title to a fair and just treatment. Whereas under LAA the persons with interest to land is defined as one who have legal ownership.<sup>67</sup>
- NIRP provides for all affected persons a consultative, transparent and accountable process with a time frame agreed to by the Project Executing Agency and the affected persons. LAA includes both administrative and judicial processes and can be time consuming, costly and not easily accessible.

The Land Acquisition Regulations of 2008<sup>68</sup> (which is effective for acquisitions where intention of acquisition is published under LAA, on or after 17.03.2009) incorporated a few of the NIRP principles into Sri Lanka's legal framework. Furthermore, as already discussed, the Land Acquisition (Payment of Compensation) Regulations 2013<sup>69</sup> were adopted which provides for compensation and grievance mechanism and established the Land Acquisition Resettlement Committees (LARC). The establishment of LARC is a positive step in respect with resettlement but it is limited to the specified projects. CPA was informed of new regulations to be issued in the near future which is meant to be in line with the NIRP.<sup>70</sup> CPA was also informed that with the new changes there would be an efficient process of compensation, where those dissatisfied with the decision of the LARC can appeal to the Super LARC. CPA welcomes the attempts at reform in this area and urges the authorities to introduce and implement such changes in a speedy manner. NIRP has been used in the Lunawa Environmental Development Project and the Upper Kotmale Project.<sup>71</sup>

## **DRAFT RESETTLEMENT POLICY**

It is also noteworthy that the Government, under the Ministry of Resettlement is in the process of introducing a policy that addresses the administrative, logistical, advisory, humanitarian and other needs of the IDPs, returned refugees and resettled communities. Unfortunately the draft policy<sup>72</sup> drafted and revised in November 2013, is yet to be placed before Cabinet. Notably, the draft policy addresses concerns of land and property rights.<sup>73</sup> The draft policy provides for

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<sup>67</sup> Section 7, LAA

<sup>68</sup> Gazette Extraordinary No.1596/12 of the Democratic Socialist Republic of Sri Lanka, April 07, 2009, available at, [http://www.documents.gov.lk/Extgzt/2009/PDF/April/1596\\_12/G%2010974%20%28E%29.pdf](http://www.documents.gov.lk/Extgzt/2009/PDF/April/1596_12/G%2010974%20%28E%29.pdf)

<sup>69</sup> Extra Ordinary Gazette notification No. 1837/47- 22 November 2013, [http://www.documents.gov.lk/Extgzt/2013/PDF/Nov/1837\\_47/1837\\_47%20\(E\).pdf](http://www.documents.gov.lk/Extgzt/2013/PDF/Nov/1837_47/1837_47%20(E).pdf)

<sup>70</sup> Interview with the Ministry of Land and Land Development, 31 October 2014

<sup>71</sup> For more information on NIRP and its implementation refer to: Gehan Gunathilleke and Vidya Nathaniel, Verite Research, "The National Involuntary Resettlement Policy: Dispelling Misconceptions and Assessing Compliance, September 2014, available at, [www.veriteresearch.org/download-pdf\\_spreport.cfm?pdf\\_id=28](http://www.veriteresearch.org/download-pdf_spreport.cfm?pdf_id=28)

<sup>72</sup> "A framework for resettlement policy" available at <http://resettlementmin.gov.lk/site/media/pdf/english/Resettlement%20Policy%2007-11-13.pdf>

<sup>73</sup> Sri Lanka Draft Resettlement Policy: General Comments, Internal Displacement Monitoring Centre (IDMC), 7 November 2013

acquisition of land for public purpose<sup>74</sup> and payment of compensation for the acquired property. The draft also provides for acquisition to be done following the due legal process but fails to include the broader framework provided in the NIRP. One issue of concern is that the draft policy seems to apply only to private land and there is no reference to those displaced who were in possession of State land. Furthermore, the draft policy limits the application to those 'displaced as a result of armed conflict' and does not factor in those displaced as a result of natural disasters or development. The draft policy also seems to have a preference towards physical movement of internally displaced persons (IDPs) than durable solutions and is referencing those still living in displacement rather than those who have already returned or relocated and who may still have outstanding protection issues related to their displacement.

### **NATIONAL HOUSING POLICY**

Sri Lanka has had several Government entities and initiatives<sup>75</sup> involved in housing<sup>76</sup>. The National Housing Policy is an outcome of the strategies based on the Mahinda Chintana Vision<sup>77</sup> which includes some key aspects: 100,000 plots of land to be provided for construction of houses, 4 housing schemes (condominium property) to be implemented for public servants in Colombo and the suburbs, 65,000 housing units to be constructed for those presently living in an unauthorized and temporary dwellings in the city of Colombo and houses to be constructed in all villages at the rate of 25 per village. The National Housing Policy<sup>78</sup> and the National Housing Policy Action Plan<sup>79</sup> were both recently launched. The Plan focuses, among other issues, on the land rights of those underserved communities whose lands are to be taken for development projects under the Urban Regeneration Project<sup>80</sup> and priorities the housing needs of the poverty stricken people who are landless.<sup>81</sup>

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<sup>74</sup> 9 (ii), 9 (iii)

<sup>75</sup> Urban Development Authority implement many projects and have their own resettlement schemes for those whose lands maybe lost (<http://www.uda.lk/projects.html>). Also under the Urban Regeneration Project, the UDA engage in housing construction ([http://www.uda.lk/investment\\_relocation.html](http://www.uda.lk/investment_relocation.html)). Janasevana includes many other sub programmes

<sup>76</sup> An Introduction to Housing and Land Laws in Sri Lanka, Centre on Housing Rights and Evictions, Page 10. The different entities include the National Housing Department (1952), the National Housing Development Department (1977), the Greater Colombo Economic Commission (1977), the Urban Development Authority and National Housing Development Authority (1979) and the Mahaweli Development Authority.

<sup>77</sup> Mahinda Chinthana, page 22, available at, <http://www.president.gov.lk/pdfs/MahindaChinthanaEnglish.pdf>

<sup>78</sup> National Housing Policy Ceremonially Handed Over to H.E The President, 06 October 2014, available at, <http://www.housingpolicy.lk/index.php/joomla-pages-ii/148-sri-lanka-to-launch-a-national-housing-policy-to-mark-world-habitat-day-on-oct-9>

<sup>79</sup> Prepared by the Ministry of Construction, Engineering Services, Housing and Common Amenities, launched on 20th October 2014 available at, <http://www.housingpolicy.lk/index.php/joomla-pages-ii/149-sri-lanka-to-launch-a-national-housing-policy-to-mark-world-habitat-day-on-oct-10>

<sup>80</sup> 4.3.1.1

<sup>81</sup> 4.3.1.5

CPA was informed of a broad consultative process used to draft the Policy and Action Plan.<sup>82</sup> This is a welcome step and it is hoped that recommendations received will be incorporated into future implementation and policy decisions. CPA was also informed that 25 ministries mentioned<sup>83</sup> in the Action Plan are involved in the process of implementation and that by 2015 the Action Plan will be implemented at the district, divisional and rural levels through committees at the different levels.

Apart from the National Housing Policy there are many other housing projects and programmes in place. Janasevana is one such main project that is implemented by the Urban Settlement Development Authority (USDA)<sup>84</sup> for the development of settlement structure. The Relocation Housing Development Programme within the Janasevana was designed to upgrade the quality of life of city dwellers living in urban under-served settlements (slum & shanty settlements) by enabling them to trade-off their plot of encumbered land against a modern housing unit. The Urban Re-Development Programme was formulated to dispose the lands from the above re-housing process for urban redevelopment projects through a financing method proposed by the USDA. The land thereby is meant to be used for affordable and up-market residential and commercial constructions. The Urban Regeneration Project is implemented by the UDA.<sup>85</sup> In addition to the USDA and UDA, the National Housing Development Authority implements the urban housing project for Government and private employees. While there is a need to focus on housing, there are concerns that the involvement of several Government entities may lead to duplication and confusion and therefore it is important to be transparent in plans and the status of implementation. Similarly, while on paper the different initiatives to provide housing sounds promising, there are concerns of how people's rights and entitlements will be respected in the implementation phase.

## **NATIONAL PHYSICAL PLAN POLICY**

The Town and Country Planning Department established under the Town and Country Planning Ordinance was converted into the National Physical Planning Department (NPPD) under the amended Town and Country Planning Department Ordinance No.49 of 2000.<sup>86</sup> NPPD falls within the purview of the Ministry of Construction, Engineering Services, Housing and Common Amenities. The main purpose of NPPD is to provide ministries with a plan for their

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<sup>82</sup> Interview with the Advisor of the National Housing Secretariat, October 2014

<sup>83</sup> National Action Plan on Housing Policy, Inter Ministerial Committee, available at, <http://www.housingpolicy.lk/images/pdf/SAP.pdf>. The Action plan is presently only available in Sinhala and is in the process of being translated into English and Tamil.

<sup>84</sup>Urban Settlement Development Authority, Ministry of Construction, Engineering Services, Housing and Common Amenities, available at, [http://www.usda.gov.lk/usda\\_col\\_2.php](http://www.usda.gov.lk/usda_col_2.php)

<sup>85</sup> Urban Development Authority, Urban Regeneration programme, available at, [http://www.uda.lk/investment\\_relocation.html](http://www.uda.lk/investment_relocation.html))

<sup>86</sup>Ministry of Construction, Engineering Services, Housing and Common Amenities, "Our Partners", available at, <http://www.houseconmin.gov.lk/index.php/our-partners/national-physical-planning-development>

development activities and has no involvement with acquisition of land. CPA was informed that any acquisition of land required for relevant projects would need to go through the relevant ministries.<sup>87</sup>

## **Conclusion**

The policy framework compared to the legislative framework is more in line with current issues and challenges. Despite this, a failure of the policy framework is the lack of uniform implementation and the inability to enforce provisions that provide safeguards to affected parties. While CPA welcomes efforts at reform, there needs to be more done to ensure that standards found in the policy framework are reflected in the legal framework and they are fully implemented. It is only when the standards are put to use that a change is likely to take place in the thinking and practice of respecting and protecting an individual's right to land and property.

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<sup>87</sup> Interview with Director General – National Physical Planning Department, 30 October 2014

## CONCLUSION

The present brief discusses the laws, policies and practices in place in terms of acquisitions, evictions and related issues, and highlights the problems with the framework and discrepancies in implementation. Although the framework in place is meant to provide safeguards from unjust and unfair practices, this has been ineffective in the face of powerful actors coupled with the erosion of the rule of law.

As flagged at the outset, disturbing trends of centralisation, militarisation and consolidation of power at the cost of people's elected representatives and transparent and inclusive governance has had its toll. Most policies and practices are justified in the name of security and development. In some instances, laws and policies are used to legitimise practices of what amounts to be land grabs. In other instances, there is a clear disregard with no effort to even attempt to provide a rationale to what are in fact illegal practices. With powerful actors such as the UDA playing an ever increasing role in the governance of post war Sri Lanka, serious concern remain with how the present framework will be used to meet the objectives of a powerful few. It is indeed a bleak picture when certain provisions in the present framework coupled with weak institutions are likely exacerbate displacement, evictions, dispossession and violations of law.

It is in this context one looks to the possibilities of reform in the context of national elections in 2015. Although it is too early to predict who is to govern Sri Lanka in the coming years and thereby define its future, the possibility of elections also provides for space to push for legislative, policy and administrative reform. It is time to hold the political actors to account and ensure they are made to address grievances. Successive Governments have contributed to the framework in place and the trends evident in Sri Lanka to continue to undermine the people's right to live and use their land. Immediate action is needed to prevent further erosion of the rule of law and ensure that governance is for the benefit of the people. This opportunity must not be lost.

## RECOMMENDATIONS

CPA has researched and documented land issues and trends across Sri Lanka for over a decade and provided recommendations based on areas that require reform. Although there is some progress in terms of previous recommendations, much more needs to be done to vitalise the reform debate and introduce much needed changes. The present brief reiterates recommendations made previously which are relevant in the post war context and lists out specific recommendations identified from the present research.

Although the present framework is specifically looking at the legal and policy framework related to acquisitions and related issues, there is no ignoring broader trends impacting land and possessory rights. Therefore, at the outset CPA sets out key recommendations in addition to the specific ones that are captured in the Legislative Reform and Policy Reform respectively.

The Government must ensure there is a genuine attempt at a **political solution** including the full implementation of the Thirteenth Amendment to the Constitution.

Decision making and implementation of projects should be **decentralised**, ensuring power is closer to the people and with officials who have the knowledge of local issues. In this regard it is also important to recognise the role and powers of local authorities and to ensure they are provided a role in decision making. Connected to this is to ensure the lead in administrative tasks is with the civilian administration with effort made at **demilitarisation**.

Evidence shows to the influence of a **development agenda** on policies and projects with scant regard towards a **rights based framework**. Although there is no denying the need for development, initiatives in this area should be in adherence to the constitutional and legal framework and international obligations. Development projects should also be planned and implemented in a **transparent and inclusive** manner.

It is timely that a comprehensive review of **compensation** schemes are undertaken and ensure transparency, equity and fairness in the allocation and payment of compensation. While CPA notes current efforts at reform in this area, these need to be done via a transparent and inclusive process.

### Legislative Reform

CPA urges the full implementation of the Constitutional framework and laws that respect the rights and entitlements of those who have resided in premises. This includes the implementation of the amended LAA in terms of acquisitions of private lands and the provision of compensation.

CPA welcomes efforts by the Government to introduce amendments into specific laws relevant to State land including the LDO and urges transparency in the

process. Such reform should also be reflected in the implementation of projects including in the alienation of State land. .

The Government should amend the LAA and other relevant laws to be in adherence to the National Involuntary Resettlement Policy (NIRP). CPA welcomes attempts underway to introduce new regulations to address issues of compensation but urges that reform is needed in other areas of the LAA.

Steps should be taken to repeal the Urban Development Projects (Special Provisions) Act which provides for broad powers to the Executive to take over private land with limited checks and balances. CPA believes that acquisition of private land should come within the purview of the Ministry of Land and Land Development and carried out in a transparent manner in accordance with an amended LAA.

Similarly provisions within other laws that provide broad powers to the Executive and Government actors should be amended. For example, the BOI Act and the Requisition Act are two that provide for land to be taken with limited checks and balances and should be amended to ensure rights of individuals are not unfairly deprived in terms of their land and possessory rights. There should also be transparency and information publicly available regarding land required for zoning, development and other purposes that may impact a person's ability to fully enjoy his or her land. The laws listed in this brief highlight numerous ways for lands to be demarcated a development area or other such areas and this should be done in a transparent manner and in consultation with relevant stakeholders including affected communities. CPA recommends a review to be done in this regard by the Ministry of Land and Land Development with the support of the Ministry of Justice, Attorney General's Department, Legal Draftsman's Office, NHRC and other actors.

## **Policy Reform**

Public information should be freely available in all three languages on the policy framework relevant to land and related issues. CPA's research highlighted different ministries, departments and authorities having several documents that impact land and possessory rights but these were not all freely available to the public. It is paramount that all stakeholders including the public are aware of the policy framework and the priorities and processes enshrined in this framework.

Immediate steps should be taken to fully implement the NIRP and for it to be reflected in the legal framework. Donors should have provision for all donor funded projects to meet the standards provided in the NIRP and to ensure there is a basic minimum standard adhered to in all development and related projects.



Steps also should be taken to finalise the Resettlement Policy in a transparent and participatory manner and to ensure that it incorporates standards found in the international framework and the NIRP.

There should be clarity in housing standards and policies in places and the adherence to these as a basic starting point in all housing projects including projects addressing needs as a result of the war, natural disasters, development and other purposes.

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