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**LAND TENURE**  
in  
**UNDER-SERVED SETTLEMENTS**  
in  
**COLOMBO**  
**SRI LANKA**



Gothampura, Colombo



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December 2007

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# **LAND TENURE in UNDER-SERVED SETTLEMENTS IN COLOMBO**

## **SUMMARY**

### **Tenure, security and poverty reduction** [Section 1]

Secure tenure to land is now internationally recognised as central to the reduction of urban poverty and the development of cities. Security of tenure does not only mean freehold title to full ownership. There are many forms of tenure to urban land and property, both formal and informal, that are equally secure.

Only with an acceptable level of security will households invest their resources in developing their dwellings and managing their neighbourhood infrastructure. There are strong arguments and extensive evidence to show that providing secure tenure to land releases household savings (“dead capital”), enabling it to be invested in urban development. Not only does recognised title to land provide collateral for credit, it secures a capital asset that can be sold in times of crisis. It is a major contributor to poor people’s struggle out of poverty.

### **Colombo** [Section 2]

Colombo city is the core of the Greater Colombo Metropolitan Area. It has a population of some 650,000, more than half of which live in under-served settlements (USS). These are characterised as ‘slums’ (old overcrowded structures of permanent materials) and ‘shanties’ (shelters of impermanent materials, informally constructed mostly on state owned land). As a result of former USS upgrading programmes and the National Involuntary Resettlement Policy (2001), few USS households feel under any great threat of eviction.

### **Land law** [Section 3]

Tenure to urban land in Sri Lanka is rooted in Roman-Dutch law and the principles of individual freehold title. The early colonial ordinances demarcated public land (1840) and established local authorities for the administration of public services (1865). Government control over privately owned land followed with the Town Improvement Ordinance (1915) and the Town and Country Planning ordinance (1946), which gave the government powers of compulsory acquisition of private land.

The Rent Acts (1959 and 1972) established a rent tribunal and, latterly, a control on the rents that landlords could levy. They were followed by the Ceiling on Housing Property law (1973) that limited the number of properties that an individual could own. As a result some 17,000 surplus properties were vested in the Commissioner for National Housing and passed on to their former tenants with (conditional) freehold title.

The Urban Development Authority (UDA) and National Housing Development Authority (NHDA) Acts (1978) gave the government more extensive and more flexible powers over the acquisition, vesting and transfer of land for low-income group urban housing. They also allowed for the waiver of planning and building bylaw restrictions in ‘special development areas’.

The Condominium Ownership (Amendment) Act (2003) is the last of a series of amendments to the original act (1973) that enables householders to have freehold ownership of their dwellings whilst retaining a share in the common infrastructure that serves them and responsibility for its maintenance.

### **Land tenure and titling practice** [Sections 4 & 5]

The transfer of property under the Ceiling on Housing Property Law (1973-80) had a very positive impact on the redistribution of land and property to a large section of the city’s lowest income population. However, it, and the rent acts that preceded it, had a significant negative impact on private investors’ confidence in the urban land and housing markets. The resulting ‘gap’ in the housing supply chain in part accounts for the high prices commanded by the informal property market in USS, which squeeze the lowest income groups into conditions of severe overcrowding, whilst providing inadequate accommodation for the lower-middle income groups, who could afford formal sector housing if it was available.

The decade 1978-89 was one of intense government activity in urban development and low-income housing. It saw the first comprehensive inventory of USS in Colombo by the UDA Slum & Shanty Division, which also drew up a set of realistic standards for upgrading whilst undertaking a series of projects that benefited from the powers bestowed on the UDA.

At the same time (1977-84), the Unicef Urban Basic Services Improvement Programme provided support to infrastructure development through the development of community based organisations in a wide range of USS in Colombo.

In 1985 the Slum and Shanty Division transferred to the NHDA as its Urban Housing Division and launched the Urban Housing Sub-Programme of the Million Houses Programme (MHP). This had a major impact on urban land redistribution and the upgrading of infrastructure and services in USS in Colombo through participatory partnerships between USS-based Community Development Councils (CDC) and the Authority. Through these processes, some 12,000 entitlement certificates were awarded to households in 80 USS between 1985-89. The 1.5 MHP continued to award recognised land titles in USS through the early 1990s in conjunction with other projects for the improvement of infrastructure in USS, though on a less dramatic scale.

Policy changed in 1998 with the launch of the Sustainable Townships Programme, which abandoned the participatory approaches to 'in-situ' upgrading of USS, replacing it with an unrealistically ambitious programme for the construction of high-rise apartments for low-income families to be financed by the commercial sale of the land that they had previously occupied. A corollary of this was the freezing of any title transfers and infrastructure upgrading in some 300 USS in Colombo. Though this still officially pertained, by 2007 it seemed to have been relaxed and some in-situ upgrading was taking place in some of these settlements.

Thus, there is now no land or housing policy or a coherent programme approach to USS in Colombo. Its absence has led to the emergence of a new form of 'organised land invasion' by local political opportunists and exploitative informal entrepreneurs in the city.

#### **Improving tenure security and development in USS**

[Sections 6 & 7]

There are compelling arguments for and against the transfer of freehold title to the occupants of small plots in USS in Colombo. Those against include: the observation that public land is a capital asset belonging to the city as a whole that should not be dissipated; individual freehold title to very small plots promotes inefficient development that will lead to the creation of a 'new generation' of slums; medium-term leases provide sufficient security to instil sufficient confidence for householders to invest in improving their dwellings, making freehold title unnecessary. Contrary to this are the arguments that: commercial banks currently require a freehold title deed as collateral for credit; the value of land is considerably enhanced when backed by a title deed; and outright ownership to a plot of land, however small, provides a social status and sense of integration into the city that is extremely important to marginalised households' struggle out of poverty.

It is recognised that awarding freehold title to USS households through the NHDA should be pursued. However, every effort should be made to capture the value of state land that is transferred.

**It is recommended** [Sections 6.2 & 7.2] that the use-value of land should be separated from its exchange-value by a system in which qualifying USS households are granted a 'certificate of occupation' that gives them all the rights of ownership (development, bequest, lease, transfer) but not a title deed, which may be purchased at a market-related rate if or when required. Although there is likely to be a market in 'certificates of occupation', such a system will obviate the most extreme profiteering from the public subsidy (free land) and ensure that, at least in the long run, the value of the land will return to the public purse.

Many different departments and agencies have a stake in the management of land and services in USS, none of which have taken a lead role since the administration of the MHP by the NHDA and UDA, both GoSL agencies with national responsibilities, in the 1980s. The lack of co-ordination at the city level has led to inconsistencies and inequities.

**It is recommended** [Section 6.3] that the CMC, which has sole jurisdiction over the city, should establish a USS Co-ordination Unit, that through mutual agreement and negotiation can monitor and co-ordinate the activities of different municipal departments and GoSL agencies, notably NHDA and UDA. It should also develop and maintain the USS database, which in terms of land management should include data required for forward planning as well as an up-to-date inventory of USS conditions and characteristics.

Although many properties in USS have been given assessment numbers by the Municipal Assessor's Department, virtually none have been assessed. Where they have, they have tended to be given a blanket value below the level at which a CMC rate is charged. However, studies have shown that there are many properties in USS, which if conventionally assessed would render a significant revenue that the occupants are able and willing to pay.

**It is recommended** [Section 6.3 & 7.2] that a study should be undertaken to verify this together with a series of pilot projects to examine and test potential participatory procedures by which valuations could be undertaken in USS and rates collected.

If the effectiveness and efficiency of land management and revenue collection in USS are to be enhanced, they will require a measure of community participation (which is GoSL policy). However, although the system of Community Development Councils nominally still exists, the vast majority of them have been disbanded or are dormant. In any case they have no legally recognised status.

**It is recommended** [Sections 6.4 & 7.2] that a series of projects should be undertaken to assess and test the extent to which CDCs could be converted into Condominium Management Councils for the purposes of overseeing Condominium Management Corporations that would have contractual obligations under the Condominium Ownership (Amendment) Act, for the administration of common amenities and other responsibilities (i.e. revenue collection) in USS.

#### **Need for further research**

[Section 7]

Underpinning the whole process of improving the management and transfer of land and ensuring equity in access to security of tenure for women and men in USS in Colombo is:

1. the need for a better understanding of land markets, particularly at the interface between the informal and formal sectors; and, perhaps as part of this
2. the impact of different forms of tenure on perceptions of security, status and the value of land in USS.



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**Preface**  
**AIMS & CONDUCT OF THE STUDY**  
**and**  
**STRUCTURE OF THE REPORT**

**Terms of Reference**

The terms of reference for the study were in two parts:

1. to review current legislation and procedures, including:
  - an overview of existing tenure systems in USS in Colombo, both formal and informal;
  - existing national and municipal policy for granting security of land tenure in USS and the land delivery procedures adopted by different agencies, and their relative effectiveness;
  - efficiency of rates and other fee collection mechanisms in USS;
  - a study of the impact of the above in Gothamipura with particular reference to gender differences in access to security of tenure to land
  
2. to examine alternative, workable options to improve the delivery of secure tenure to land and revenue collection in USS and the actions required, giving emphasis to expanding the role of Colombo Municipal Council.

These terms of reference have been met with the exception of a detailed step-by-step analysis of the lengthy process for transferring land titles that has been described at some length in an important study by Jayaratne (1992) that is still largely valid, though it may need slightly updating in a more prolonged study than has been possible in the time available.

An in-depth study of tenure systems and women's access to secure title in Gothamipura was not undertaken as these issues will form a significant component of the baseline survey due to be undertaken in early 2008<sup>1</sup>. Nevertheless, it is significant to note that the discussions held with the chairpersons of Community Development Councils in four USS, all of them women, revealed that, in their view, women have access to formal security of tenure equal to that of men.

Practical and workable approaches to improving the security of tenure to land are discussed in Part II of the report, with supporting arguments for their adoption. However, it would be presumptuous to make prescriptive recommendations for their implementation on the basis of so short a study that has not allowed time for adequate consultation with the stakeholders. So this has been avoided.

The study was undertaken over a twelve-day period (5-16 November 2007) in Colombo. A list of the discussions held is appended.

**Structure of the report**

The report is structured in two parts, largely reflecting the two parts of the ToR.

Part I starts with a brief analytical overview of the principal issues surrounding security of tenure to land and particularly its importance to low-income urban households in Section 1. A short introduction to the demographic and land distribution of USS in Colombo is given in Section 2. It then reviews the current legislation pertaining to urban land tenure and transfer in Sri Lanka and its origins and development in Section 3 and an examination is made of the impact of the principal programmes and projects for the delivery of land and housing for low-income groups in Colombo over the last three decades in Section 4. Section 5 draws the preceding sections together with a brief overview of policy needs and a discussion on how, in

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1. See: Centre for Poverty Analysis (CEPA), *Community-based Assessment and Improvement of Living Environment in USSs & Environs: The case of Gothami-Colombo Draft Baseline Household Questionnaire*, (Sections 3 and 9), mimeo, Colombo, November 2007.

the absence of adequate public sector intervention, the lowest income groups currently gain access to affordable land, housing and services.

Part II has two sections. Section 6 raises key issues in relation to land security and titling in USS and recovering the value of land that is transferred to individual households. It makes recommendations for CMC to take on a more proactive co-ordinating role in the development and management of USS and examines an alternative to the CDC system of neighbourhood management. In Section 7 –The Way forward– brief recommendations are made for further studies and the next stages in improving land management in Colombo.

## **ACKNOWLEDGEMENTS & DISCLAIMER**

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I am enormously grateful to all those people listed in the Appendix who spent time informing me and discussing the issues of land tenure and titling in Colombo. In particular, I must thank K.A.Jayaratne, President of Sevanatha Urban Resource Centre, who gave me the benefit of the wealth of his experience, knowledge and insights in the whole field of under-served settlement development in Sri Lanka; also Janaka Polambegoda of Sevanatha who introduced me to the under-served settlements that I visited and their CDC members. My colleague Michael Mattingly made invaluable comments on the first draft of the report.

All the errors and misunderstandings that remain in the report are entirely my responsibility.

PW  
December 2007

## **ACRONYMS**

CAB	Common Amenities Board
CDC	Community Development Council
CEB	Ceylon Electricity Board
CHP	Ceiling on Housing Property (Law)
CMA	Condominium Management Authority
CMC	Colombo Municipal Council
DMC	Deputy Municipal Commissioner
GoSL	Government of Sri Lanka
MC	Municipal Commissioner
MMC	Municipal Councillor (Member of the Municipal Council)
MHP	Million Houses Programme
NHDA	National Housing Development Authority
NIRP	National Involuntary Resettlement Policy
NWS&DB	National Water Supply & Drainage Board
REEL	Real Estate Exchange [pvt] Ltd
SLLRDC	Sri Lanka Land Reclamation & Development Corporation
SSD	Slum and Shanty Division (of the Urban Development Authority)
STP	Sustainable Townships Programme
UBSIP	(Unicef) Urban Basic Services Improvement Programme
UDA	Urban Development Authority
UN-Habitat	United Nations Human Settlements Programme
Unicef	United Nations Children's Fund
USS	Under-served settlement

**Rs.100 US\$1.00**

# PART I REVIEW OF LEGISLATION AND PROCEDURES

## 1 INTRODUCTION & ISSUES

This section briefly introduces the preoccupations and observations that surround current debates on urban land tenure and titling in informal and under-served settlements, all of which are very familiar to those concerned with the slums and shanties of Colombo.

### 1.1 TENURE AND SECURITY

It is universally recognised that insecurity of tenure to urban land inhibits investment in its development and maintenance. Few people or institutions will put their resources into servicing or building on land from which they may be evicted without adequate compensation. People will not invest their energy or finances into maintaining property if they cannot be assured of a sufficient social or financial return on their investment.

In terms of financial security, this simple observation hinges on the words 'adequate' and 'sufficient'. There are many examples where (informal) developers gauge the returns to be made on the illegal construction of low-cost rental accommodation to be higher than the risk of losing their investment as a result of eviction before they have turned a profit. However, in terms of social security (shelter, identity, income, capital asset) the significance of security of tenure to land and housing needs less qualification.

Both 'security' (protection from involuntary and arbitrary eviction) and 'tenure' (conditions by which land is occupied and/or used) need qualifying. There are many types of actual and perceived security to land and property, ranging from the full protection by the law backed by the constitutional and political institutions of the state, to the security provided by the force of numbers in otherwise illegal conditions, such as in the vast slums of many of the great cities of Asia in which any attempts at forced eviction would be politically unacceptable and dangerous to implement.

There is an equally broad range of types of tenure covering different aspects and levels of the rights to the occupation, development, use, transfer and trading of land. The title to any parcel of urban land and the property on it may be governed by several types of tenure at the same time. For instance it may be collectively owned by a co-operative, a member of which has an inalienable right to build a house on it, which he/she may rent to a tenant on a secure short-term lease – three levels of secure title to the same piece of land.

Almost the full range of tenure types and levels of security to urban land exist in Sri Lanka. Broadly, these embrace:

- Informal (in ascending order of security):
  - Street sleeping (homelessness)
  - Short-term rental in unrecognised squatter settlements (shanty)
  - 'Owner' occupation in an unrecognised shanty (without any official documents)
  - Private tenancy in a recognised slum or shanty (with a legally binding lease or contract)
  - Owner occupancy in a recognised shanty with enumeration card or tenure entitlement letter<sup>2</sup>

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2. The last two categories may be classified as 'formal'

- Formal (all more or less equally secure, but with different ‘rights’)<sup>3</sup>
  - Medium- long-term lease on public land (GoSL, public agencies, local authorities)
  - Medium-term lease of private land or property
  - Long-term registered leasehold on public or private land and/or property (including public rental housing)
  - Co-operative tenure
  - Delayed freehold (hire-purchase)
  - Freehold

## 1.2 TENURE AND POVERTY ALLEVIATION AND REDUCTION

The discussion hitherto has considered the importance of security of tenure to the investment of households’ and communities’ energies and savings in the development and maintenance of their dwellings and neighbourhoods. However, secure title to land and property is also a capital asset that can give significant social and financial security and returns. In conditions where there is an active land market, freehold and long-leasehold titles to land and/or property are commonly accepted as collateral for credit, enabling entrepreneurial householders access to capital to invest in business ventures that are denied to those with no capital backing<sup>4</sup>.

Of course, land and property, both legally registered or informally held also has a sale value that, in the conditions of a vibrant land market –that typifies virtually any growing city– is constantly increasing. However, households with formally recognised title deeds invariably have access to a wider market –and usually a more productive one– than those in the informal sector, whose sales are restricted by the risks associated with different degrees of insecurity<sup>5</sup>.

In terms of any low-income community’s ‘portfolio of assets’, security to land and property (physical capital) ranks high amongst its other assets: financial capital (security of employment, productive durables, remittances and rent income), human capital (education, skills) and social capital (cohesive household and community support systems) all of which contribute to the reduction of poverty and the alleviation of its impact<sup>6</sup>.

## 2

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3. Titles to any property are commonly thought of as being held in a bundle, comprising such aspects as period of enjoyment of the use (e.g. 5 years, 99 years or forever), right to sell or to bequeath to an heir, etc. Individually, these aspects do not suggest levels of quality or security. Bundles will possess quality according to the mix of rights and in relation to the context in which they are held.

4. The work of Hernando de Soto, notably his *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Basic Books, New York, 2000), takes this argument to some extreme, claiming that more than US\$9 trillion of “dead capital” is locked up in the un-registered capital assets of the poor in developing countries and all that is needed to eliminate global poverty is the official recognition of their title to the land and property that they already occupy. Beguiling though this is, there are many arguments that question the scale of de Soto’s claims, though the premises on which they are based –legally recognised secure title to land is a potentially productive capital asset– cannot be refuted.

5. The sale of land and housing that has been transferred to low-income families by government with an element of subsidy is often restricted in order to curtail the beneficiary making a profit on it. In purely market terms this is just and reasonable. However, if the award of title to land to its low-income users is seen as part of government’s strategy for poverty reduction through the redistribution of resources, it is unreasonable to restrict the ability of land owners to sell their property in order to raise funds for alternative productive investment or to cope with crisis that represent higher priorities for them.

6. See: Moser, C. (ed), *Reducing Global Poverty: the Case for Asset Accumulation*, Brookings Institution Press, Washington DC, 2007.

## THE CONTEXT - COLOMBO<sup>7</sup>

The 2001 census of Sri Lanka recorded a residential population 642,000 in Colombo city (the area administered by Colombo Municipal Council – CMC). Data also show that the city's population has grown very slowly over the last two decades (averaging 0.45 percent per annum), a trend that is likely to continue<sup>8,9</sup>. In the preceding thirty-year period (1953-81), however, Colombo's population had grown significantly (averaging 2.3 percent per annum). In large measure this was through the migration of people with few urban skills seeking low-wage urban employment. Without resources to join the middle or upper echelons of the housing market, they were forced into the already high density, but affordable, areas of Colombo North or to squat on vacant land –mainly that owned by government, notably road and rail reservations, canal banks and vacant lots.

Thus more than half the city's population live in USS –77,600 families in 1,600 settlements<sup>10</sup>. These are customarily classified in two broad, but useful, categories:

- **Slums** [25,500 dwellings in 1,070 settlements]: basically old and/or overcrowded tenement gardens of decaying permanent construction with minimal common water supply and sanitation, or subdivided old large houses; and
- **Shanties** [13,300 housing units in 183 settlements]<sup>11</sup>: shelters, generally of impermanent materials with inadequate access to communal services and usually with no legal right to land (squatters).

In addition there are a few other types of USS such as deteriorated labour lines (quarters) and urban fringe settlements that are under serviced and of temporary construction, but where the occupants have recognised title to the land.

Some 73 percent of the land in Colombo is privately owned, 22 percent is state land held by various GoSL authorities and departments and 5 percent belongs to Colombo Municipal Council<sup>12</sup>.

Tables 1 and 2 below summarise the distribution of land ownership and tenure status of USS in Colombo.

**Table 1**

Land Ownership	No. of Settlements	Percent	No. of Households	Percent
Owner occupied	550	34	19,117	23
Municipal Land	219	14	15,148	20
GoSL state land	569	35	35,008	46
Privately owned	276	17	8,339	11
Total	1,614	100	77,612	100

7. For an excellent introductory overview of Colombo and the city's under-served settlements, see: Sevanatha, *The Case of Colombo, Sri Lanka* in *Understanding Slums*, [http://www.ucl.ac.uk/dpu-projects/Global\\_Report/cities/colombo.htm](http://www.ucl.ac.uk/dpu-projects/Global_Report/cities/colombo.htm), DPU, London, 2003

8. Sevanatha, *Poverty Profile: City of Colombo*, CMC, Colombo, 2002.

9. The population of Greater Colombo, which encompasses neighbouring municipalities that have taken up much of the conurbation's population growth has been growing at some 2.2 percent per annum over the same period (GoSL, Department of Census and Statistics, <http://www.statistics.gov.lk/>, Colombo, 2007)

10. Sevanatha (2002) op.cit,

11. Ministry of Urban Development, Housing and Construction, *Survey of Low Income Settlements (REEL Database)*, Colombo, 1999

12. Jayaratne, K.A., *Land Tenure for Low Income Families*, mimeo, Colombo, 1992.

**Table 2**  
**Land Title**

Freehold	725	45	28,256	37
Leasehold	296	19	10,169	13
User permit	485	30	31,040	40
Unauthorised occupation	108	6	8,147	10
Total	1,614	100	77,612	100

Source: Sevanatha, *Poverty Profile: City of Colombo*, CMC, Colombo, (2002)

As can be seen, in 2002 two thirds of the slum and shanty households in the city lived on municipal or GoSL land and half of them had formal title to it, either as freehold owners or as tenants.

Thus few households (<10 percent) feel under threat of eviction<sup>13</sup>. This is to a large extent the result of liberal policies in the past and latterly the National Involuntary Resettlement Policy (NIRP)<sup>14</sup>, which prohibits un-negotiated eviction or involuntary resettlement without adequate or appropriate compensation. This does not mean, however, that there is no need for the formalisation of title to land and property of the 40 percent of households currently with only enumeration cards and other forms of user permit living in under-serviced settlements in the city. Perceived and real insecurities continue to exist, the full potential value of property remains dormant, USS households are socially and politically marginalised, infrastructure and service delivery are inadequate, environmental health is precarious – all in part due to the lack of appropriate recognition of the right to land.

### 3

## URBAN LAND TENURE – THE LAW

This section reviews the main legislative instruments that have had, and continue to have, an impact on increasing security to land by the occupants of urban USS, principally those in Colombo.

### 3.1 THE EARLY LAWS AND ORDINANCES

Tenure to urban land in Sri Lanka is firmly based on the principles of freehold title that gives individuals (and married couples) and organisations full rights to use and dispose of land as they wish, within the law. First codified in Roman-Dutch law by the 17<sup>th</sup> century colonisers, these principles have been absorbed into cultural values and reinforced by legislation ever since. A corollary to this has been the acquisition and maintenance of government-held public land –state land (formerly crown land)– introduced and upheld by the British colonial administration and the subsequent governments of Ceylon and Sri Lanka. The Crown Lands Encroachment Ordinance 1840 laid down the bases for the public ownership of land that in urban areas have been adjusted and modified by instruments such as the Municipal Councils ordinance of 1865 that established local government in Colombo, Galle and Kandy and that of 1947 that consolidated local government's responsibility for the administration of public services and amenities.

The control of the use of privately owned urban land came with the Housing and Town Improvement Ordinance of 1915 and the 1946 Town and Country Planning Ordinance. The first of these enduring legislative instruments gave powers to local government to deal with issues of environmental health, public open space, and the administration of preventive and remedial development control measures. The 1946 T&CP Ordinance<sup>15</sup> introduced 'modern'

13. See: Gunetilleke, N. et al, *Understanding the Dimensions and Dynamics of Poverty in Underserved Settlements in Colombo*, CEPA Working Paper No.3, Centre for Poverty Analysis, Colombo, 2004

14. Approved by Cabinet in 2001.

planning procedures, land use zoning, and planning and building control procedures, including strong powers for the conservation of architectural heritage. Though, like the earlier Housing and Town Improvement Ordinance, it vested the administration of its powers in local government, it created a Central Planning Commission to advise the minister and a central Department of Town and Country Planning, headed by the Government Town Planner to oversee land use planning and regulation throughout the country.

Both these ordinances embraced the use of compulsory acquisition of land for public use and the rationalisation of land use zoning. They also gave local authorities responsibility for slum clearance and rehousing. But squatting on government (and private) land was clearly seen as illegal, thereby excluding the possibility of extending infrastructure or delivering public services to them, and no reference is made to the public acquisition or transfer of land in order to allow squatter settlements to be upgraded.

The Land Acquisition Act of 1950 and its antecedents and subsequent revisions, which underpinned the land transfer components of these ordinances, only provides for compensation for the loss of land, structures and crops. It takes no account of the potential social and economic impacts of involuntary resettlement and eviction. It does not require local authorities to explore alternatives to eviction or consult with or compensate those users who have no legal title despite, in many cases, their having occupied such land for decades.

Such issues were to a large extent addressed by a set of far-sighted policies and new legislation introduced in the 1970s and '80s, notably: the Ceiling on Housing Property Law of 1973 and the Urban Development Authority and National Housing Development Authority Laws of 1979 (see Section 3.4 and 3.5 below).

### **3.2 THE RENT ACTS**

Though not directly legislating on the holding or transfer of urban land, the various rent acts have had a significant impact on the housing market in Colombo and on the development of land for housing.

The first Protection of Leaseholders Act of 1959 established a Rent Review Board. This was superseded by the Rent Act of 1972 which constituted a Rent Control Board under the Ministry of Housing, Construction & Local Government to protect tenant's rights against landlord exploitation. This included the fixing of a permissible 'rent ceiling' based on the rateable value of a property. This act was amended by the UNP government in 1980 to remove the rent ceiling on any housing constructed after that date, though it remained with effect to commercial properties. With the 13<sup>th</sup> Amendment of the constitution in 1987, the administration of rent control passed to Provincial Council Rent Review Boards, with the ultimate appeal remaining with the GoSL Rent Control Board.

### **3.3 THE RECLAMATION AND DEVELOPMENT CORPORATION ACT 1968**

This act enabled the establishment of the Colombo District (Low-Lying Areas) Reclamation and Development Board with powers to acquire and vest land under water, marshy land and land liable to inundation in the Board and to reclaim (fill) it. It was able then to vest the land in other public sector agencies or to sell it to the private sector for development. In doing this it passed the value of the un-reclaimed land back to the original owner retaining the value of the reclamation cost by the Board.

The importance of this instrument was that it came into force at a time when the scarcity of undeveloped land within the municipal boundaries of Colombo was beginning to push land values up at a hitherto unprecedented rate, making the cost of filling marshy and floodable areas financially viable, even for the resettlement of low-income households from slums and shanties in the city. An amendment to the Act in 1982 gave the Board authority throughout the

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15. Enacted a year before the highly influential British Town and Country Planning Act of 1947 that had a major (negative) impact on urban development throughout most of the Commonwealth.

country, changing in its name to the Sri Lanka Land Reclamation & Development Corporation (SLLRDC).

The SLLRDC is also responsible for the natural drainages system in the city, notably the maintenance of canals on the banks of which many informal USS have developed. In the context of this responsibility the SLLRDC has been directly responsible for both the upgrading and relocation of USS. Notably under the Greater Colombo Canal Rehabilitation and Development project that started in the late 1980s.

### **3.4 THE CEILING ON HOUSING PROPERTY LAW 1973**

As pointed out in Section 2, the inter-censorial periods 1953-63 and 1963-71 saw the highest population growth rates in Colombo's history (averaging 2.2 per cent per annum) increasing the city's population by two thirds in less than two decades<sup>16</sup>. A very large proportion of this increase was due to the migration of low-income workers from small towns and the rural areas seeking urban employment opportunities and increasing the demand for affordable accommodation. This was largely supplied by landlords holding relatively large numbers of properties in tenement gardens<sup>17</sup>.

The Ceiling on Housing Property (CHP) Law was enacted by the leftist United Front coalition government to address what was seen as the problem of exploitative landlords who owned relatively large numbers of tenements that were, in many cases, un-serviced and dilapidated through lack of maintenance, largely as a result of the stringent rent controls. At the same time the law was intended to introduce a measure of redistribution in the ownership of property to the lower income groups.

In essence the law limited the ownership of any individual to two houses, plus two for each of his/her dependent children. Slightly more complicated formulae pertained to the ownership of dwellings by enterprises and institutions for the use of their employees. The surplus housing stock was vested in the Commissioner for National Housing for redistribution with freehold title to the occupants (former tenants) at no cost to those who had been paying less than Rs.25 (then US\$1.25) per month in rent and for a nominal sum on a sliding scale to those who had been paying more. Compensation to the former owners was in the form of 20-year government bonds based on an official (conservative) valuation of the property.

### **3.5 THE URBAN DEVELOPMENT AUTHORITY (UDA) & NATIONAL HOUSING DEVELOPMENT AUTHORITY (NHDA) ACTS 1978**

The UNP government came to power in 1977 with a flourish of liberal economic policies and legislation, amongst which were two that had a significant impact on the development of urban land and housing: the establishment of the Urban Development Authority (UDA) and the National Housing Development Authority (NHDA) as 'bodies corporate' under the then Ministry of Local Government, Housing & Construction.

The Urban Development Authority Law of 1978 gave the UDA responsibility for the preparation of development plans for urban areas with powers to declare parcels of land as 'development areas' and acquire them, if state land, by vesting them to the UDA or by the compulsory acquisition of private land; and to undertake (contract) public development projects<sup>18</sup>. However, unlike the powers given to the Commissioner for National Housing by the CHP Law, the UDA has no special facility for handing down title to land. It retains the freehold of the land that it acquires or it may vest it in another public agency.

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16. Sevanatha (2002), op.cit.

17. Mostly single room properties sharing a water tap and basic sanitary facilities.

18. Including "...to cause the clearance of slum and shanty areas and to undertake the development of such areas" [Powers and Functions, Section 8(n)]

The UDA Law also gave the Authority responsibility for the determination and administration of environmental (planning) standards and, of particular significance to USS, to their waiver in certain circumstances. Thus it is able to declare 'special development areas' in circumstance where planning regulations<sup>19</sup> may be more lenient than the national standards. For example in declaring a USS a 'special development area' the normal minimum plot size of six perches (150m<sup>2</sup>) may be reduced, the normal requirements of road widths need not apply, etc<sup>20</sup>.

These two legislative instruments had a very significant impact on the transfer of land rights to low-income households in USS, the main responsibility for which rested with the NHDA.

The National Housing Development Authority Law of 1978 created the NHDA with responsibility for the delivery of affordable housing to the lower income groups in the country. Initially this was confined to rural areas –urban housing being the responsibility of the UDA Slum and Shanty Division (SSD). In 1985 the SSD was transferred from the UDA to the NHDA Urban Housing Division.

The NHDA Law enabled the Authority it to acquire, hold and dispose of land for housing purposes. Through a process of negotiation with the Land Commissioner, the Surveyor General and the Ministry of Lands in the 1980s the NHDA was able to simplify the procedures and shorten the time that it normally takes to vest state land from another agency. It also had powers to rent and grant freehold title on small plots to individual households. With this facility the NHDA has frequently worked in partnership with the UDA in order to benefit from the latter's powers of compulsory acquisition, thereby exploiting the comparative advantages of both authorities, which in those days came under the same ministry – Local Government, Housing & Construction.

Initially the NHDA awarded beneficiary households 15-year leases on their land in upgraded settlements and new sites and service projects. This was later raised to 30, then to 50 years and, finally, the leases were commuted to freehold in-perpetuity<sup>21</sup>. The authority by which NHDA is able to grant freehold title has had a very significant impact on upgrading USS in Colombo and other urban local authorities.

### **3.6 THE 'CONDOMINIUM LAW'**

The Apartment Ownership (Amendment) Act of 2003, the last of a series of amendments to the original 1973 law, has recently come to prominence with the establishment of the Condominium Management Authority that has grown out of, and absorbed the functions of, the former Common Amenities Board (CAB)<sup>22</sup>.

The law is clearly addressed to multi-story apartment blocks that are proliferating in Colombo in response to the demand for housing (and investment outlets) of the upper-income groups. It regulates the terms under which individual flat-owners, as shareholders in the property as a whole, share management and maintenance responsibility for the common services and spaces whilst enjoying freehold title to their own apartments. It lays down the legal, financial and governance responsibilities of elected Condominium Management Councils and the management functions of Condominium Management Corporations (executive bodies). The

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19. Set by the Housing and Town Improvement Ordinance of 1915 and revised by the Town and Country Planning Ordinance of 1945 and again by the UDA Law of 1978, with subsequent revisions thereafter.

20. Useful though it is for the upgrading of USS and issue of land titles, there is a logical and ethical anomaly in the concept of 'special development areas' that condones the application of standards below those deemed to be the minimum to ensure the health, safety and amenity of the community. Alternatively, the normal standards are unnecessarily high.

21. In the law such title deeds are deemed to be 'conditional' rather than 'full' freehold as virtually all urban USS plots are below the official minimum area of 6 perches (150m<sup>2</sup>) and therefore are not officially recognised as 'legal'. However, all authorities, including the CMC Revenue Department treats such deeds as freehold.

22. The CAB was established in 1973 to administer the common facilities such as shared sanitary facilities and open space in tenement gardens that had been vested in the Department of National Housing by the CHP Law.

Condominium Management Authority, under the Ministry of Housing and Common Amenities, is the regulating body charged with the approval and registration of condominiums.

Whilst the Apartment Ownership Law was enacted as a corollary to the CHP Law and the Common Amenities Board was created to manage the shared infrastructure vested in the National Housing Department in 1973, the 'condominium concept' has hardly been applied in USS in Colombo. However, it could provide a useful vehicle for land and infrastructure management in both upgraded and new settlements in the city. This is discussed in greater detail below (Section 5.4).

## 4

### LAND TENURE IN COLOMBO – THE PRACTICE

This section outlines the principal achievements of programmes and projects that have had an impact on securing land for the occupants of USS, reflecting on some of the problems that have been, and are being, faced.

#### 4.1 THE DEPARTMENT OF NATIONAL HOUSING

The significance in terms of the scope of the CHP Law and the precedents that it set has been outlined above (Section 3.4). By 1978, five years after the start of the programme some 12,500 dwellings -70% of the total 17,250 slum houses- were vested with the Commissioner for National Housing but the title of only 5,365 (44% of those vested) could be immediately transferred as freehold deeds to the occupants<sup>23</sup>. Due to disputes or the reluctance of householders to be saddled with deteriorated and apparently valueless property, the Commissioner found himself as the biggest slum landlord in the city. Over time and through later slum upgrading programmes this residue was eventually transferred to the occupants.

To many the issue of 20-year government bonds as compensation for property lost was seen as somewhat draconian. However, in addition to the Treasury's inability to find immediate cash compensation, it must be remembered that the stringency of the rent control laws that did not allow the landlords sufficient rental income to undertake adequate maintenance, let alone improvements, and the incapacity of the majority of tenement tenants to afford higher rents, made most of the ceded property virtually worthless – at least in the short-term.

On a longer-term perspective, CHP Law, together with the Rent Act, had a serious negative impact on private sector investment in the development of rental housing for all income groups in the city. Not only was the ownership of rental housing made virtually illegal, but even long after the repeal of the CHP Law and the removal of rent restrictions in 1980, investor confidence remained cautious, leaving a serious gap in an important area of housing supply in the city - middle-income rental housing - for more than a decade.

Nevertheless, there is no questioning the importance of the CHP Law at the time in which it was in force (1973-80) in terms of:

- the political courage with which it was conceived and administered;
- its impact on the redistribution of property amongst the lowest income groups in the city;
- its control of exploitation of the lower end of the housing market by landowners (slum landlords);
- the precedent set by giving powers to the Commissioner to issue freehold title deeds, thus bypassing normal lengthy and bureaucratically tortuous processes.

However, the CHP Law did not address the growing number of shanty settlements -some 12,000 - that were encroaching on undeveloped public land (and some private land) in the city.

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23. Selvarajah, E., *The impact of the Ceiling on Housing Property Law on the Slum and Shanty Improvement Programme in Sri Lanka* in *Land for Housing the Poor*. Angel, S., et al, Select Books, Singapore, 1983.

## **4.2 THE UDA SLUM AND SHANTY DIVISION (SSD) & UNICEF URBAN BASIC SERVICES IMPROVEMENT PROGRAMME**

From its inception the UDA was managed as a series professional and administrative divisions, amongst which was one responsible for the upgrading of Slums and Shanties and the development of sites and services projects for new low-income housing (resettlement). In Colombo the SSD started operation by surveying all USS in the city and classifying them as slum or shanty; by level of services and condition of structures; security of title to land; and whether appropriate to be upgraded in-situ or to be resettled elsewhere. Resettlement, as opposed to in-situ upgrading, was undertaken in those slums and shanties located on high-value land that might be redeveloped with a substantially more profitable use and those on land that was either dangerous (e.g. liable to flood) or that encroached on land needed for public service purposes (e.g. canal bank reservations required for the maintenance of the city's drainage system, railway embankments, etc).

Then a programme of upgrading priority settlements ensued. This entailed 'regularising' plot layouts (with minimum demolition), upgrading the superstructures, services and common amenities. A limited programme of providing serviced plots on vacant land for households that had to be relocated was also started. The majority of USS were properties that had been transferred to the occupants under the CHP Law, giving them freehold title to land, so security of tenure was not a major issue, though disputes over historical title, particularly to common land in tenement gardens did seriously delay many projects<sup>24</sup>. The title to the land for sites & services projects that had been vested in the UDA remained with the Authority, which gave 'entitlement certificates' verifying the beneficiaries' occupancy rights. These provided security against eviction, but little else<sup>25</sup>.

In parallel, and in close collaboration with, the SSD's activities (1977-84), Unicef was engaged in a widespread Urban Basic Services Improvement Programme (USBIP) for providing water and sanitation in USS in Colombo and other urban local authorities. For this it and the SSD worked with the Common Amenities Board.

The overriding importance of the UDA SSD was that it undertook the first and most complete inventory of USS in Colombo and that it designed and initiated the first coherent approach to slum upgrading in the city. It also formulated a set of basic standards for urban settlement upgrading. The Unicef UBSIP instigated and developed a process of participatory local development for which it established community development councils (CDC) in each settlement in which it provided services - a process and structure that was later taken on and developed by the Urban Housing Sub-Programme of the Million Houses Programme.

But neither the SSD nor the UBSIP had any direct impact on improving formal security of title to land. However, the attention that they brought to USS through the upgrading of public infrastructure gave those households who had no land title a sufficient sense of official endorsement to provide many of them with the confidence to invest in the improvement of their dwellings.

## **4.3 THE MILLION HOUSES PROGRAMME, URBAN HOUSING SUB-PROGRAMME**

The Million Houses Programme (MHP) was launched by the NHDA in 1983 in rural areas and two years later in urban local authorities when, in 1985 the SSD was transferred from the UDA to the NHDA, as its Urban Housing Division. The theoretical and operational basis of the MHP Urban Housing Sub-Programme was the replacement of public sector construction with the provision of 'enabling supports' to household and community initiative and endeavour. The Authority, through its network of district-level offices, supported the organisation of CDCs in USS as the basic unit of management; it provided training and technical advice to

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24. Selvarajah, et al, op.cit

25. Land was later vested by UDA to NHDA to enable secure title (initially rental) to be transferred to the householders.

householders and community leaders; issued small soft loans to families for improving their dwellings; and developed a process of 'community contracts' for the upgrading of public infrastructure in settlements. Thus the Urban Housing Sub-Programme continued the process of in-situ upgrading, relocation where necessary, and the design and management of sites and services projects started by the SSD, but with a new emphasis on decentralised community engagement and development.

This process was underpinned by an extensive programme of land vesting. Enabled by the NHDA Law of 1978, state land on which shanties had developed was vested in the NHDA which, in turn, leased it to its occupants. As described above (3.4) a creative and productive partnership was established to facilitate the acquisition of private land under the powers of the UDA Law that was then vested in NHDA for onward transfer to individual households.

In the five-year period 1985-89 some 12,150 entitlement certificates recognising a right of occupancy were issued to households in 80 USS in Colombo, providing them with a range of degrees of security to land<sup>26</sup>. These varied from basic 'enumeration cards' indicating recognition of the plot of land occupied by a household, which had no legal validity but bestowed a very real perception of official recognition and security, to formal and legal 50-year tenancy agreements or leases.

By 2007 the NHDA had a total of some 16,000 title arrangements with USS households in Colombo and had started a process of upgrading them all to freehold title deeds<sup>27</sup>. The majority of these were being issued on completion of payment of NHDA loans for house improvements taken out since 1985, including a small number (700) where the loan repayment had been waived because the households' extreme poverty.

It has been argued that there is no need for the NHDA to issue freehold title; that sufficient security is provided by 50-year leases to encourage and enable householders to invest in their dwellings and neighbourhood environment; and that it is short-sighted of the state to lose control of its central city land assets *in perpetuity*. However, as is discussed in greater detail below (5.1), fear of eviction is not a major problem for the vast majority of Colombo's USS households. Of far greater significance is the ability to use their property as collateral to raise credit, for which the formal banking sector requires proof of freehold title. In addition ownership of land bestows a social status that is increasingly important to low-income households, particularly those emerging from the stigma of being 'slum' or 'shanty' dwellers.

#### 4.4 PROJECTS

Since the early 1990s there have been three important urban projects that have had an impact on security of tenure in USS in Colombo, though it has not been the main focus of any of them:

- The Clean Settlements Project (CSP) (1996-98), funded by World Bank and NORAD grants and an IDA loan, aimed to support the improvement of infrastructure in USS, with some emphasis on solid waste management, and to strengthen CBO's operational capacity. The issue of land occupancy certificates was a minor component of the project.
- The Urban Settlements Improvement Project (USIP) (started in 1999 with World Bank funding in 48 USS in the city and still going in 2007, though with reduced funding and no international donor support). Its principal objectives were infrastructure development and upgrading in USS, for which it used the NHDA Law on vesting and transfer of land to householders to encourage their investment in the improvement of their dwellings. Though, as with the CSP, this was not a major

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26. Jayaratne (1992) op.cit

27. In November 2007, some 750 freehold deeds had been issued in Colombo, with a further 7,600 in the pipeline for issue by April 2008. In addition to these a further 4,000 are held up by land ownership disputes, etc.

component of the project and it did not introduce any innovations in land tenure or titling.

- Participatory Improvement of Under-Served Settlements in Colombo (PRIMUSS), (2000-08), a GTZ funded project with a focus on poverty reduction through community participation in the improvement of service delivery in some 20 USS in the city. As with the preceding projects, the PRIMUSS project has not had any direct impact on land tenure. However, it did support the preparation of a *Policy Framework and Operational Strategy for Participatory Improvement of Under-Served Settlements in Colombo*<sup>28</sup>, which sets out the principal issues related to land tenure and makes some strategic recommendations for land management.

#### 4.5 THE SUSTAINABLE TOWNSHIPS PROGRAMME AND REEL

In 1998 the then Ministry of Housing & Urban Development made a major change in its approach to housing in Colombo with the launch of the Sustainable Townships Programme and the establishment of REEL (Real Estate Exchange [pvt] Ltd), a company to manage it. This saw the move away from community-based participatory upgrading, replacing it with a programme intended to exploit the value of land in USS by exchanging householders' plots for apartments in high-rise condominiums with freehold title<sup>29</sup>. The income from the sale of the vacated land, together with profits from the commercial sale of newly constructed upper-income apartments, was to be recycled as a revolving fund for the constructing further housing for the inhabitants of USS. However, life has not been so simple.

As has become apparent, many USS dwellers do not want to trade their land, whatever the 'illegality' of its tenure, for title to a flat in an apartment block, thus making it difficult, if not impossible, to clear USS sites for up-market sale to the private sector without resort to forced eviction, which contravenes the National Involuntary Resettlement Policy. It has also become apparent that the land parcels that have been put onto the market by REEL have not been able to raise sufficient capital to finance the construction of subsidised apartment blocks affordable by the former USS dwellers. So even after a decade the programme is still dependent upon external supplies of capital that government is reluctant to provide – the fund is not revolving and is becoming increasingly dependent upon the production of up-market housing at the expense of its intended social housing function.

Whilst less than a thousand USS households have benefited from this programme in the decade 1998-2007<sup>30</sup>, of greater significance has been the (negative) impact on access to secure title to land in some 300 of the 1,600 USS in Colombo. All in-situ development in these 'high land value settlements' was frozen at the start of the Sustainable Townships Programme in preparation for their 'exchange' by REEL, so no development by NHDA, CMC or any other agency could take place. However, although this restriction has not been officially withdrawn, in-situ upgrading, including the issue of occupancy certificates has recently been resumed in many, if not all, of them.

The Sustainable Townships Programme brought no new legislation to the land tenure and transfer processes in Colombo and it seriously undermined the long-established process by which marginalised households had been gaining a real and marketable stake in the economy of the city and a place in its society.

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28. PRIMUSS, *Policy Framework and Operational Strategy [for the] Participatory Improvement of Under-Served Settlements in Colombo*, mimeo, CMC/GTZ, Colombo (2005).

29. The first REEL project at Sahaspura was a 17 floor block of 670 apartments. Subsequent projects have been more modest four and five story walk-ups.

30. REEL, 'Pelindaba' Housing Programme; Construction of 65,000 Houses for Urban Poor: Six Year Action Plan 2006-2011, Ministry of Urban Development and Water Supply, Colombo, 2006.

## POLICY & INFORMAL LAND ACQUISITION – THE PROCESS

This short section draws together the previous two sections on legislation and programmes and projects for upgrading USS and briefly describes the processes by which low-income households gain access to land in Colombo.

### 5.1 THE NEED FOR AN INTEGRATED PUBLIC LAND & HOUSING POLICY

Sri Lanka has seen the development of progressive and enabling legislation governing the rights to secure title to urban land that in many respects has been 'pro-poor'. The most significant have been the positive impact of the UDA and NHDA Laws of 1978 giving the government powers to compulsorily acquire land for housing low-income families and to transfer title to them.

The earlier Protection of Leaseholders Act (1959), Rent Act (1972) and the Ceiling on Housing Property Law (1973) were bold and progressive laws that enabled many low-income families to get a foot on the formal urban property ladder - an important route out of poverty and social marginalisation. However, they also had a strong negative influence on the rental housing market, particularly for the middle-income groups. Even after they were abandoned in 1980 private sector developers' confidence had been sufficiently badly shaken to prevent them from investing in urban land and housing<sup>31</sup>. As a result there has been, and still is, a scarcity of accessible middle-income rental housing or affordable apartments for sale in the city. This is a serious gap in the housing and property ladder that not only has an impact on new lower-middle income groups that are joining the city's growing commercial sector, but also on those households that would be ready and able move out of informal and under-serviced settlements into to the formal sector.

The high prices commanded by very small plots in USS are a result of this 'gap' at the interface between the formal and informal components of the land and housing markets. Whilst this is good news for those who occupy such plots in USS, particularly if they can secure formally recognised freehold title deeds, it does not lead to an equitable or incremental supply of land for housing either for the lower-middle income groups seeking socially acceptable rental accommodation, or for the lowest income families seeking their first foothold in the city with the scarcity of resources available to them. Any solution to this problem in Sri Lanka will only be found in the context of a coherent national and municipal housing policy that targets the urban land and housing needs of all income groups, with some emphasis on private sector investment in rental housing that is affordable to the full range of lower- and middle-income households<sup>32</sup>.

Sri Lanka has never had a coherent policy that defines the government's role in guiding, stimulating and, where necessary, controlling the planning, development and management of urban land and housing across the whole sector. The programmes of direct construction under the United Front government in the early 1970s saw the delivery of public rental housing that reached the lower levels of the formally employed middle income groups (principally public employees) but not the growing low-income informal sector. The SSD and MHP in the 1980s had a significant impact on servicing and upgrading existing slums and shanties but, as discussed above, not the middle income groups. Nor did they address the future needs for affordable land to cater for anticipated population growth. The Sustainable Townships Programme of the late 1990s and early 2000s was founded on a futuristic dream of 'cities within the city' developed by public/private partnerships and the profits from the sale of central area land that had been cleared of slums and shanties once their occupants had been persuaded to move to multi-storey apartments. However, the programme's ambitious

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31. The Rent Act (1972) has not been repealed. Since the 1980 amendment to the act it does not apply to dwelling houses constructed after 1980, only applied to commercial properties. Thus there is still a lingering fear that it could be reinstated.

32. See: Wakely, P. and Jayawardana, C., 'Notes on a Framework for a National Housing Policy for Sri Lanka', mimeo, UN-HABITAT, Colombo, 2005

intentions have been thwarted by the ill-conceived social and economic assumptions upon which it was based, and few informed commentators believe that its *Six-Year Plan of Action*<sup>33</sup> can or should be implemented, as it will effectively freeze the upgrading and land transfer of some 20 percent of Colombo's USS.

Whilst commentary on national land and housing policies is beyond the scope of this report, it is important to note that virtually all relevant legislation and the administration of land and housing programmes has been at the national level. Despite the special circumstances of Colombo that differ fundamentally from other Sri Lankan urban local authorities, there has never been a policy for the development of housing in the city<sup>34</sup>. Nor has there been a citywide programme for the identification, acquisition and development of land for future low-income housing in anticipation of the growth in demand. Providing land for the lowest income groups has always been the responsibility of the (informal and often illegal) private sector.

## 5.2 INFORMAL LAND ACQUISITION PROCESSES

The lack of an effective and integrated housing and land policy in Colombo is largely responsible for the increasingly complicated and devious processes by which the lowest income groups gain access to housing. Commentators on the city's development observe that since the winding down of the MHP in the early 1990s, a new form of 'organised illegal land invasion' has developed in Colombo, replacing the previous processes whereby informal settlements grew incrementally over time as new households settled one-by-one on vacant land in proximity to other squatters, in order to secure a measure of solidarity and security in numbers.

The case studies below illustrate two types of 'organised' land appropriation for low-income housing, prevalent in Colombo – one through the political system, the other through informal entrepreneurial initiative. Both these processes provide land at costs that are affordable to low-income households, that is reasonably secure and to which they seem likely to be able to obtain service connections and, in the long run, freehold title. However, there is a limit to which abandoning land transfers to informal mechanisms such as these can be considered a substitute to a coherent policy, however *laissez-faire* or devolved it may be.



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33. REEL (2006) op.cit.

34. None of the plans for Colombo (Colombo Master Plan, 1979; City of Colombo Development Plan, 1985; Colombo Metropolitan Region Structure Plan, 1998; Western Region Megapolis Plan, 2004) provide any useful operational guidance on the integrated management of land and housing markets for all income groups in the city.

### **Informal land appropriation process in Colombo North**

(as recounted by a resident in one such settlement)

Colombo North is a haven for newcomers to the city, particularly poor people from the war-torn districts of the North and East. There are many Tamil and Muslim families here and it is easy to 'get lost'. It is a safe place to be. Also it is close to the port and to fish and vegetable markets are close and it is relatively easy to find a job in the informal sector. But you have to have contacts before you come to Colombo – someone to look after you. You can't just put up a shanty on a piece of vacant land as in the old days. You will be questioned about connections to terrorists. And many vacant plots are being guarded and developed with high-rise buildings.

However, if you need land to settle down in Colombo North, there are people who will help you to purchase land in communities. They are new communities. Most public lands in Colombo North are public lands which are either reservations belonging to the Port or Railway Authorities, old municipal dump sites or Canals or low lands kept as flood retention areas.

What happens is that a person who has contacts with high level politicians or a local politician puts up two or three shacks on public land. Then he brings some earth and fills the floor and asks his people to stay there for some time. If there is no objection from the government they will continue staying there. If there are objections from government, a local politician may intervene with authorities demonstrating his power and arguing that it was done by his poor constituents who had no place to live. He may get support from a high level politician in the ruling party in order to prevent any police actions. At the same time he will use his contacts in CMC to provide some form of water supply to the land. It goes on like that for five or six months. Then the local "land mafia" make arrangements to sell these shacks to people who really need them. People will buy such shacks at various prices and stay under the protection of local strong guys who arrange to get their names registered in the electoral roll.

Once some families have settled like that the 'developers' put up some more huts and keep them empty for some time and sell them to any buyers. Once people have lived in those huts for more than one year they can apply for private water and electricity connections from Government authorities at a subsidised price. The water and electricity authorities provide such facilities to the poor with CMC or the Grama Niladari's approval.

Most of the new shanties in Colombo North have been built like this over the last five to eight years. Some municipal council members have improved access roads and drains in these newly built communities with their municipal decentralized budget money.



### Land transfer at 219 Watte in Colombo North

(as told by Ms. Ayanti, Chairperson of the 219 Watte CDC, Nov 2007)

In 2004 the popular and influential Municipal Councillor (MMC), took control of a well located but low lying parcel of marshy land close to the Kelani River that belonged to CMC and was used informally for growing 'greenleaf' vegetables. Using his decentralised budget allocation, the MC filled and concreted the land, installed a tap and two public toilets, and subdivided the land into 162 plots of 10'x15' (3.3m x 6.0m). The plots were then distributed to landless households from different parts of the city. (One beneficiary got a plot because her husband had "done some work" for a friend of the Mayor of Colombo).

The 162 disparate families then set about constructing their houses, predominantly using second-hand timber for walls and corrugated iron and cement fibre sheets for roofs. (The Electricity Board later gave metered connections to houses that had concrete or brick party walls; the rest (majority) hijacked it from neighbours). They also started to form a Community Development Council, which by 2007 boasted a 100 percent household membership.

The MMC arranged for the Electoral Commissioner to allocate each household an electoral number (thereby increasing his vote-base) and an address in the settlement. A letter, signed by the heads of all 162 households, was then sent by the CDC chairperson to the Minister of Urban Development requesting the issue of enumeration cards for each plot, to which the Secretary replied saying that the request had been forwarded to the NHDA. At the same time, Ms. Ayanti visited the UDA two or three times to request household connections to services.

By November 2007 it was understood that the land was in the process of being vested in the NHDA by the CMC so that enumeration cards (or entitlement certificates) could be issued. As soon as this process is in hand the CDC will start to pressure the NHDA to upgrade them to freehold title deeds.

Since 2006, some 15 plots in 219 Watte have been sold for Rs.25-30,000 (US\$250-300). But households are aware that with NHDA enumeration cards they would fetch Rs.3-400,000 (US\$3-4,000) and with freehold title – significantly more.



## PART II OPTIONS, IMPLICATIONS AND ACTIONS

### 6 CONSTRAINTS TO EFFECTIVENESS AND EFFICIENCY

This section examines the principal issues and points of contention in the management and transfer of land in USS in Colombo and, where appropriate, discusses possible approaches to increasing their effectiveness and efficiency<sup>35</sup>.

#### 6.1 SECURITY OF TENURE AND VALUE OF TITLE: FREEHOLD vs LEASEHOLD

The question of whether full freehold title to small (two perch - 500m<sup>2</sup>) plots of land is necessary for the provision of acceptable security or is expedient in terms of the longer-term development of Colombo has been raised above (Section 4.3). The CHP Law set the precedent for awarding (conditional) freehold title to small plots in the early 1970s. The next significant move was the upgrading of NHDA enumeration cards and occupancy certificates to freehold title deeds, a process that is being expedited by the NHDA in 2007-08.

When the UDA and NHDA Laws were enacted, giving both authorities extensive powers over land title transfer, it was not envisaged that they would be used extensively for the transfer of freehold title from public to private ownership, even less ownership over such small parcels of land as those that characterise the majority of USS properties. Under the Million Houses Programme the NHDA originally retained the freehold to the land vested in it, giving householders in upgrading and sites and services projects no more than an enumeration card that had no legal legitimacy. This was then replaced with a 30-, 40- and ultimately a 50-year lease, with implications that it would be renewable upon expiry<sup>36</sup>. Finally, this was upgraded to the issue of freehold deeds.

The principal arguments against freehold title were, and still are:

1. State and municipal land is a public asset which should not be depleted, but retained for possible future use, particularly as many USS are located in areas of 'land scarcity' in the high density centre and North of the city. This was the basis of the NHDA's original argument in favour of medium- to long-term leases on land, as opposed to following the precedent set by the CHP Law.
2. The declaration of 'special development areas' by the UDA that allows the development of land parcels below six perches (150m<sup>2</sup>) should be treated as a 'temporary measure' to allow for the servicing and upgrading of USS over the short- to medium-term future. However, to award freehold title to 'sub-standard' plots creates high density enclaves that will be very hard to re-agglomerate when the economic circumstances of the area improve and there is no market for two perch plots - thereby creating new slums.
3. A public medium-term (30-50 years) tenancy agreement or lease, even an enumeration card or occupancy certificate, provides sufficient confidence of householders' security to encourage and enable them to invest in the improvement of their dwellings and the maintenance of local public infrastructure, thereby obviating the need for freehold title. As evidence of this, there is a market, though not a particularly vibrant one, in leasehold properties in USS in Colombo<sup>37</sup>.

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35. Effectiveness is assessed by the degree of security to land and property that households and communities have (and perceive that they have) and the extent to which security of tenure is an asset to their struggle out of poverty. Efficiency is a measure of the ease and speed with which appropriate and affordable title to land is transferred to households or communities and the economy of the processes by which it is recorded and managed.

36. Shorter (5-year) renewable leases were occasionally awarded in situations where it was envisaged that the land would be needed for other uses (by the Colombo Master Plan) in the near future.

Whilst acknowledging that in Colombo, unlike many cities in Asia, full freehold title is not a prerequisite for security against eviction, nor does it seem to be a necessary precondition for investment in the upgrading of individual dwellings, there are three compelling arguments in favour of the award of individual freehold title:

1. Commercial banks will only accept freehold title deeds as collateral for credit. A lease, however formal or long, is not considered a secure guarantee. This is a very major constraint to the upgrading of USS into regular urban neighbourhoods and to the role of property in the process of poverty reduction and the provision of affordable rental accommodation. For example, householders with freehold title are able to borrow not only for the upgrading of their own (single storey) dwellings but also for investment in income-earning ventures, including for instance, the construction of a second or third floor that they are able to let out, using the rent income to service the loan as well as supplement other livelihood sources<sup>38</sup>.
2. The value of property in USS is enhanced by a factor of four or five when secure freehold title is attached to it<sup>39</sup>. Land is the most important component of a household's asset base<sup>40</sup>, thus representing a very significant component in low-income families' move out of poverty.
3. Many householders in USS in Colombo, a large number of whom are first or second generation citizens, express a seemingly deep-rooted concern that unless they have a "real stake" in the city, in part meaning the inalienable ownership of land, they will remain marginalised<sup>41, 42</sup>. This argument is of paramount importance, not only politically, but also in terms of achieving the long-term security and development of the city, particularly in the context of Colombo's recent history of social division and the need to integrate the urban poor into the urban economy and society of the city as a whole<sup>43</sup>.

Clearly there are merits in both these sets of arguments and the decision of which position to take is a political one. However, bearing in mind the importance of both the security-value and the exchange-value of possessing title deeds of full ownership to land, it does seem that this is the more just and socially productive route to follow. However, this need not be entirely at the expense of the public purse or to the detriment of enabling the lowest income households to climb out of poverty and into the mainstream of urban society and economy.

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37. Two and three perch plots (50-75m<sup>2</sup>) with NHDA occupancy certificates (enumeration cards?) in Gothamipura are changing hands for Rs.400,000 (US\$4,000) (Source: interview with Gothamipura CDC Chairperson).

38. Householders in Katiranawatte Stage 3 are earning Rs.5-6,000 (US\$50-60) per month in rent from second floors that are let to tenants. A householder in Kalinga Mawatha was able to borrow Rs.1 million (US\$10,000) from the Bank of Ceylon on the collateral of the deeds, issued by the NHDA, of his 2½ perch (62m<sup>2</sup>) plot and house in order to buy land elsewhere for his son prior to his marriage. (Source: household interviews).

39. In Gothamipura, two to three perch (50-75m<sup>2</sup>) plots with freehold title deeds have been sold for Rs.1.5 - 2 million (US\$15-20,000) whereas those with only NHDA enumeration cards or CMC assessment numbers sell for Rs.400,000 (US\$4,000) (Source: interview with Gothamipura CDC Chairperson).

40. See: Gunetilleke et al, p.42-43, (2004) op.cit.

41. In 2007 the householders of Katiranawatte Stage 3 in Colombo North rejected an NHDA offer of 50-year leases on their land, stipulating that they would only accept freehold titles, for which they are willing to pay Rs.50,000 (US\$500). The CDC chairperson of Katiranawatte Stage 1, which was awarded 50-year leases at Rs.300 (US\$3) per month in 1997, was completing negotiations with the NHDA in 2007 to trade them in for freehold title, for which they are also willing to pay.

42. Interviews with USS households in Colombo over many years; also Gunetilleke et al, (2004) op.cit.

43. See: CMC Vision statement: "Colombo being a model city in Asia, a caring organization looking after interests of citizens and users with an efficient quality service for the creation of a safe, healthy and wealthy life" ([http://www.cmc.lk/vision\\_mission](http://www.cmc.lk/vision_mission)).

## 6.2 RECOVERING THE VALUE OF LAND & INCREMENTAL TITLE

### 6.2.1 Types of title

As can be seen from the preceding sections, there are several different types of recognition of rights to land in USS in Colombo, each providing different perceptions of security. They embrace the following, only the last two of which, provide any form of legally recognised security other than that provided by the National Involuntary Resettlement Policy (which is not a law):

- NHDA Householder's file or Enumeration Card, issued in the 1980s, which acknowledges the occupant by name and gives each plot an address.
- CMC Rates Assessment number, issued by the Municipal Assessor, which gives each plot an address, but attaches no link to the name of the occupant.
- Service agreement with a service provider (NWS&DB and/or CEB) that make connections and provide services "*solely on humanitarian grounds implying no recognition or guarantee of ownership*" to the property.
- Entitlement Certificate of right to occupancy issued by NHDA, UDA or CMC, giving the occupants a conditional right to occupy the land on which they live, but making no promises of long-term security.
- Certificates issued by the NHDA under the MHP HOLP (Housing Options and Loans Package) which promised to exchange the certificates for rental agreements, once the householders have paid all instalments of their housing improvement loan.
- Tenancy or rental agreement (possibly renewable) with NHDA, UDA, SLLRDC or CMC in which the tenant agrees to pay a monthly sum for a fixed period (30-50 years)<sup>44</sup>.
- (Conditional) Freehold title awarded under the terms of the CHP Law or various NHDA programmes, starting with the MHP, as described above.

These different tenure arrangements largely result from the range of programmes and projects that have been introduced and implemented over the last 30 years, leading to anomalies and injustices within and across low-income communities in Colombo<sup>45</sup>.

Therefore there is a need to rationalise the process by which people gain access to secure title to land and property within USS and across the city. A starting point should be clarity on the issues of capturing at least a notional value of the public land that is transferred to households and (or versus) the use of land transfers as a vehicle for the redistribution of wealth to the lowest income groups. As pointed out above (3.4), the CHP Law gave title, free of any charge to the lowest rent-payers in vested property and charged a fee, that in no way reflected the (potential) market value, to those who had been paying more than Rs.25 per month. The NHDA process of issuing titles, which has been even more arbitrary and pragmatic, has also made no attempt to recover the real value of the land, nor has it distributed the same title to all.

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44. Tenants occupying NHDA or UDA flats (2-3 story walk-ups) in USS may be incorporated in this category.

45. For instance, in Gothamipura, a settlement of some 500 dwellings, one CDC represents householders who have: 1) no recognition whatsoever; 2) MHP householder files; 3) CMC assessment numbers; 4) CMC Occupancy Certificates; 5) NHDA issued freehold title; 6) tenancies in three-story walk-up flats built in 2005 after the tsunami; and 7) more than 60 percent of the householders in all categories rent rooms to tenants. 95 percent of the dwellings are recognised by the service agencies with individual metered water and electricity connections. (Interview with CDC Chairperson; Sevenatha, *Community Profile of Gothamipura*, mimeo, Colombo, 2007).

### 6.2.2 Separating use-value from exchange-value

A strategic approach that would satisfy both the capture of land values for the public purse and at the same time allow it to provide an affordable step onto the ladder out of poverty, lies in separating recognition of the right to the use of land from the possession of a freehold title deed (or a marketable long [50-99 years] leasehold). In effect this already exists in the process by which the NHDA is converting enumeration cards and occupancy certificates to title deeds, but it does not include any attempt to realise the value of the land, which is effectively a 'gift of the state' from which beneficiaries are free to profit.

The concept is this: All land in USS should be vested in a public authority (which, it is argued below should be CMC/NHDA) that holds the freehold title deed to each plot. The authority issues a 'certificate of occupation' to each recognised occupant of plots that have been approved for development (following 'plot regularisation', etc). The certificate embraces all the rights of ownership within the law (development, bequest, lease and transfer), but is not a registered deed of freehold (or leasehold) title. Occupants will have the option of buying their title deeds at a market-related<sup>46</sup> rate (including the cost of land registration (survey costs, etc), either outright or by instalments. Occupants may not wish to take up this option, but when they do want to buy the deeds to their property, they will have to do it at the prevailing market-related rate.

Many certificates of occupancy are likely to be bought and sold without redeeming the registered title deed. However, without a formal deed it is improbable that a property will command its full market value or that it will provide full security or collateral for borrowing. If a purchaser wants full freehold ownership they will have to pay the full market-related rate to the authority, via the vendor.

Under current conditions this scheme still leaves households unable to use their property as collateral for credit from the private commercial banks unless they have redeemed the freehold title. Those who are members of the Women's Bank<sup>47</sup>, which does not require freehold title deeds as collateral, can apply to it for a loan, though their chances of getting it are necessarily limited.

However, it seems likely that the commercial banks will not be able to maintain their stringent loan conditions for very long as they begin to realise that title deeds of small plots do not actually represent a realistic and manageable guarantee against default<sup>48</sup>. Thus, there are indications that the commercial banks are entertaining the idea of using measures such as an assessment of the level of community organisation and evidence of applicants' capacity to save, as collateral for housing loans rather than title deeds<sup>49</sup>.

Nevertheless, those households who are not linked into 'community collateral' schemes or who wish to realise the full market value of their property or to enter negotiations with 'formal sector' purchasers, will need to buy their title from the authority. In any case, it is anticipated that many households would opt to purchase their title deeds even if they had no immediate plans to sell their land or to use it to raise credit. So, the procedures for doing this by instalments

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46. The value of properties should reflect an actual market value as closely as possible, though the method for calculating it, such as using the prevailing rateable value, may include an element of subsidy. Alternatively, in order to discourage speculative transfers, the rate may be set at a 'potential value', for instance the value that the property would have if it was part of an agglomeration of plots making up a more attractive site for formal sector development.

47. The Women's Bank, which is still hardly acknowledged by government, though it is widely recognised internationally, is growing fast, both in terms of its size and lending capacity. It has around 60,000 low-income members with total assets of c.Rs.800 million and operates in 22 out of the 25 administrative districts in Sri Lanka. It has 160 Bank Branches that serve its members. Twenty percent of its members are in Colombo District, of which the vast majority live in USS in Colombo City.

48. For example, in the case of default on a loan of, say Rs.1 million (US\$10,000), the process of actually repossessing a dwelling on a small plot in the middle of an USS and disposing of it on the market by a commercial bank, would hardly be practical or cost-effective.

49. Source: discussions (Nov 2007) with UN-Habitat with reference to housing finance for the Slum Upgrading Facility (SUF) project in Moratuwa, with particular reference to reported policy discussions with Hatton National Bank.

should be simple, flexible and available over a long payment period in order to assist the lowest income groups for whom saving is difficult.

### 6.3 CO-ORDINATION OF LAND MANAGEMENT – THE ROLE OF CMC

#### 6.3.1 CMC USS Co-ordination Unit

As has been illustrated above, there is large number of public sector players in the land management and transfers processes in USS in Colombo. However, they have no coherent policy framework against which priorities can be set and no co-ordinating body to guide them at the level of the city. This has led to duplications, confusions and iniquities. In the past (1980s) the UDA and NHDA (both agencies of the same ministry) played this role to some extent but, as part of national programmes covering all urban local authorities. Since then, changes of government and ministerial restructuring have led to changes in the focus of these and other government departments and authorities, leaving the urban and housing sectors with no coherent focus. Such is the political nature of central government.

Local government, in this case CMC, however, has a more stable and sustainable administrative structure in addition to having sole jurisdiction over the city. Therefore it is ideally and uniquely placed to monitor and co-ordinate the management and transfer of land in the USS of Colombo.

Taking this position, the *Policy Framework*<sup>50</sup> for the improvement of USS, prepared by CMC as part of the PRIMUSS project in 2005 (Section 4.4) clearly recommends that the municipality should be responsible for the co-ordination of all aspects of USS upgrading in the city, including the administration of land titling and transfer. It lays emphasis on integrating support to the improvement of social, economic, environmental and physical conditions in USS and the need for community participation and the establishment of strategic partnerships between the principal public, private and civil society actors.

It would be impractical for CMC to assume more powers than it has already under the Municipal Councils Ordinance of 1864 and its subsequent amendments. However, it should aim to establish a tightly focussed capacity to facilitate and interconnect the procedures of all the stakeholder agencies that impinge on upgrading USS in the city and, where necessary, be able to undertake some routine administration on their behalf. For example, the process of vesting and transferring land routinely takes several years for the UDA and/or NHDA to complete<sup>51</sup>. However, it has been demonstrated that a significant proportion of the time is taken up by bureaucratic routines (e.g. data entering, completion of application formats, preparing of notices, etc) or technical processes (e.g. surveys, valuations, etc) that can be speeded up by allocating more resources (personnel) to them. Some of these routines may be taken on, or contracted out, by CMC that is likely to give them a higher priority<sup>52</sup>.

Therefore it is recommended that CMC should establish a new USS Co-ordination Unit to work closely with all other municipal departments that are engaged in the development and management of USS, notably Engineering, Public Health, City Planning and the Municipal Assessor in co-ordinating their activities in USS throughout the city. It would also develop close relations with government departments and agencies with programmes and projects that impact upon USS in Colombo. Obviously the most important being the UDA and the NHDA, particularly in accessing their powers of compulsory land acquisition, vesting of public land, declaration of 'special development areas' and title transfer to individual householders<sup>53</sup>. It

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50. PRIMUSS (2005), op.cit.

51. See Jayaratne (1992) which gives a series of illuminating tables that identify all the stages, for example, for land acquisition, which departments or agencies are involved in each stage and the average time that they take.

52. The Lunawa Improvement and Community Development Project in Moratuwa has developed such institutional relationships with demonstrable effectiveness (discussions with the Project Director).

53. Also the proposed Urban Settlements Development Authority (USDA), a new agency of the Ministry of Urban Development and Sacred Area Development. (Virtually all the powers and responsibilities of the USDA seem to duplicate those already exercised by the UDA and NHDA, questioning its utility).

would also have to maintain close contact and a negotiation facility with the principal landowners in the city, such as the Railways, Highways and Port Authorities and SLLRDC on whose land USS are, or may become, located.

It would be for the Municipal Commissioner to propose and the Council to decide where such a new unit should fit into the establishment. However, it is suggested that alongside the Institutional Development Unit under the Deputy Municipal Commissioner (Professional Services) might be appropriate.

### **6.3.2 Municipal revenue from USS**

As has been indicated above, the Municipal Assessor's Department has given assessment numbers to all plots in all USS that have been upgraded and in several settlements that have not yet been upgraded, even though they do not meet the minimum standards plot size (e.g. six perches) or have adequate access to services. However, the majority of these enumerated plots have not been valued and those that have, have been given a 'blanket' rateable value below the level at which the municipality collects rates (property tax) because it would not be cost-effective to do so<sup>54</sup>. This would seem to be a misinformed approach.

Clearly there are many substantial dwellings in USS that command a significant rateable value and house families (and sub-tenants) that could afford to pay rates. An important empirical study presented at the UN-Habitat Urban Management Programme (UMP) Colombo City Consultation in 1999 by Sevanatha<sup>55</sup> shows that by applying a real rateable value to USS properties the municipality stands to gain significant additional revenue, even by the most conservative calculations. Furthermore, there is more than anecdotal evidence<sup>56</sup> that many USS households want to pay CMC rates for a variety of reasons, such as: it confirms their status as recognised and contributing citizens; evidence of being a rate-payer gives more ready access to school places for children; rate-payers feel that they have a right to urban services, a 'right to complain' and a stake in local and city governance.

Nevertheless, the anomaly remains that on the statute books dwellings that fall below the established standards of health and safety including a minimum plot size of six perches (150m<sup>2</sup>) are 'illegal'; therefore they cannot be serviced by CMC; therefore the municipality cannot levy a rate. But, services are delivered to substandard properties on humanitarian grounds and in accordance with the 1985 City of Colombo Development Plan; so the municipality does levy rates on them despite the law<sup>57</sup>.

Therefore it is strongly recommended that this inconsistency is formally addressed and that the municipality's rate assessment and collection procedures for USS are reviewed and steps taken to capture this potentially valuable source of revenue. (Further recommendations for this are made in Section 6.4 below).

### **6.3.3 USS Database**

In common with wide ranging international experience, the CMC *Policy Framework* study recognises that a basic citywide database is a prerequisite to any effective land management operation. The process of developing a database on USS in Colombo was started in 2001 under a project supported by the EU AsiaUrbs programme and the UN-Habitat Urban Management Programme and a GIS-based information system was designed, set up and preliminary inputs made to it. However, its intention to record the boundaries of all registered

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54. Nevertheless, the *Poverty Profile* (Sevanatha, 2002, op.cit.) states "...that about 56 percent of urban poor families in Colombo pay rates to the CMC on an individual property assessment basis, while 15 percent pay rates on a flat rate for the community. About 30 percent of low-income settlements do not pay any rate (not qualified) to the municipality at all".

55. Jayaratne, K.A., *Municipal Revenue Enhancement of Urban Poor and Under-Served Areas in Colombo*, in *Proceedings of the Colombo City Consultation – May 22 1999*, mimeo, CMC, Colombo (1999).

56. Sevanatha (2002); Gunetilleke, et al (2004), op.cit.

57. An argument, eloquently made by the CMC Municipal Assessor in an interview (Nov. 2007). However, the status of 'special development areas' where sub-standard conditions are permitted by the UDA is unclear. (i.e. whether this rule applies in perpetuity, or whether it can be, or has it been, withdrawn for any settlements).

plots in all 1,600 USS in the city has proved too ambitious in practice<sup>58</sup>. Thus, to be useful in cadastral terms, it needs to be re-thought as an incremental and more participatory process engaging USS communities in its development and reviewing the use of the most recent hand-held GPS technology.

Despite its inadequacies, there is already enough information in the database to make it a useful planning and programming tool. In terms of land management it may be used by the proposed CMC USS Co-ordination Unit to:

1. identify the current ownership of the land on which each USS is located and those that have been 'regularised' and enumerated (given formal addresses);
2. classify and locate (by address and ultimately on a map) households in regularised settlements by level of security to land (enumeration card, occupancy certificate, lease, title deed) and 'eligibility' for the award of certificates of occupation and/or transfer of title;
3. identify those plots in regularised settlements that, on the basis of a visual inspection, should be valued for the payment of rates; and ultimately 3a) those that are paying rates and are eligible for periodical reassessment;
4. identify the number of households in the 'un-regularised' settlements that may be enumerated, given an occupancy certificate (promissory note) and regularised and those that have to be relocated (for safety, land use or economic reasons);

The database should also map and classify land that may in future be available for vesting and developed for low-income group housing for, for example the relocation of households in existing USS. This is important to enable the CMC USS to prioritise negotiations for the vesting of land, etc, with other state agencies and acquisition or the establishment of land-sharing partnerships with the private sector.

#### **6.4 CDCS vs CONDOMINIUM MANAGEMENT CORPORATIONS**

In line with international neo-liberal best practice, Sri Lanka subscribes to the principles of decentralisation, the devolution of authority, participatory governance and the engagement of communities in the development and management of cities and settlements. As is pointed out above, the formation of community development councils (CDCs) under the Unicef UBSIP in the 1970s and the subsequent importance given to them by the MHP in the 1980s, created a structure of non-governmental CBOs that has underpinned USS upgrading projects ever since, particularly through the Community Action Planning (CAP) process.

However, CDCs have never had any constitutional mandate or legal responsibility, except where they have taken on a contractual obligation, such as the management of 'community contracts' for infrastructure upgrading. To many, being the lowest level of local governance but not part of government is their strength. Thus, at the same time as working closely with government, notably the NHDA and CMC, in the development of USS, they are able to play an independent 'watch-dog' role over the state, monitoring its activities and holding it to account. Nevertheless, they are voluntary and therefore ephemeral. So, since the mid-1990s, when participatory approaches to urban housing and service delivery were largely abandoned by GoSL, many of Colombo's CDCs have become inactive and/or been dissolved, only reviving when an upgrading or service delivery project is in the offing or there is a need to lobby for the resolution of a particular collective problem.

In terms of land management, the *Municipal Revenue Enhancement Study*<sup>59</sup>

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58. All 1,600 USS have been recorded as points on the city map with a basic inventory of number of households, level of services, etc. USS boundaries have been demarcated in only two of the 37 city wards and plot boundaries have been digitally mapped for only one settlement (Gothamipura). The Gothamipura survey took six months of data collection and recording by five fieldworkers, using conventional survey methods and paper maps.

recommends procedures for involving CDCs in the assessment of rateable values and revenue collection, in order to ease the burden on the CMC Assessor's Department and to engage communities in the governance and management of their neighbourhoods. This, presumably, could not reliably or honestly be undertaken on a voluntary basis but would entail a formal contractual arrangement. But CDCs are not legal entities able to sign contracts. However, condominium management corporations are (see Section 3.6 above).

If USS were treated as condominiums under the terms of the Apartment Ownership Law administered by the CMA, their CDCs might become Condominium Management Councils overseeing the administration of land and common amenities by appointed Condominium Management Corporations. They would thus become legal entities with permanent managerial roles. To these could be added other responsibilities, such as assisting in the property valuation process and the collection of rates in partnership with (under contract to) the Municipal Assessor's Department. Furthermore, if a whole USS or parts of it were assessed as a condominium, the plot size anomaly for rating and other official purposes would be overcome (5.3.2).

Clearly responsibilities such as these would require a level of managerial support to USS Management Corporations that the CMA is not currently in a position to provide. However, professional and technical assistance both in terms of CDC training and the employment of a corps of management consultants, working as 'executive officers' to USS Management Councils and Corporations could be provided (contracted out to NGOs or independent consultants) by the CMC (through the proposed USS Co-ordination Unit). As is pointed out by the *Municipal Revenue Enhancement Study*, the collection of rates from USS stands to gain significant additional revenue, a modest surcharge on which could be used to cover the cost of such assistance, if necessary<sup>60</sup>.

## 7

### THE WAY FORWARD

As indicated in the Preface to this report, it would be presumptuous to make categorical or detailed recommendations on the basis of so short a study and in the absence of in-depth consultation with the many stakeholders involved in land management and transfers in USS in Colombo. However, areas where further enquiry and experimentation is needed in order to inform action that impinges upon the management and transfer of land in USS can be identified. These fall into two categories:

1. research studies intended to fill gaps in knowledge that will inform policy-making and the development of strategic approaches to the implementation of policy; and
2. short-term pilot projects that test hypotheses and ideas for improving land management in USS, prior to their full-scale adoption (or rejection).

#### 7.1 RESEARCH STUDIES

There are many areas of important and potentially productive research on USS in Colombo. However, there are two that specifically address issues of land management and markets that are of direct and immediate relevance to national and municipal policy.

##### 7.1.1 Stimulating investment in lower-middle-income housing

At the level of national policy reference has been made (Section 5.1) to the need for a national housing policy and, more importantly, a strategy for its implementation by the GoSL. In

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59. Jayaratne (1999), op.cit.

60. Domestic rates in low-income neighbourhoods are set at 15 percent of the rateable value, as opposed to 25 percent in upper-income areas (Jayaratne, (1999). Thus, it is assumed that an additional 2-3 percent surcharge to cover management costs could be absorbed reasonably painlessly.

preparation for this a better understanding of urban housing markets, particularly in the lower middle-income groups, is required in order to inform government on the sort of supports and incentives necessary to stimulate private sector investment at the lower end of the market. Though such incentives are likely to be primarily financial, there will be opportunities for public/private partnerships involving state owned land that are worth exploring through rigorous market research. Some understanding of the interface between informal and formal housing delivery mechanisms has been gained from the experience of REEL and the STP, but further study should be rigorously demand driven, unlike the supply-based premises (assumptions) on which the STP was launched.

### **7.1.2 Impact of titling on land markets in USS**

The premise that different 'levels' of promissory notes, certificates, enumeration cards and title deeds account for different perceived degrees of security to land in USS and therefore different market land values is commonly accepted in Sri Lanka (and elsewhere – Section 1) and is the basis of the analysis and recommendations of this report (and many others). However, the evidence is anecdotal and partial. Therefore there is a need for a rigorous study of the impact of title to urban land in existing and former USS in Colombo. This research should examine the social (anthropological) attitudes to identity and land security in urban USS as well as the financial and market impact of different tenure types and relate them to policy alternatives that embrace the wider considerations of urban poverty reduction and the value of urban land as a public good<sup>61</sup>.

## **7.2 SHORT-TERM PILOT PROJECTS**

At the level of Colombo city there is a range of studies and projects that would inform new approaches to the management and transfer of land in USS. However, to ensure that they are focussed in a way that would be useful and productive in 'real' terms they should be set in the context of a coherent policy framework. This is provided by the 2005 *Policy Framework and Operational Strategy: Participatory Improvement of Under-Served Settlements in Colombo*<sup>62</sup>, which does provide a 'policy framework' but not an 'operational strategy' for implementing it. In order to present the framework for adoption by the council for the development of a municipal policy, studies are needed to explore alternative strategic approaches to its operation within the administration. These will have to be undertaken through sensitive negotiations within and between the different CMC departments and the careful political lobbying of councillors.

In connection with this, the case has been made above (6.3.1) for the establishment of a USS Co-ordination Unit embedded in the CMC administration with a suggestion that an appropriate location for it might be alongside the Institutional Development Unit under the DMC (Professional Services). The core function of the proposed Unit would be to set priorities for the development of USS in conjunction with other CMC departments, GoSL agencies and externally funded projects, and to co-ordinate their implementation. It would also develop, maintain and manage the USS database (6.3.4) for which it would be responsible for commissioning and co-ordinating specialist studies.

The studies and pilot projects related to land management and transfer in USS that are outlined below are dependent upon the establishment of a permanent 'USS Co-ordination Unit' or similar institutional anchor within CMC, otherwise there is little likelihood of their having more than an academic value.

### **7.2.1 Formation of Condominium Councils and Corporations in USS**

Section 6.4 suggests the establishment of condominiums in USS in order to give statutory powers to CDCs by converting them into elected Condominium Management Councils for the purpose of overseeing appointed Condominium Management Corporations with responsibility

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61. It might be rewarding to attempt to work from a hypothesis that refutes the conventional wisdom that individual freehold title provides the highest level of security or the most appropriate and/or rewarding land values in the cultures and economies of USS in Colombo.

62. See PRIMUSS (2005), op.cit.

for the maintenance and management of common spaces and amenities in USS<sup>63</sup>. Anecdotal evidence<sup>64</sup> suggests that the CDCs that are currently active would welcome such an opportunity for greater official recognition and authority, though it is not certain that the full implications of the Apartment Ownership Law and its application to USS has been fully understood and assimilated, either by USS communities or by the CMA. An obvious constraint would be the extent of capacity building and technical support would be required to ensure responsible and efficient condominium management corporations, which, it is suggested, might be contracted out to NGOs or independent consultants.

This process needs testing in a series of pilot projects in different types of USS. Such pilot studies should have a range of objectives that might be tested in different USS or as a cumulative series of studies built up one or two settlements<sup>65</sup>. The applied research objectives would embrace:

- an examination of the application of the Apartment Ownership Law to USS in order to establish the full extent of its application to USS and the degree of flexibility within it in order to respond to different conditions and levels of USS development;
- an analysis of the extent to which USS communities are really willing and able to form themselves into condominiums for the purposes of managing their common amenities and what other responsibilities they would be prepared to take on;
- an identification of the level and range of capacity building needed and the external professional and technical (managerial and accountancy) assistance that would be required to ensure efficient and effective management corporations that would meet the requirements of the CMA, and the cost of providing them.

### **7.2.2 Valuation and devolved rate collection in USS**

Perhaps linked with the study proposed above, a series of pilot projects are needed to explore the feasibility and procedures for assessing the rateable value of individual properties, or condominiums, in USS in partnership with CDCs or USS condominium management corporations, as suggested in Section 6.3.3 above and by the Sevantha study<sup>66</sup> referred to in the same section.

An important aspect and possible constraint to the study would be the legal status and types of titles to land in the pilot USS with regard to the levying of rates, as the study should not be confined only to settlements, or USS condominiums, in which the individual households have freehold title.

The principal objectives of the study would be to go further and wider than the 1999 Sevanatha study in:

- assessing a real and equitable value of individual plots, and/or to agglomerations of plots forming USS condominiums, and the processes employed;
- designing and testing arrangements and procedures for devolving (contracting out) aspects of the administration of rate assessment and collection to community based organisations and the sorts of technical and managerial supports and monitoring processes needed to ensure transparency and accountability.

Clearly managing detailed negotiations between the Municipal Auditor's Department and the selected USS would be central to such a study.

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63. It is not imagined that CDCs would necessarily confine their activities to those required of Management Corporations. Many would retain their status as CDCs as well, in order to continue their other governance, social and developmental functions.

64. Discussions with CDC chairpersons in four USS, November 2007.

65. Large USS, such as Gothamipura, may have several condominiums so, for example, it could be used to test (and demonstrate) different degrees of condominium formation and management.

66. Jayaratne (1999), op.cit.

### 7.2.3 Develop a proposal for the management of incremental titles

The lack of clarity and inequality of different forms of tenure in USS is outlined in Section 6.2, which suggests an approach to capturing the value of state land that is transferred to households (and, potentially, to condominiums) in USS as part of an 'upgradeable' land titling process. Before this approach can be taken any further it needs to be designed in greater detail in conjunction with the principal stakeholders, notably the NHDA, UDA, CMC, SLLRDC (and possibly the future Urban Settlements Authority), all of which are 'ground landlords' of USS, each with a different policy towards tenure<sup>67</sup>. It is not suggested that all agencies should necessarily adopt a common form of title (freehold or leasehold), but that there should be a common approach to recovering its value when transferring deeds and long-term lease agreements.

The outcome should be an acceptable and transparent approach and procedures for establishing the 'market-related' value of land parcels in USS and system for monitoring transfers and managing a register of titles. It is recommended that this should be a central component of the USS database, managed by the proposed CMC USS Co-ordination Unit.

Clearly the scope of this proposal should be limited in the first instance, perhaps to new transfers of (conditional) freehold title from the NHDA to USS householders or condominiums, in order to avoid the protracted procedures referred to in Section 6.3.



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67. The NHDA and CMC have by far the biggest stake in land in USS in Colombo.

**Appendix**  
**DISCUSSIONS IN COLOMBO**  
**5-16 November 2007**

Monday 5 Nov.

**Colombo Municipal Council**

- Mr Gamini Chandrasena, Deputy Municipal Commissioner (Professional Services)  
Project Leader, Focus City Project, Colombo
- Ms Kumuduni Samarasinghe, Senior Engineer
- Mr Laxman Perera, Lands Officer
- Mr Chaminda Gankewala, Project Co-ordinator

**UN-HAITAT**

- Mr Conrad de Tisserra, Director, Sri Lanka Programme
- Mr Disa Weerapana, (Regional Director Rtd)

**Centre on Housing Rights and Evictions (COHRE)**

- Ms Shyamala Gomez, Women's Housing Rights officer  
(also Gender Advisor, UN Resident Co-ordinator's Office)

**Sevenatha Urban Resource Centre**

- Mr K.A.Jayaratne, President
- Mr H.M.U.Chularatne, Executive Director

Tuesday 6 Nov.

**Lunawa Improvement & Community Development Project**

- Mr Anura Dassanayake, Director
- Mr Ariyasena, Chief lands Officer

**National Water Supply & Drainage Board**

- Mr W.B.G.Fernando, Assistant General Manager (Rural Water Supply)  
(formerly Non-Revenue Water Supply, Colombo)

**Ministry of Urban Development & Sacred Areas Development**

- Mr H.M.Dayananda, Project Director, Urban Settlements Improvement Project  
(USIP) and Acting Director, Real Estate Exchange Ltd (REEL)

Wednesday 7 Nov.

**National Housing Development Authority (NHDA)**

- Mr Vasanta Wijayratne, General manager
- Ms C.Ellawala, DGM (Legal)
- Mr S. Balansuriya, DGM
- Mr Damika Gunewadene, Senior Manager

**Condominium Management Authority (CMA)**

- Mr Upali Upawansa, Acting General Manager

**Ministry of Urban Development & Sacred Areas Development**

- Mr Laxman Perera, Additional Secretary & Acting Director, Development

**Urban Development Authority (UDA)**

- Mr E.M.R.U.B.Dorakumbura, Director (Land Development & Management)

Friday 9 Nov.

**Gothamipura**

- Ms. Christina Sandra Frances, CDC Chair

**Kalinga Mawatha**

- a household

**41/30 Watte**

- a group of railway reservation squatters

Monday 12 Nov.

**Colombo Municipal Council**

- Mr Gamini Chandrasena, Deputy Municipal Commissioner (Professional Services) and c.20 officers (presentation and discussion of findings, etc to date)

Tuesday 13 Nov.

**National Housing Development Authority (NHDA)**

- Mr Gamini Vithana, AGM Urban Housing
- Mr Jayanta, Senior Clerk (previously staff of Rent Control Board)

**Centre for Poverty Analysis (CEPA)**

- Ms Naranjana Gunatilleke, Co-ordinator, Poverty impact Monitoring Programme
- Ms Azra Abdul Cader, Poverty Assessment & Knowledge Management Programme

**Colombo Municipal Council (CMC)**

- Ms Kumuduni Samarasinghe, Senior Engineer, USS Database

**Ministry of Urban Development & Sacred Areas Development**

- Mr H.M.Dayananda, Project Director, Urban Settlements Improvement Project (USIP) and Acting Director, Real Estate Exchange Ltd (REEL)

Wednesday 14 Nov.

**Katiranawatte Stage 1**

- Ms A. Vasanti, CDC Chair

**Katiranawatte Stage 3**

- Ms. Morjan, CDC Chair

**219 Watte**

- Ms. Ayanti, CDC Chair

**Lunawa Improvement & Community Development Project**

- Mr Anura Dassanayake, Director

Thursday 15 Nov.

**Colombo Municipal Council (CMC)**

- Mr P.P.T.Mohideen, Municipal Assessor
- Mr N.S.Jayasundera, ex-Deputy municipal Commissioner (Professional Services)

**Sri Lanka Land Reclamation & Development Corporation (SLLRDC)**

- Mr W.K.Wicramasinghe, Deputy General Manager (Lands & Marketing)

**Sri Lanka Railway Authority (CGR)**

- Mr Lalithasiri Gunaruan, General Manager

Friday 16 Nov.

**UN-Habitat**

- Mr Conrad de Tisserra, Director, County Programme
- Ms Ayanthi Gurusinghe, Slum Upgrading Facility (SUF), Country Team Leader
- Mr David Evans, CTA, Post-Disaster Housing Coordination Project

**Real Estate Exchange Ltd (REEL)**

- Mr Lalith Mirihagalle, Executive Director

**Sevenatha Urban Resource Centre**

- Mr K.A.Jayaratne, President