

# **The National Involuntary Resettlement Policy:**

Dispelling Misconceptions and  
Assessing Compliance

*Gehan Gunatilleke & Vidya Nathaniel*

**LAW &  
GOVERNANCE**

September  
2014

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The authors wish to thank **Priyanka Krishnamoorthy** for her initial research and analysis. The authors are also grateful to **Nishan de Mel, Viran Corea, Bhavani Fonseka & Iromi Perera** for reviewing the study and providing constructive feedback.

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## List of Acronyms

<b>ADB</b>	Asian Development Bank
<b>CEA</b>	Central Environmental Authority
<b>CPA</b>	Centre for Policy Alternatives
<b>CRP</b>	Compliance Review Panel
<b>EIA</b>	Environmental Impact Assessment
<b>HSZ</b>	High Security Zone
<b>LAA</b>	Land Acquisition Act, No. 9 of 1950
<b>LARC</b>	Land Acquisition and Resettlement Committee
<b>LLRC</b>	Lessons Learnt and Reconciliation Commission
<b>MLLD</b>	Ministry of Lands and Land Development
<b>NIRP</b>	National Involuntary Resettlement Policy
<b>PEA</b>	Project Executing Agency
<b>RAP</b>	Resettlement Action Plan
<b>RDA</b>	Road Development Authority
<b>RIP</b>	Resettlement Implementation Plan
<b>SEZ</b>	Special Economic Zone
<b>UDA</b>	Urban Development Authority

# INTRODUCTION

Sri Lanka has had a long and turbulent history of internal displacement. During the war, the discourse on displacement focused on 'conflict-induced displacement'. The post-war development agenda, however, has shifted the focus towards 'development-induced displacement'. The country now faces the perennial challenge of reconciling development goals with individual rights.

Development induced displacement takes place mainly through the formal acquisition of private lands. At present, the Land Acquisition Act, No. 9 of 1950 (LAA) governs acquisition of land in Sri Lanka. This law authorises the state to acquire private lands for 'public purposes'<sup>1</sup> without offering durable solutions to those affected.

In response to shortcomings in the LAA, the Asian Development Bank (ADB) initiated a process in 2001 to address the issue of involuntary resettlement. As a result of this process, the government adopted the National Involuntary Resettlement Policy (NIRP). NIRP reflects a set of international best practices, which addresses the gaps in the LAA and offers durable solutions to affected persons. It aims to offer those displaced by development projects a similar or better standard of living compared to their situation prior to displacement.

Despite the lapse of a decade since Cabinet approved NIRP in 2002, the policy is seldom applied in practice. This study attempts to reintroduce NIRP, and highlights its continued importance and relevance to development planning in Sri Lanka. In doing so, the study addresses two misconceptions: first, that the present government does not officially recognise the policy; second, that it is not feasible to implement. This study also assesses current levels of compliance with the policy – both by the government and ADB. The study is based on an analysis of available documents and consultations with experts in land law and administration.

The study is presented in five parts. The first deals with the key provisions of NIRP. The second deals with the agencies responsible for implementing the policy. These sections are followed by a comparative analysis of the LAA and NIRP. The fourth section deals with government measures to ensure compliance, and the measures adopted by ADB to monitor compliance. The final section of the study deals with several case studies that demonstrate both the current need and potential for mainstreaming NIRP.

This study aims to dispel common misconceptions: (1) NIRP 'is not recognised by the present government' and (2) is 'not feasible to implement'.

# KEY PROVISIONS OF NIRP

## APPLICABILITY

Prior to discussing its key provisions, it is important to highlight the special status of NIRP. The Cabinet of Ministers approved the policy on 24 May 2001. The policy is not merely a non-binding document meant for selective application. It makes direct reference to the fact that the government is responsible for drafting amendments to the LAA in order to bring it in line with NIRP.<sup>2</sup>

Despite the fact that ADB initiated the process that led to NIRP, the policy applies to all development projects regardless of funding sources.<sup>3</sup> This position is clearly confirmed by a letter dated 31 January 2003, by which the (then) Secretary to the Ministry of Lands requested all Chief Secretaries of the provinces to 'widely circulate' the policy among organisations within the provinces and to instruct them to follow the policy in 'matters pertaining to land acquisition and resettlement'.<sup>4</sup>

Prior to publishing this study, the authors presented their findings for nearly two years at various fora. A

frequent – and pertinent – concern raised during these presentations was the likelihood that the present government no longer recognised NIRP as official policy. This concern was laid to rest in June 2013 when the present government cited the policy as evidence of measures taken by the government to implement the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC). In a progress report released in June 2013, the government reported that it had completed implementing the LLRC's interim recommendation on

Secretary, Ministry of Lands issued instructions that NIRP should apply to all acquisitions.

issuing 'a clear statement by government that private lands would not be utilized for settlements by any government agency'.<sup>5</sup> On page 31 of the progress report, the government states that the 'National Involuntary Resettlement Policy is available' and presents such availability as evidence of full implementation of the recommendation. Leaving aside the relevance of NIRP to the recommendation concerned, the specific reference to NIRP reveals that the present government recognises the continued applicability of the policy.

In June 2013, the government recognised the continued applicability of NIRP.

## SUBSTANTIVE PROVISIONS

### GENERAL PRINCIPLES

NIRP contains three key principles relevant to designing and implementing development projects:

- *Impact mitigation:* Steps should be taken to avoid or reduce involuntary resettlement by reviewing alternatives to the project, as well as alternatives within the project;

- *Full and Informed Consent:* A consultative, transparent and accountable involuntary resettlement process with a timeframe should be agreed to by the Project Executing Agency (PEA) and the affected people; and
- *Local participation:* Resettlement should be planned as a development activity for the affected persons and should be carried out with the full participation of the provincial and local authorities.

# KEY PROVISIONS OF NIRP

## RESETTLEMENT ACTION PLANS

NIRP states that a Resettlement Action Plan (RAP) should be formulated for situations where twenty or more families are affected. If less than twenty are affected, a plan of lesser detail should still be prepared.

According to NIRP, an RAP should:

- Explore alternative project options which avoid or minimise impacts on people;
- Include compensation for affected persons including occupiers who do not have formal title to land;
- Consult displaced persons and host communities on resettlement options; and
- Provide for successful social and economic integration of the displaced persons and their hosts.

NIRP applies to occupiers who do not have formal title.

Compensation should include loss of income.

## COMPENSATION

NIRP lays down certain fundamental principles relating to compensation:

- Affected persons should be fully and promptly compensated;
- If the persons affected have lost land, replacement land should be offered; and
- In the absence of replacement land, cash compensation should be offered.

The policy also specifies the basis on which compensation should be calculated. Compensation should be paid promptly for loss of land, structures, other assets and income. It should be based on full 'replacement cost' and should also include transaction costs. Moreover, PEAs should bear the full costs of compensation and resettlement.

NIRP provides a policy framework for gender equality in land alienation.

## WOMEN AND VULNERABLE GROUPS

NIRP specifically directs PEAs to integrate gender considerations into development planning. According to the policy:

- Gender equality and equity should be ensured and adhered to throughout the implementation of the project; and
- Households headed by women and vulnerable groups among affected persons should be given

particular attention and appropriate assistance to improve their status.

Laws such as the State Lands Ordinance, No. 8 of 1947, and administrative practices under such laws do not explicitly provide for joint-ownership of land by spouses.<sup>6</sup> Subsequent legal interpretation of the law suggests that such joint-ownership could be given 'if it is the policy of the state'.<sup>7</sup> Hence NIRP, if applied properly as the policy of the state, creates the space for joint-ownership to be given to spouses in order to guarantee gender equality. In the context of development-induced displacement, such joint-ownership would significantly strengthen land tenure amongst women heads of households who have survived their spouses.

## PARTICIPATION AND INTEGRATION

NIRP promotes the principles of participation and integration. It directs PEAs to design and implement participatory mechanisms to ensure that affected persons are economically and socially integrated into the host communities. This process necessarily involves broad community participation during both the project planning and implementation stages.

# IMPLEMENTATION AGENCIES

NIRP offers a multi-stakeholder policy framework, with responsibilities spread across several key institutions. The following table explains the responsibilities of each of these institutions:

## **Ministry of Lands and Land Development (MLLD)**

- Generally responsible for implementing NIRP.
- Ensuring that the LAA is appropriately amended to fall in line with NIRP.
- Issuing and enforcing necessary regulations and guidelines based on the amended LAA.  
  
E.g. Regulations and guidelines on involuntary resettlement planning, implementation and monitoring.

## **Project Executing Agencies (PEAs)**

- Ensuring compliance with all requirements under NIRP in terms of planning and implementing resettlement solutions.
- Establishing Resettlement Units with adequately trained staff, particularly where the project involves significant resettlement.
- Bearing the full cost of compensation and resettlement.
- Developing a well-resourced internal monitoring system to monitor the implementation of RAPs.

## **Central Environmental Authority (CEA)**

- Reviewing impacts of projects involving involuntary resettlement, and assessing measures taken to mitigate impacts.
- Providing the necessary guidance to public and private sector agencies undertaking projects that lead to involuntary resettlement.
- Reviewing and approving RAPs prepared by PEAs and making them publicly available.

## **NIRP Steering Committee**

- Evaluating and overseeing implementation of the policy.

\*Comprises representatives from the MLLD, the PEAs and CEA



# LAA & NIRP: COMPARATIVE ANALYSIS

NIRP was designed to address the significant shortcomings of the LAA. These shortcomings underscore the need to amend the LAA to reflect the main principles of NIRP. This section provides a more detailed analysis of the key differences between the LAA and NIRP.

<b>Payment of compensation</b>	LAA	<ul style="list-style-type: none"> <li>The government could acquire land from private landowners <b>before</b> providing compensation.</li> </ul> <p>Note: Consultations with lawyers who litigate on land acquisition matters reveal that, due to bureaucratic impediments and other obstacles, it could take years (more than five years in some cases) for private landowners to receive compensation.</p>
	NIRP	<ul style="list-style-type: none"> <li>Guarantees that affected persons are granted compensation <b>prior to</b> dispossession of the land.</li> </ul>
<b>Calculation of compensation</b>	LAA	<ul style="list-style-type: none"> <li>Compensation is <b>confined to loss of lands and formalised settlements</b>.</li> </ul> <p>Note: Subsequent regulations published in 2009 (see below) expand the scope of compensation.</p> <ul style="list-style-type: none"> <li>Persons are only paid a <b>depreciated value</b> for structures on the acquired property. The actual land is surveyed by the Department of Land and then valued by the Department of Valuation.</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>The categories for which compensation is payable under NIRP is <b>wider in scope, as it covers larger economic and social needs</b>.</li> <li>Compensation is calculated to include loss of land, structures, other assets and income. The calculation of compensation is based on <b>full replacement cost</b> including transaction costs.</li> </ul>
<b>Mode of paying compensation</b>	LAA	<ul style="list-style-type: none"> <li>Statutory compensation could be paid in installments.</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>Payment in installments is not permitted.</li> </ul>
<b>Replacement costs</b>	LAA	<ul style="list-style-type: none"> <li>Compensation for replacement costs is <b>not</b> directly provided. However, components of replacement costs are provided for in subsequent regulations published in 2009 (see below).</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>Compensation for replacement costs is <b>guaranteed</b> – i.e. compensation for expropriated property should be sufficient to actually replace lost assets, or to acquire substitutes of equal value or comparable productivity or use; transaction costs should be included.</li> </ul>

# LAA & NIRP: COMPARATIVE ANALYSIS

Resettlement policies	LAA	<ul style="list-style-type: none"> <li>The State is not required to address resettlement issues following acquisitions. Under subsequent regulations published in 2009 (see below), only an additional 10% is offered as compensation if the acquisition results in displacement.</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>The State and the PEA are required to implement a resettlement process within a specific timeframe.</li> <li>A comprehensive RAP should be published in the case of the displacement of twenty or more families; and a plan of lesser detail in the case of the displacement of less than twenty families.</li> </ul> <p>Note: The World Bank's Involuntary Resettlement Policy provides that a resettlement plan should include measures to ensure that displaced persons are provided technically and economically feasible resettlement alternatives.<sup>8</sup> Additionally, the physical relocation of persons should be based on 'locational advantages' and contain factors 'at least equivalent to the advantages of the old site'.<sup>9</sup></p>
Persons with no documented interest in the land	LAA	<ul style="list-style-type: none"> <li>Persons without documentary evidence of some interest in the acquired land are <b>not recognised</b> as persons entitled to compensation; only a 'person interested' in the land could claim compensation (e.g. owner, mortgagor or lessee).</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>Persons without documentary evidence of their interest in the acquired land may still be entitled to compensation (e.g. bona fide occupiers of the acquired land).</li> </ul>
Income restoration activities	LAA	<ul style="list-style-type: none"> <li>No provision for restoring income generating activities.</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>Income sources and livelihoods of affected persons should be re-established.</li> <li>Compensation for income loss should be provided.</li> <li>Where involuntary resettlement is unavoidable, affected persons should be assisted to re-establish themselves in terms of their livelihoods and improve their quality of life.</li> </ul>
Public disclosure of resettlement plans	LAA	<ul style="list-style-type: none"> <li>Public disclosure is <b>not required</b> unless it is subject to an environmental assessment by the CEA.</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>All resettlement plans should be made <b>publicly available</b>.</li> <li>The CEA should review and approve all RAPs prepared by PEAs, and should make plans publicly available.</li> </ul>

# LAA & NIRP: COMPARATIVE ANALYSIS

<p><b>Acquisition on an urgent basis</b></p>	LAA	<ul style="list-style-type: none"> <li>The State is <b>permitted</b> to acquire the land on an urgent basis, at any time after notice regarding the acquisition of land has been displayed on or near the land - i.e. notice under Sections 2 or 4.</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>The State is <b>prohibited</b> from acquiring land on an urgent basis.</li> <li>Replacement costs should be paid and reasonable notice should be given before the acquisition.</li> </ul>
<p><b>Role of affected persons</b></p>	LAA	<ul style="list-style-type: none"> <li>No role</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>Affected persons should be made active stakeholders in the relocation and resettlement process.</li> <li>Affected persons should be involved in the selection of relocation sites, livelihood compensation and development options.</li> </ul>
<p><b>Scope of 'affected persons'</b></p>	LAA	<ul style="list-style-type: none"> <li>Affected persons are <b>described narrowly</b> as persons who are physically displaced from the land due to the acquisition.</li> </ul>
	NIRP	<ul style="list-style-type: none"> <li>Affected persons are <b>defined broadly</b> as persons affected by changes to use of land, water or other resources caused by development projects.</li> </ul>

# COMPLIANCE WITH NIRP

## GOVERNMENT COMPLIANCE

NIRP places a responsibility on the Ministry of Lands (now the Ministry of Lands and Land Development) to propose amendments to the LAA, so as to bring it in line with the policy. Therefore, in order to fully comply with NIRP, the government must amend the existing law to reflect the contents of the policy. This obligation is part and parcel of NIRP itself. Thus the government's failure to convert NIRP into statutory law amounts to non-compliance with the policy. Proposed amendments are yet to be placed before Parliament.

## CHERRY-PICKING PROJECTS

At present, the government has opted to apply NIRP only to a handful of projects. For example, it applied NIRP to the Lunawa Environmental

Improvement and Community Development Project and the Upper Kotmale Project.<sup>10</sup> These projects demonstrate the feasibility of NIRP, as the policy was implemented in full on both occasions. The government has also applied NIRP in respect of projects that were not ADB-funded. For example, the RAP for the World Bank Funded Road Sector Assistance Project (II) clearly mentions and complies with NIRP.<sup>11</sup>

However, there have been several instances where the government has failed to adhere to NIRP. In the past few years, the government has initiated several development projects that have resulted in displacement of persons. Yet many of these persons have not benefitted from NIRP.

The case studies section of this report offers a more detailed analysis of the relevant projects.

## CHERRY-PICKING PRINCIPLES

In addition to the selective application of NIRP to certain projects, the government has also incorporated certain elements of NIRP (particularly in relation to compensation) into statutory law.

The Ministry of Finance and Planning has taken steps to mainstream certain NIRP principles. For instance, the Ministry introduced a series of regulations to clarify, improve and streamline the deter-

mination of compensation and other entitlements of project-affected persons through the Department of Valuation.

In 2008, the Department of Valuation<sup>12</sup> introduced the National Policy on Payment of Compensation to overcome some of the weaknesses in the LAA. While this policy has demonstrated some initiative on the part of the government, the contents of the

policy are not easily accessible. Moreover, there is no clear evidence of broad compliance with such a policy. In 2009, the Cabinet of Ministers approved a new set of regulations pertaining to land acquisition, compensation and income restoration, which were developed as a part of the Policy on Payment of Compensation. The Ministry of Lands and Land Development accordingly

issued regulations under Section 63(2)(f) of the LAA in April 2009.<sup>13</sup> These regulations stipulate that compensation based on the market value of any property acquired under the Act should be computed on the following basis:

- When only a portion of a land is acquired and when the value of that portion as a separate entity is proportionately lower than the market value of the entire land, compensation should be proportionate to the value of the entire land.

*Illustration: The total extent of the acquired land is 100 acres and its value is LKR 100 Million. The extent of the acquired portion of the land is 30 acres. As a separate entity, the market value of the acquired portion would be LKR 25 Million. However, since the proportionate value of the acquired portion is LKR 30 Million, the compensation paid to the affected party should also be LKR 30 Million.*

- If the building is used for occupation or business purposes or is intended for such purposes on the date the acquisition notice is published, the difference between the cost of reconstruction and the value of the building (based on the market value determination above) should be paid as additional compensation.

NIRP itself requires that it is incorporated in its entirety into statutory law.

# COMPLIANCE WITH NIRP

The April 2009 regulations also stipulate that compensation should be paid for the following damages and losses:

- Expenses incurred for appearing for a Section 9 inquiry under the LAA
- Expenses for finding alternative accommodation
- Cost incurred in change of residence
- Cost of advertising
- Re-fixing cost of fixtures and fittings
- Expenses incurred for transport
- Loss of earnings from business (within the limits given in prevailing Act)
- Increased overhead expenses
- Double payments
- All other expenses to the owner due to the acquisition
- Any other additional expenses for disturbance or compensation not connected under any other sub-section of the LAA which is directly not connected to market value of the land
- When an owner of a house or of an investment property is displaced, additional 10% payment based on market value

April 2009 regulations: no compensation for loss of income if the livelihood activity is cultivation.

November 2009 regulations: applicable only to a limited number of projects; requires formal title to receive full relief; and does not guarantee public consultation.

These additional provisions improve the scheme of compensation under the LAA, but fall short of the expectations under NIRP, which provides for 'full replacement cost'. For instance, under the April 2009 regulations, compensation for loss of income is limited to earnings from a business as defined by the LAA. Section 46 of the LAA states: 'no compensation shall be allowed...if the business is the sale or disposal of the produce of the land to be acquired.' Hence individuals engaged in cultivation will not be entitled to compensation for loss of income under the April 2009 regulations.<sup>14</sup>

In November 2013, the government introduced further regulations under Section 63(2)(f) of the LAA.<sup>15</sup> These regulations provide for a new scheme of compensation applicable to a specific list of projects<sup>16</sup> and supersede the April 2009 regulations as far as these projects are concerned. The new regulations establish Land Acquisition and Resettlement Committees (LARCs) for each project, and vests powers in these committees to determine the compensation payable to affected persons.<sup>17</sup> Compensation payable under the new regulations includes replacement costs and loss

of income.<sup>18</sup> It also provides for a grievance mechanism in the form of a 'Super LARC' in the event that an aggrieved party is not satisfied by the determination of a LARC.<sup>19</sup> These mechanisms broadly reflect the mechanisms developed under NIRP, particularly in the context of the Southern Transport Development Project discussed below.<sup>20</sup>

The November 2013 regulations are an improvement on the previous schemes under the LAA and the April 2009 regulations. However, two concerns arise with respect to these new regulations. First, the scope of the regulations is limited to specific projects. Thus, they do not apply to all large-scale development projects that have caused displacement, such as the 'Special Zone for Heavy Industries'

in Sampur, Trincomalee and the Hambantota Port Development Project. Second, the regulations fall short of the standards of NIRP. For instance, only persons with formal title to the acquired land appear to be entitled to full compensation and alternative lands.<sup>21</sup> Those deemed by a LARC as 'encroachers' are neither entitled to compensation (except for improvements) nor, automatically, to alternative land.<sup>22</sup> Moreover, the regulations do not offer a mechanism for public consultation or guarantee solutions prior to displacement.

The foregoing analysis confirms that the government has selectively applied NIRP to some projects. Moreover, it has taken limited steps to incorporate certain elements of NIRP into statutory law. In both cases, the broad aims of NIRP, i.e. *to be incorporated in its entirety into statutory law*, have not been met by the government.

# COMPLIANCE WITH NIRP

## ADB COMPLIANCE

ADB played a pivotal role in the formulation and adoption of NIRP as official state policy in 2001. As mentioned above, NIRP places a direct obligation on the government to incorporate its principles into statutory law. Hence, full compliance with NIRP requires that the government amend the LAA to reflect the principles of NIRP.

ADB has a responsibility to make development assistance conditional on full compliance with NIRP. In doing so, however, it would need to insist that the government amends the LAA to ensure that NIRP applies to all development projects that cause displacement. Merely applying NIRP to ADB-funded projects would not amount to full compliance. However, during the past decade, ADB's approach to the question of involuntary resettlement has been narrow, as it has monitored compliance only in respect of ADB-funded projects.

Several such projects led to involuntary resettlement and required compliance with NIRP:

- Southern Transport Development Project (1999)<sup>23</sup>
- Southern Transport Development Project – Additional Financing (2008)
- National Highways Sector Project (2005)
- National Highways Sector Project – Additional financing (2011)
- Dry Zone Urban Water and Sanitation Project (2012)
- Southern Road Connectivity Project (2013)

These projects have largely complied with NIRP through the development of RAPs. Thus ADB appears to be taking steps to ensure compliance with NIRP as far as ADB-funded projects are concerned.<sup>24</sup> In July 2009, the ADB Board of Directors approved a Safeguard Policy Statement to be applied to all projects funded by ADB. This policy became effective in January 2010, and required that:

- Social impacts are identified and assessed early in the project cycle;
- Resettlement plans are prepared and implemented in a timely manner so as to avoid, minimise and mitigate adverse social impacts; and
- Those affected are informed and consulted during the project preparation/implementation.

ADB has a responsibility to make development assistance conditional on full compliance with NIRP, regardless of the funding source.

The question remains, however, whether ADB has a responsibility that extends beyond the projects it funds. On the one hand, it is possible to argue that monitoring national level compliance is beyond the remit of ADB. On the other hand, NIRP itself states that it applies to all development projects regardless of their sources of funding. Hence ADB has a responsibility to insist on compliance regardless of the funding source, and to make development assistance conditional on such compliance. Instead, ADB's insistence on compliance only in respect of ADB-funded projects has led to the selective application of the policy. Thus large-scale acquisitions for 'public purposes', such as the acquisition of 6,371 acres of private land in Valikammam, Jaffna,<sup>25</sup> have taken place without any compliance with NIRP. Meanwhile, large-scale demarcations of private land as 'Licensed Zones' under the Board of Investment Act No. 4 of 1978, such as the 'Special Zone for Heavy Industries' in Sampur, Trincomalee,<sup>26</sup> have also taken place without compliance with NIRP. The Hambantota Port Development Project<sup>27</sup> is another example of non-compliance. There were reports of inadequate compensation, irregular resettlement and resettlement in land unsuitable for cultivation.<sup>28</sup> Additionally, relocation sites were located far from the old town, which made it difficult for those resettled to engage in previous income generating activities.<sup>29</sup> As demonstrated in the case studies, the approach of ADB has helped maintain the space for the government's selective application of NIRP, thus significantly weakening NIRP's status as a national policy.

At present, neither the government nor ADB fully comply with NIRP. By failing to incorporate NIRP in its entirety into statutory law and by selectively applying NIRP to certain projects, the government has failed to fully comply with NIRP. By failing to make development assistance conditional on full compliance with NIRP and by monitoring compliance only in respect of ADB-funded projects, ADB has facilitated non-compliance.



# CASE STUDIES

## COMPLIANCE WITH NIRP

### Case Study 1: Southern Transport Development Project

The Southern Transport Development Project to build a highway that connected Colombo with Galle and Matara commenced in 1999. This project comprised two components, namely, the Southern Highway Component and the Road Safety Component. The project was funded by:

- Asian Development Bank (ADB)
- Japan International Corporation Agency (JICA)
- Nordic Development Fund (NDF)
- Swedish International Development Agency (SIDA)
- EXIM Bank of China
- Government of Sri Lanka

The loan by ADB was approved in 1999 and part of the loan was disbursed in 2004, while the remainder was disbursed in 2006. Project activities commenced in January 2003.

This project has come under much scrutiny with regard to the application of NIRP principles.

The Resettlement Implementation Plan (RIP) developed by the ADB in October 2002 estimated that:

- 5,683 households would be affected, of which 1,315 households would lose their homesteads; and
- Among the affected, 214 households were considered vulnerable and in need of special assistance to restore their incomes.

#### Government Compliance

The government appears to have taken measures to comply with NIRP during the project.<sup>30</sup>

#### Impact Mitigation

- The Road Development Authority (RDA) ensured that the Final Trace deliberately avoided highly populated areas, though at a cost to the environment.

#### Resettlement

- The RDA and local government institutions developed thirty two resettlement sites.

#### Compensation

- LARCs were established at the local level to provide compensation for affected persons and to enable them to understand and influence such decisions.<sup>31</sup>
- LARCs provided a forum for affected persons to negotiate the current market value of lands and replacement costs of structures, rather than accepting the statutory compensation paid through the LAA.
- To facilitate this process, separate committees were established in each DS division, headed by the Divisional Secretariat. If the affected person was not satisfied with the quantum of compensation, they could appeal to the 'Super LARC', which could be established by the relevant line ministry.
- Affected persons had the option of claiming compensation under the normal procedures provided for under the LAA, by way of a request to the RDA.

#### Calculation of Compensation

- Compensation was determined by supplementing the statutory payment determined under the LAA by the valuer for land and structures.
- Fixed allowances were paid to compensate for costs of replacement such as renting of temporary residence, preparation of documents, shifting and replacing utilities.

#### Community Participation

- Many of the resettlement sites were selected in consultation with the displaced persons.
- The LARC held consultations with the affected households to address dissatisfaction with compensation. If these negotiations failed, it would be carried on to the Secretary to the Ministry of Highways or in more extreme cases, to a court of law.

## Concerns

There were concerns that NIRP was not adhered to in full. These concerns were evidenced by the submission of a request for compliance review of the Southern Transport Development Project by the Joint Organization of the Affected Communities of the Colombo – Matara Highway.

### *Compliance Review Panel (CRP)*

The CRP was a three-member independent body appointed by the Board of Directors of ADB. Their role was to carry out the compliance review phase of the ADB accountability mechanism. Persons affected by ADB-assisted projects were permitted to file requests for a compliance review. The CRP was then responsible for inquiring whether the harm suffered by the complainants was caused due to non-compliance with ADB policies, and providing recommendations for remedial action.

### *Observations recorded by the CRP in 2004*

The CRP investigated the issues raised by the complainants affected by the Southern Transport Development Project. The issues included full compensation for resettlement, reconsideration of the road trace so as to minimise resettlement, provision of adequate land for replacement and the need for an independent committee to carry out a full investigation of the highway. The CRP submitted its final report with its findings and suggested remedial actions in 2005.

The main concerns it raised included:

- Selection of a trace which could avoid or minimize resettlement

The complaint was that the trace selected did not avoid or minimize resettlement and that there was inadequate exploration of viable alternative project options.

The NIRP clearly provided that involuntary resettlement should be avoided where possible and if not possible it should be minimized as much as possible by exploring other options.

The CRP discovered that in the course of project planning, there had been significant changes in the Original Trace. These changes had resulted in an increase in the number of affected families re-

quiring relocation from the initial estimate of 800 families to a final number of nearly 1,300 families. Additionally, another 6,000 families were affected and required compensation. According to the complainants, the Original Trace had mainly cut through abandoned and unproductive fields, whereas the Final Trace went through populated areas.

- Compensation

It was claimed that compensation for resettlement had been delayed and in certain instances was inadequate. There were also claims that in some cases the conditions of the affected persons had worsened.

The Loan Agreement between the government and ADB stipulated that adequate funds were to be allocated by the government to the RDA. However, it was revealed that ADB did not adequately act to ensure that funds were available to pay compensation on a timely basis. By May 2004, LKR 1,838.90 million was paid for this purpose. However, another LKR 2,055 million was required.

In the fourth monitoring report of the CRP (for 2009-2010), this issue had only partly been remedied. The CRP had recommended that all affected persons were to be fully compensated by actual payment before they move out. The monitoring report explained that this could not be complied with due to the advanced stage of the land acquisition. However, ADB, through its Sri Lanka Resident Mission, assured implementation of the Resettlement Implementation Plan (RIP). The report stated that, as of February 2010, full compensation had not been paid to fourteen out of 10,237 lots.

- Preparation of resettlement sites

The complaints raised in this regard were that these sites were not ready for resettlement, as the necessary infrastructure, such as roads and water supply, was inadequate.

The CRP discovered that affected families who had chosen to move into RDA resettlement sites had had to move in prematurely without some of the necessary facilities. However, it was noted that at the time of the report, the RDA was endeavouring to amend this issue.



## CASE STUDIES

- Initial Social Assessment for Final Trace

In 1992, the RDA designed the 'Original Trace' (also referred to as the RDA Trace) for the project. However, the project could not be carried out as the mandatory Environmental Impact Assessment (EIA) had not been obtained. In 1996, ADB developed an alternative design and this design was combined with the RDA Trace, to form the 'Combined Trace'. The required EIA and socio impact studies were completed in 1996. In 1999, the CEA approved the project. However, the CEA requested for some parts of the route to be changed and the RDA responded to this by drafting a new trace which is known as the 'Final Trace'.<sup>34</sup>

The complainants alleged that an Initial Social Assessment was not carried out for resettlement in areas where the Final Trace deviated from the Combined Trace. Thus it was alleged that the resettlement plan did not cover the Final Trace, and that those resettled were in a considerably worse off position.

According to ADB policy, resettlement plans were to be built into the development process. The CRP found that while a social impact assessment was carried out for the Original Trace and the Combined Trace, the Final Trace was adopted without conducting the required consultations and analysis.

- Involvement of the affected people during project identification and planning stages

The required consultation with affected persons at these stages allegedly did not take place. It was claimed that in some cases, eighteen months had lapsed (since the decision on the trace was first taken) before the affected persons were informed that they would lose their lands and houses.

The CRP noted that there was some confusion with regard to the level of information shared and understood on both sides. However, the CRP discovered that there was inadequacy with respect to public consultations conducted for certain areas in the Final Trace, which were not previously covered by the Original Trace.

- Availability of the Resettlement Implementation Plan (RIP)

The complainants claimed that the RIP was not made available to them. Further, despite the RDA stating in June 2004 that the RIP would be available in the Divisional Secretary's office within a month, it was not made available to the complainants.

The CRP found that the Sinhala translation of the RIP was only distributed in October 2004 to the Divisional Secretaries and RDA project offices. ADB was hence found to be in violation of its disclosure policy.

- Independent monitoring agency

The Loan Agreement provided that an independent monitoring agency, which was acceptable to ADB, should be appointed in order to supervise and monitor the RIP, grievance procedures and resolution of disputed claims for compensation. The complainants raised concerns regarding the fact that the required monitoring had not been carried out.

The CRP explained that there had been initial compliance with this requirement, with the appointment of a local firm as a monitor. However, in 2002, the RDA cited inadequate performance and appointed Finnroad Ltd. as the monitor, with the agreement of ADB. However, Finnroad Ltd. was also a Management Consultant for RDA, which raised concerns over the objectivity of the monitoring. In March 2004, Finnroad Ltd. described the resettlement process as a success thus far, while other staff reports were critical of the RDA. Hence the CRP found this appointment to be a violation of ADB policy.

*The ADB Board of Directors approved the findings and recommendations of the CRP and efforts were taken to implement the recommendations. The CRP monitored the implementation of these recommendations on an annual basis. The fourth monitoring report (for the period 2009-2010) stated that, as of May 2010, only two of the original nineteen recommendations remained to be implemented.<sup>32</sup> In 2011, the fifth and final monitoring mission of the CRP found that all the recommendations had been complied with.<sup>33</sup>*

## Case Study 2: Lunawa Environmental Improvement and Community Development

The Lunawa Lake catchment area, located within Moratuwa and Dehiwala – Mt. Lavinia Municipal Council areas, suffered from frequent flooding. The aim of this project was to mitigate flooding by improving drainage and the canal systems of the Lunawa Lake catchment area.

In 2003, the Government of Sri Lanka and the Japan Bank for International Cooperation (JBIC) jointly agreed to utilise NIRP in the implementation of this project. As a result of this project, 18,000 families were directly or indirectly affected, and 833 of these families were entitled to resettlement under NIRP principles.

The options made available to these families included relocation to other areas, cash payment for surrendered lands, and resettlement within sites sponsored by the project. Those who selected resettlement within the sites were provided with 50 sq-meter houses on serviced land, which included access to roads, sanitation and water connections. Those who opted to settle elsewhere received full replacement cost of the property acquired, together with a resettlement allowance and income restoration grant. Persons without legal land ownership titles were also entitled to these packages.

An assessment in March 2009 revealed:

- 88 households were resettled in four resettlement sites. Basic infrastructure i.e. access roads, water supply, electricity, and sewerage facilities were provided;
- 196 households were resettled in lands purchased using resettlement compensation packages; and
- 566 households were resettled in the original sites after regularising the plots (i.e. on site resettlement).

Through the application of NIRP, many of those affected were granted security of tenure, in most cases for the first time. Additionally, women were made joint owners of the properties on which they were resettled.

Main features of the resettlement strategy:

### *NIRP redefinition of project-affected persons*

NIRP definition of 'project-affected persons' was much wider than the LAA's definition of 'persons interested'. This project included those who had no recognisable legal right or claim, but were in occupation of the land at the time the socio-economic survey under the project was carried out.

### *Active participation of project-affected persons*

All resettlement sites, layout plans and house designing were formulated in consultation with project-affected persons. Furthermore, a Livelihood and Income Restoration Programme was developed in consultation with them. To ensure effective communication, a Community Information Centre was established in the project office.<sup>35</sup> Neighborhood Development Forums were created to represent the interests of persons resettled elsewhere.

### *Entitlements to affected persons*

Links were established with banks to pay entitlements. Those without land ownership received a minimum bottom line entitlement package. The bottom line package consisted of a 50 sq-meter parcel of serviced land in a resettlement site free of costs and a minimum amount of LKR 400,000 to build a house. Families could also request for the value of the serviced land and purchase a piece of land at a desired location.

### *Community development opportunity*

Community Development Committees and NGOs worked in project planning in order to ensure that community development opportunities were utilised. The project was designed so as to create and strengthen the abilities of community members in terms of building infrastructure and carrying out contracts for operation and maintenance work, all of which improved incomes within the community.<sup>36</sup>

*This project faced some challenges in terms of the payment of entitlements, the land surveying process, and the valuation process. There were also concerns about the reduced participation of middle and high-income project-affected persons.<sup>28</sup> However, despite these setbacks, the Lunawa project remains a vital illustration of how NIRP can be successfully applied, even in a complex urban environment.*

## NON-COMPLIANCE WITH NIRP

NIRP is applicable to *all* development-induced displacement. Hence any land acquisition that causes displacement should be carried out in accordance with this policy.

The following case studies examine instances where NIRP has not been complied with despite development-induced displacement taking place.

### Case Study 3: Evictions from the Trincomalee HSZ/SEZ

In October 2006, a gazette notification was issued establishing a Special Economic Zone (SEZ) in Trincomalee.<sup>38</sup> Subsequently in 2007, areas within Sampur and Muttur East were declared High Security Zones (HSZ). Some of these areas also fell within the SEZ.<sup>39</sup>

A SEZ does not usually prevent movement of persons within the area. However, since parts of the Trincomalee SEZ fell within the HSZ, freedom of movement within the zone was restricted, thereby affecting 4,249 families (amounting to 15,648 individuals).<sup>40</sup>

In 2008, there was a reduction in the size of the HSZ, and the government permitted some families to return to these areas.<sup>41</sup> While the reduction of the HSZ benefited families whose lands fell out of the Sampur HSZ, the remaining families were not afforded a remedy. Following the government's decision to discontinue the state of emergency in August 2011, all HSZs, including the Trincomalee HSZ, technically ceased to exist. However, areas within the former HSZ continue to remain restricted, thereby establishing a *de facto* HSZ.

In May 2012, Gazette No. 1758/26 declared that the land acquired in the area was to be developed into a 'Special Zone for Heavy Industries'. Hence those originally displaced by the HSZ now continue to be displaced for development purposes. The transformation of the nature of displacement raises serious questions in terms of the applicability of NIRP. Those displaced were only given a standardised compensation and relocation package.<sup>42</sup> However, such a standard package is unlikely to meet the specific needs of many affected people and falls short of the standards guaranteed under NIRP.

### CASE STUDY 4: Evictions in Colombo – Mews Street and Borella

The Urban Regeneration Project implemented by the Urban Development Authority (UDA), seeks to 'make the City of Colombo the most attractive city in South Asia'.<sup>43</sup> According to the UDA website, this will involve the relocation of 70,000 households. Two specific cases that relate to this initiative are discussed below.

#### *Mews Street, Slave Island*

In May 2010, 33 families were evicted from Mews Street, Slave Island. According to a study conducted by the Centre for Policy Alternatives (CPA),<sup>44</sup> none of these residents were given any information with regard to accommodation or compensation. These residents were subsequently informed by the UDA that permanent housing apartments were to be constructed in Dematagoda within a year. They were also promised a rental allowance.

The evicted families thereafter filed a Fundamental Rights petition against the UDA.<sup>45</sup> Following the case, the UDA reportedly offered alternative accommodation to the aggrieved families, which was found to be unsatisfactory.<sup>46</sup> In 2013, the new resettlement complex was opened. However, none of the Mews Street evictees were allotted any apartments in this complex. They are yet to receive permanent housing.<sup>47</sup>

#### *Borella*

A study conducted by CPA<sup>48</sup> revealed that inadequate measures were taken to resettle families evicted from Castle Street, Borella in November 2013. While these families did not possess clear titles to their lands, they received municipal services and were acknowledged as residents.<sup>49</sup> Several families had invested significantly in improvements to their houses, while others carried out small home-businesses within the premises. Resettlement plans for the evicted families were not clearly formulated and were implemented in an arbitrary manner. Some relocated residents complained that the new apartments they received were of poor quality.<sup>50</sup>

## CASE STUDIES

An attempt was made to evict residents in Wanathamulla, Borella in December 2013. A petition filed by residents of “34 – watte” street in Wanathamulla explained that they had occupied these premises since the 1950s and had received formal title deeds by the Municipal Council of Colombo in 1979. These residents were not consulted or included in the resettlement process.<sup>51</sup> Further, instead of compensation they were offered housing suspected of being sub-standard.<sup>52</sup> Additionally, the residents were required to contribute towards meeting a portion of the housing costs.<sup>53</sup> This consisted of an initial payment of LKR 50,000 with a

further LKR 50,000 to be paid within the first three months for maintenance of the apartments, and monthly installments of LKR 3,960 over the next 20 years.<sup>54</sup>

*The Urban Regeneration Project is clearly development-related. Hence NIRP is applicable to the initiative. NIRP specifically applies to affected persons who do not have documented title to land. Therefore, under NIRP, those occupying houses at the time of the seizures and demolitions are entitled to ‘fair and just treatment’, including resettlement plans and compensation.*

# CONCLUSION

NIRP provides the development sector with a sound framework that integrates certain internationally recognised principles into the development planning process. The policy offers durable solutions to the problem of development-induced displacement by focusing on impact mitigation, resettlement and reintegration, community participation and gender equity and equality.

This study has attempted to dispel two misconceptions about NIRP. First, it has been suggested that the policy is not recognised by the present government, given the fact that a previous government adopted it more than a decade ago. However, the present government has referenced the policy as evidence of an existing state policy on the non-utilisation of private lands for ‘settlements by a government agency’.<sup>55</sup> Though the precise meaning of ‘settlements by a government agency’ is unclear, the recognition of NIRP as part of the present government’s national policies remains without doubt. Hence NIRP retains its currency as a set of best practices with respect to involuntary resettlement. Second, any doubts pertaining to the feasibility of NIRP may be laid to rest given the success of the Lunawa Project. The case proves that NIRP could offer durable solutions, provided there is sufficient political will to apply the policy in full.

Despite the official recognition of NIRP, and notwithstanding its overall feasibility, there has been consistent resistance to mainstreaming the policy outside ADB-funded projects. The policy has not been applied to numerous acquisitions for so-called public purposes. Meanwhile, the government has taken limited steps to improve the scheme of compensation under the LAA. Yet these schemes are also selectively applied and fall short of the standards of NIRP. Moreover, ADB’s own compliance monitoring has been limited to the projects it funds. This study thus questions the role of ADB in maintaining the space for such selective application, which has in turn weakened the status of NIRP as a national policy.

In this context, there is an urgent need to build an advocacy campaign around NIRP and ensure greater levels of compliance. We conclude by offering the following recommendations:

- Educate the public on the contents of the policy:
  - Trilingual versions of the policy should be widely circulated amongst the public – particularly communities at risk of or in the process of involuntary resettlement.
  - Civil society organisations dealing with land issues, development and displacement should disseminate the policy and hold information sessions on its contents.
  - Greater awareness of the policy will enable communities faced with involuntary resettlement to demand full compliance with NIRP.
- Lobby the government to amend the LAA to bring it in line with NIRP:
  - Political actors, including parliamentarians, should raise the issue at their respective fora, drawing attention to the contents of the policy and the urgent need to reform the legal framework to reflect those contents.
  - Civil society organisations should lobby the Ministry and political actors dealing with land issues, development and displacement in order to compel reform. Civil society should generate public support for such reform through public information and media campaigns.
  - The Ministry of Lands and Land Development should be engaged in order to compel the amendment of the LAA.
  - The Ministry should draft amendments to the LAA and have the proposed amendments approved by the Cabinet of Ministers.
  - Proposed amendments should thereafter be introduced in Parliament.
- Engage development funders and agencies, including ADB, to ensure greater compliance:
  - Political actors and civil society organisations should engage development funders and agencies on conditions imposed on the government.
  - Development funders and agencies should make their support towards all ongoing and potential development projects conditional on full compliance with NIRP.<sup>56</sup>



# END NOTES

<sup>1</sup>The LAA has defined ‘public purpose’ to include ‘a purpose which, under this Act or any other written law, is deemed to be a public purpose’. The judgment in *Mendis et al. v. Perera et. al.* [Supreme Court] S.C. (FR) No. 352/2007 provides a more explicit definition of the term ‘public purpose’. The term ‘public purpose’ under the LAA requires the primary object of the acquisition to be for the ‘public utility and benefit of the community as a whole’ and ‘contemplates a benefit of a sufficiently **direct** nature’ (emphasis added).

<sup>2</sup>See National Involuntary Resettlement Policy, Forward, para.4.

<sup>3</sup>*Ibid.* clause 3.

<sup>4</sup>Letter dated 31 January 2013 (LD/NIRP/01) by W.K.K. Kumarasiri, Secretary, Ministry of Lands to all Chief Secretaries.

<sup>5</sup>National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Thematic Area (June, 2013), p.12.

<sup>6</sup>See Centre for Housing Rights and Evictions, Shadow Report to the United Nations Committee on the Elimination of Discrimination against Women – Sri Lanka, 48th Session, 17 January – 4 February 2011, p.12, citing COHRE, Gender Sensitive Guidelines on Implementing the Tsunami Housing Policy, July 2006, p.1.

<sup>7</sup>The Attorney-General’s department, in a legal opinion addressed to the Secretary, Ministry of Land and Land Development, dated 28 January 2008, observed that there is no prohibition against granting co-ownership under the State Lands Ordinance, if it is the policy of the state.

<sup>8</sup>Para 6(a)(ii) World Bank Involuntary Resettlement Policy (Revised April 2013).

<sup>9</sup>*Ibid.* Para 6(b)(ii).

<sup>10</sup>Centre for Poverty Analysis, ‘Urban Evictions: Protecting the vulnerable in post election Colombo’, *The Sunday Times*, October 2011, at <http://sundaytimes.lk/111009/BusinessTimes/bt08.html>.

<sup>11</sup>See Ministry of Highways and Road Development, *Resettlement Action Plan, World Bank Funded Road Sector Assistance Project (II)* (January, 2011).

<sup>12</sup>The Department of Valuation regulates the country-wide registration of lands, definition of property boundaries, land partitioning, land transfers, land surveys and land acquisition, and determines market value of property acquired for a public purpose, such as for development projects.

<sup>13</sup>See Gazette Extraordinary No.1596/12 of 7 April 2009.

<sup>14</sup>The ADB Safeguard Policy Statement 2009 provided that income sources and livelihoods affected by project activities should be restored to pre-project levels, and that details on income restoration and livelihood improvements should be provided in the resettlement plan. These principles are explained in broad terms and ought to encompass all forms of livelihoods, including informal and unregistered businesses.

<sup>15</sup>See Gazette Extraordinary No. 1837/47 of 22 November 2013.

<sup>16</sup>The projects are: (a) Colombo - Katunayake Expressway Project; (b) Colombo Outer Circular Highway Project; (c) Southern Transport Development Project; (d) Colombo - Kandy Road Project; (e) Orugodawatta - Ambatale Road Project; (f) New Kelani Bridge Approach (Kelanimulla to Angoda, Koswatta Road) Project; (g) Mattakkuliya Bridge Approach (Central Road and Aluth Mawatha) Project; (h) Matara - Kataragama Railway (Construction Project); (i) Daduru Oya Reservoir Project; (j) Rathnapura - Balangoda road Project; (k) Balangoda - Bandarawela Road Project; (l) Padeniya - Anuradhapura Road Project; (m) Thambalagamuwa - Kinniya Road Project; (n) 5/2 Bridge Katugasthota - Kandy - Jaffna Road; (o) Matara - Godagama Road; (p) Horana - Pamankada Road; (q) Southern Expressway – Madurugoda Road; and (r) Kirulapana - Godagama Road.

<sup>17</sup>Under regulation 3(2) of the November 2013 regulations, the membership of a LARC includes: the Divisional Secretary or Assistant Divisional Secretary of the relevant Divisional Secretary’s Division; (b) the Surveyor General or his nominee; (c) the Chief Valuer or his nominee; and (d) an officer not below the rank of the Assistant Secretary nominated by the Minister to whom the subject of the respective Specified Project has been assigned.

## END NOTES

<sup>18</sup> See regulation 4(2)(b)(iii), (d), (g), (h) and (k).

<sup>19</sup> See regulation 5(2). The Super LARC comprises the Secretary of the Ministry of the Minister to whom the respective subject of the Specified Project is assigned or his representative; (b) the Secretary of the Ministry of the Minister to whom the subject of Land and Land Development is assigned or his representative; (c) the Secretary of the Ministry of the Minister to whom the subject of Finance is assigned or his representative; (d) the Chief Valuer or his representative; the Surveyor General or his representative; and (f) the Chairman or Chief Executive Officer of the respective Specified Project or a representative nominated by him.

<sup>20</sup> Certain policy documents refer to 'LARC' and 'Super LARC' as 'LARC 1' and 'LARC 2'.

<sup>21</sup> See regulation 4(2)(n).

<sup>22</sup> See regulation 4(2)(c) and (n).

<sup>23</sup> The project was designed prior to NIRP being approved by Cabinet. However, NIRP was made applicable to this project as well. See Centre for Poverty Analysis, *CEPA Proposal: ODI Civil Society Partnerships Programme Influencing Involuntary Resettlement Policy in Sri Lanka* (June 2006).

<sup>24</sup> There have been some instances where compliance was somewhat weak. For example, as evident in the case studies section, the Southern Transport Development Project received mixed reviews with regard to compliance with NIRP.

<sup>25</sup> See Gazette Extraordinary, No. 1807/23 dated 26 April 2013. According to the Centre for Policy Alternatives, approximately 6,300 families remain displaced as a result of the acquisition. See Mirak Raheem, *Protracted Displacement, Urgent Solutions: Prospects for Durable Solutions for Protracted IDPs in Sri Lanka*, Centre for Policy Alternatives (2013), p.23.

<sup>26</sup> See Gazette Extraordinary, No. 1758/26 dated 17 May 2012 issued under Section 22A of the Board of Investment Act (BOI), No. 04 of 1978. According to a report by the Law & Society Trust, approximately 1,300 families remain displaced as a result of the Special Zone. See Vindhya Buthpitiya, *Reconciling Rights, Responsibilities and Disjunctures: An Assessment of Sri Lanka's Post-War Development Drive*, Law & Society Trust (November 2013), p.8. The existing Special Zone was originally part of a larger Special Economic Zone (SEZ) declared in 2006 under Section 22A of the BOI Act. See Case Study 3 for more details.

<sup>27</sup> The project was financed by the Sri Lanka Ports Authority and the China EXIM Bank.

<sup>28</sup> V. Buthpitiya, *Reconciling Rights, Responsibilities and Disjunctures: An Assessment of Sri Lanka's Post-War Development Drive*, Law & Society Trust, November 2013, p.7.

<sup>29</sup> C. Priyanka, 'Before Salt dissolves: The gradual degeneration of the quality of life of victims of Hambantota Mega Development Projects', Law & Society Trust, *ESCR Newsletter* Issue 7, September 2013, p.3.

<sup>30</sup> Centre for Poverty Analysis, 'Lives built on shifting sands', *The Nation*, 26 February 2012, at: <http://www.nation.lk/edition/business-tbl/item/3144-lives-built-on-shifting-sands.html>; Priyanthi Fernando - Centre for Poverty Analysis, 'Right of way: A story yet to be told', *The Island*, 13 December 2011, at: [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=41114](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=41114).

<sup>31</sup> Priyanthi Fernando, *Forced to Move: Involuntary Displacement and Resettlement – Policy and Practice*, Centre for Poverty Analysis (2009), at <http://www.cepa.lk/uploads/110712040737Forced%20to%20move%20-%209th%20sympo.pdf>.

<sup>32</sup> Asian Development Bank, *Accountability Mechanism Compliance Review Panel* (July 2010) at: [http://compliance.adb.org/dir0035p.nsf/attachments/CRP4thMonitoringReport-STDP-final.pdf/\\$FILE/CRP4thMonitoringReport-STDP-final.pdf](http://compliance.adb.org/dir0035p.nsf/attachments/CRP4thMonitoringReport-STDP-final.pdf/$FILE/CRP4thMonitoringReport-STDP-final.pdf).

<sup>33</sup> Asian Development Bank, *2011 Annual Report of the Compliance Review Panel*, at <http://www.adb.org/sites/default/files/crp-annual-report-2011.pdf>.

<sup>34</sup> Hemantha Witanage, *Southern Transport Development Project Sri Lanka*, Philippine Rural Reconstruction Movement with NGO Forum on the ADB, at <<http://www.forum-adb.org/docs/ADB-and-the-Environment-case1.pdf>>

## END NOTES

<sup>35</sup> The affected persons were able to present their complaints, either verbally or in writing to the Community Information Centre. Following a consultation, a documented response is provided to the claimants within 15 days, and if the claimants are not satisfied with their decision, they are permitted to submit their case to the National Project Director. The Ministry of Urban Development and Sacred Area Development (as it was then known) is expected to provide a documented response to the claimant within 15 days.

<sup>36</sup> India Environmental Portal: Knowledge for Change, Lunawa Environmental Improvement & Community Development Project, India Environmental Portal, at <http://www.indiaenvironmentportal.org.in/deep-focus/sri-lanka/lunawa-environmental-improvement-community-development-project>.

<sup>37</sup> Thilak Hewawasam, UN Habitat, *Innovative Approaches for Involuntary Resettlement*, 7<sup>th</sup> FIG Regional Conference, at [http://www.fig.net/pub/vietnam/ppt/fao04/fao4\\_hewawasam\\_ppt.pdf](http://www.fig.net/pub/vietnam/ppt/fao04/fao4_hewawasam_ppt.pdf).

<sup>38</sup> See Gazette Extraordinary No. 1467/03 published on 16 October 2006 in terms of Section 22A of the BOI Act No. 4 of 1978.

<sup>39</sup> See Emergency (Muttur (East)/Sampoor High Security Zone) Regulations No. 2 of 2007.

<sup>40</sup> Speech delivered by Hon. R. Sampanthan, Member of Parliament, Trincomalee District and Parliamentary Group Leader, Illankai Tamil ArasuKadchi (ITAK) on the Adjournment Motion relating to the declaration of Muttur East- Sampur as HSZ on 20 June 2007.

<sup>41</sup> According to Gazette Extraordinary No.1573/19 of 30 October 2008, the extent of the Sampoor HSZ was reduced from 110 sq-km to 38 sq-km.

<sup>42</sup> The standardised IDP relocation and compensation package consisted of a house, 20 perches of land, and LKR 25,000 for household goods and livelihood assistance. See Centre on Housing Rights and Evictions, *High-Security Zones and the Rights Return and Restitution in Sri Lanka – A Case Study of Trincomalee District* (April 2009), p.24.

<sup>43</sup> Urban Development Authority, *Vision – Urban Regeneration Project*, at [http://www.uda.lk/investment\\_relocation.html](http://www.uda.lk/investment_relocation.html).

<sup>44</sup> Centre for Policy Alternatives, *Forced Evictions in Colombo: The Ugly Price of Beautification* (April 2014) ('CPA: 2014'), pp.24-25.

<sup>45</sup> SC (F.R) Application No 349/10.

<sup>46</sup> See Collective for Economic, Social and Cultural Rights In Sri Lanka, *Sri Lanka: Implementation of the International Covenant on Economic, Social And Cultural Rights* (September 2010), p.14.

<sup>47</sup> CPA: 2014, pp.24-25.

<sup>48</sup> *Ibid.* p.33.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> CA (Writ) Application No: 283/14.

<sup>52</sup> CPA: 2014, p.33.

<sup>53</sup> *Ibid.*

<sup>54</sup> CA (Writ) Application No: 283/14.

<sup>55</sup> National Plan of Action for the Implementation of LLRC Recommendations – Responsibilities by Thematic Area (June, 2013), p.12.

<sup>56</sup> Development funders and agencies play a role in maintaining the space for selective application of and non-compliance with NIRP.





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