

# REBUILDING AFTER THE TSUNAMI: keeping it legal



*There is an urgent and pressing need to rebuild the infrastructure that was shattered by the tsunami of December 26 — and especially to re-house the hundreds of thousands of people whose homes have been destroyed or damaged severely.*

*Sri Lanka has long had a comprehensive legal framework relating to coastal management and development. This includes laws and regulations which govern building. Some of these address local concerns, and others take national and regional planning and development into consideration.*

*The laws incorporate environmental and safety aspects. They specify what can and cannot be built, where building can take place and where it can not, and detail the proper procedures to follow and institutions to consult when undertaking construction activities.*

*Almost all rebuilding and resettlement activities are being carried out within a kilometre of the coastline. These areas have a high population density and contain many ecologically sensitive areas. Land suitable for building permanent housing is scarce and in great demand. In coastal areas there also exist long-established settlement and cultural patterns, and a land ownership and succession system and legal framework that is clearly established and known, and has been in existence for many centuries.*

*In the past land-use and building regulations were often weakly (if at all) enforced. Many buildings were illegally sited or poorly planned. As was made evident in the aftermath of the tsunami, this seriously undermined the security of coastal settlements. As post-tsunami reconstruction takes place it is vital that existing laws and norms are recognised.*

*This includes addressing laws relating to the identification of land suitable for building houses; what structures may be built once the land is identified; the acquisition of land from private individuals and alienation of state land; and succession and ownership.*

*Many agencies, individuals and investors are currently involved in post-tsunami reconstruction. Yet there remains a great deal of confusion (and sometimes even misinformation) about the rules and regulations that govern coastal development and conservation. In many cases rebuilding is going ahead with scant regard to these laws, which are being blatantly flouted.*

*Re-establishing the rule of law, and committing to uphold existing laws relating to coastal development and conservation, will be integral to rebuilding properly after the tsunami — and to maintaining the long-term safety and security of Sri Lanka's coastal residents.*



## **EFL** **Policy Paper** **June 2005** **Environmental** **Foundation Ltd (EFL)**

EFL is a non-profit public interest organisation, whose mission is the conservation and enhancement of the natural environment through legal means.

Since 1981 EFL has established itself as a driving force in promoting environmental justice for the people of Sri Lanka, particularly poor and disadvantaged communities, through the provision of mediation, representation and advocacy services, and legal and scientific support, in environmental matters.

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There are a number of laws and regulations which govern building in the Democratic Socialist Republic of Sri Lanka, some which address local conditions and others which have to take into consideration national and regional planning and development. Both these and the relevant authorities responsible for their implementation are described in the paragraphs which follow.

This briefing paper outlines Sri Lankan laws and regulations relating to:

- **Construction in the coastal zone;**
- **Government agencies that have broad jurisdiction over construction activities;**
- **Areas where construction is not allowed, or where special permission must be sought;**
- **Institutions and laws governing environmental aspects and impacts of construction activities;**
- **Activities that require special approval or assessment procedures;**
- **Summary of laws relevant to the reconstruction process.**

## Construction in the coastal areas

*The majority of reconstruction activities are being carried out in coastal areas of Sri Lanka, because this is where the bulk of the direct impacts of the tsunami occurred. There exist legal definitions of the “coastal zone”, and the “development activities” that take place in it. Special laws also govern the type and location of building activities that are permitted in coastal areas, and the procedures that must be followed when construction is planned and implemented.*

### ***What authorities are mandated to oversee building in coastal areas?***

Tsunami-related damages have occurred within a kilometre or so of the coast. This is where rebuilding and resettlement is taking place.

**Gazette No. 223/16 – 1982** under the **Urban Development Authority Law No 41 of 1978 as amended** declares this area (the area lying within the limits of 1 km of the Mean High Water line of the sea is suitable) as an Urban Development Area, and the **Urban Development Authority Law No 41 of 1978 as amended** states that all development activity within urban development areas shall fall under the purview of the Urban Development Authority. Furthermore, according to the **Coast Conservation Act No.57 of 1981 as amended**, the Coast Conservation Authority is mandated to regulate and control development activities in the Coastal Zone (as defined below).

Authorities responsible for the implementation of other laws and regulations which govern building in particular areas or under particular conditions are described further below.

### ***What constitute development activities in the coastal zone?***

According to Section 2 of the **Coast Conservation Act**:

- The **Coastal Zone** means “that area lying within a limit of three hundred metres landwards of the Mean High Water line and a limit of two kilometres seawards of the Mean Low Water line and in the case of rivers, streams, lagoons or any other body of water connected to the sea either permanently or periodically, the landward boundary shall extend to a limit of two kilometres measured perpendicular to the straight base line drawn between the natural entrance points thereof and shall include the waters of such rivers, streams, lagoons or any other body of water so connected to the sea.”



- A **Development Activity** means “any activity likely to alter the physical nature of the Coastal Zone in any way and includes the construction of buildings and works, the deposit of wastes or other material from outfalls, vessels or by any other means, the removal of sand, coral, shells, natural vegetation, seagrass or other substances, dredging and filling, land reclamation and mining or drilling for minerals, but does not include fishing.”

### ***Are building and other development activities in the Coastal Zone governed differently than those in other areas of the country?***

In addition to the laws and regulations which govern building and other activities throughout Sri Lanka, Section 14 of the **Coast Conservation Act** makes it mandatory that a permit be obtained from the Coast Conservation Authority for any development activity falling within the Coastal Zone unless it is duly prescribed. Building is not prescribed, and therefore always requires a permit from the Coast Conservation Authority. Without a permit, building is deemed unauthorised, and unauthorised construction is banned within the Coastal Zone.

The procedure of applying for a permit to build in the Coastal Zone proceeds according to the following general steps:

- An application to build is made to the Director of the Coast Conservation Department.
- The Director may choose to call for an Environmental Impact Assessment Report.
- The report will be open for public hearing and scrutiny for 30 days after its publication in the Gazette

The Director will arrive at a decision regarding the application after considering the views of the Coast Conservation Advisory Board.

It should be noted that an Environmental Impact Assessment (EIA) may be required as part of the process by which the issuing of a permit is considered. Post tsunami reconstruction and rebuilding is of such magnitude that the exclusion of these activities from EIA requirements may not be justifiable. Legal requirements for EIA are described further below.

The **Coast Conservation Regulation No. 1 of 1982** as set out in Gazette Notification No. 260/22 – 1983 sets out in detail the regulations pertaining to development activities which are permitted or prohibited in the Coastal Zone. Prohibited development activities are defined in other legislation such as the Fauna and Flora Protection Ordinance, the Forest Ordinance, the National Environment Act and the Antiquities Ordinance (these are detailed below).

## **Government agencies that have broad jurisdiction over construction activities**

*A variety of national government agencies and local authorities are legally empowered to oversee, regulate and grant approval for construction activities in Sri Lanka within different areas and levels of scale.*

### ***The Urban Development Authority is mandated to oversee development activities in urban development areas***

**Gazette No. 223/16 – 1982** under the **Urban Development Authority Law No 41 of 1978 as amended** declares that “the area lying within the limits of 1 km landwards of the Mean High Water line of the sea is suitable for development and by order of the Government of Sri Lanka declared to be an Urban Development Area”.

The **Urban Development Authority Law** also establishes the Urban Development Authority (UDA) in order to promote integrated planning and implementation of economic, social and physical



development in areas declared as urban development areas. Section 8 states that all development activity within urban development areas shall fall under the purview of the UDA.

The provisions of the **Urban Development Authority Planning and Building Regulations 1986** as set out in **Gazette No. 392/ 9** describe the regulations covering any development activity within urban development areas, including reconstruction and rebuilding. These include, but are not limited to:

- Building categories;
- Submission of structural and service plans;
- Preliminary planning clearance and approval of plans;
- Development to be in conformity with the permit;
- Suitability of site;
- Use of site;
- Floor area ratio access specification as to lots;
- Height of building;
- Street line and building lines;
- Layouts for flats and housing units;
- Open spaces around buildings;
- Mechanical ventilation and air conditioning;
- Foundations;
- Water supply and sewage;
- Drainage;
- Waste disposal;
- Electrical and plumbing work;
- Fire safety;
- Certificate of conformity.

### ***The Coast Conservation Authority is mandated to regulate and control development activities in the Coastal Zone***

According to the **Coast Conservation Act**, the Coast Conservation Authority is mandated to “make provision for the survey of the Coastal Zone and the preparation of a Coastal Zone Management Plan; to regulate and control development activities within the Coastal Zone; to make provision for the formulation and execution of schemes of work for coast conservation; to make consequential amendments to certain written laws; and to provide for matters connected therewith or incidental thereto.”

### ***The National Housing Authority is mandated to engage in all housing and construction issues at a national level***

The **National Housing Development Authority Act No. 17 of 1979 as amended** establishes the National Housing Development Authority (NHDA). Section 4 empowers the NHDA to engage in all housing and construction issues at a national, with the objectives of:

- To directly engage itself in the construction of flats, houses and other living accommodation or buildings;
- To formulate schemes to establish housing development projects in order to alleviate the housing shortage;
- To cause the clearance of slum and shanty areas and the re-development of such areas;
- To promote housing development;
- To develop or re-develop land for the carrying out of any of the objects of the Authority;
- To make land available to any person for housing development;
- To provide financial or other assistance to persons engaged in any activity which is similar to any of the objects of the Authority;
- To conduct, promote and co-ordinate activities in relation to all aspects of housing development; and;
- To do all such other acts as any be necessary or conducive to the attainment of any of the above objects.

### ***At the local level, approval for building must be sought from Municipal Councils, Urban Councils and Pradeshiya Sabhas***

According to the **Municipal Councils Ordinance No. 29 of 1947**, the **Urban Councils Ordinance No. 61 of 1939** and the **Pradeshiya Sabha Act No. 15 of 1987 as amended**, in areas falling within the purview of Municipal Councils, Urban Councils and Pradeshiya Sabhas respectively, approval should be sought prior to reconstruction and rebuilding so as to ensure that the proposed area does not fall within an area allocated for a public purpose or reservation. Structural and other specifications are also taken into consideration when processing an application to construct.



## **Areas where construction is not allowed, or where special permission must be sought**

*Building activities are restricted by law in and around many ecologically and culturally sensitive areas. In some instances construction is prohibited completely, and in other cases special approval is required from the relevant authorities.*

### **No construction activities are permitted in National Reserves**

Section 2 of the **Fauna & Flora Protection Ordinance No. 2 of 1937 as amended** specifies the following areas as being National Reserves:

- Strict Natural Reserves;
- National Parks;
- Nature Reserves;
- Jungle Corridors;
- Refuges;
- Marine Reserves;
- Buffer Zones.

As defined in Section 2 of the **Fauna & Flora Protection Ordinance**, the Minister may by Order published in the Gazette declare that any area of Crown Land shall for the purposes of this Ordinance be a National Reserve and may by a subsequent Order published in the Gazette declare that the whole or any specified part of any National reserve shall be declared a "Buffer Zone".

National Reserves are under the jurisdiction of the Department of Wildlife Conservation. No construction at all is permitted in them.

### **Construction within 1 mile of National Reserves, Sanctuaries and Buffer Zones requires permission from the Department of Wildlife Conservation**

By Order published in the Gazette, the Minister may declare any specified area of State land or land other than State land within Sri Lanka as a Sanctuary (other than land declared to be a National Reserve). Construction in Sanctuaries requires consultation with the Department of Wildlife Conservation.

Construction within a 1 mile radius of a National Reserve, Sanctuary or Buffer Zone requires permission from the Department of Wildlife Conservation.

### **Construction is prohibited in Forest Reserves, and requires permission from the Forest Department in areas close to them**

The **Forests Ordinance No. 16 of 1907 as amended**, authorises the Minister of Wildlife and Natural Resources to declare any areas as a Forest Reserve, and to prohibit certain activities from being carried out in these designated areas. Tree felling, cultivation and the construction of buildings and roads are all activities that are prohibited in Forest Reserves.

Control and monitoring of forests fall within the authority of the Forest Department. Any reconstruction or rebuilding taking place in close proximity to a Forest Reserve must be approved and cleared by the Forest Department.

### **Construction in and around Fishery Reserves requires permission from the Director of Fisheries and Aquatic Resources**

Section 36 of the **Fisheries and Aquatic Resources Act No. 2 of 1996**, enables certain areas to be demarcated and protected as Fishery Reserves in order to protect or develop aquatic species, conserve the environment or facilitate scientific research. In this regard, certain areas adjoining earmarked reservoirs and water bodies can be declared as a fishery reserve with the concurrence of the Minister of Wild Life and Natural Resources. Any development activity in a fishery reserve requires the permission and approval of the Director of Fisheries and Aquatic Resources.



### ***Construction is prohibited in Archaeological Reserves***

The **Antiquities Ordinance No. 9 of 1940 as amended** provides for the Director General of Archaeology to declare certain areas as Archaeological Reserves. Encroachment of any kind for whatever purpose (including construction) is deemed an offence under Section 34 of the Ordinance.

### ***Construction on paddy land requires permission from the Commissioner General***

According to Section 32 of the **Agrarian Development Act No. 46 of 2000**, the use of paddy land for a purpose other than agricultural cultivation without the written permission of the Commissioner General is a punishable offence.

## **Institutions and laws governing environmental aspects and impacts of construction activities**

*There are a wide range of environmental issues associated with building, including those relating to the clearance or modification of natural ecosystems, construction design and technology, water supplies and sewage and waste disposal. A variety of laws establish and enforce environmental standards, safeguards and protection requirements for construction, infrastructure and human settlement.*

### ***Environmental management***

The **National Environmental Act No. 47 of 1980 as amended** establishes the Central Environmental Authority (CEA) to ensure that the environment is put to beneficial use and protected and managed in a manner conducive to prudent and long-term sustainable development. In Section 33 it defines the environment as “the physical factors of the surroundings of human beings including land, water, soil, atmosphere, climate, sound, odours, tastes, and the biological factors of animals and plants of every description.”

### ***Waste management***

Section 33 of the **National Environment Act** defines waste as “any matter prescribed to be waste and any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, consistency or manner as to cause alteration to the environment.”

The Central Environmental Authority is responsible for the coordination of all regulatory activities relating to the discharge of wastes and pollutants into the environment and the protection and improvement of the quality of the environment. It regulates, maintains and controls the volume, types, constituents and effects of waste, discharge, emissions, deposits or other sources and sub sources of pollution, which are of danger or potential danger to the quality of any segment of the environment. The discharge, deposit or emission of waste into the environment which will cause pollution is prohibited unless it is done under license issued by the authority. Such a license may be suspended or cancelled when there is a violation of the conditions of issue.

### ***Pollution control***

Section 33 of the **National Environment Act** defines pollution as “any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by the discharge, emission, or the deposit of wastes so as to affect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, aquatic life, or to plants of every description”.



The Central Environmental Authority is mandated to prevent, abate and control pollution. It undertakes surveys and investigations as to the causes, nature, extent and prevention of pollution and it requires any local authority to comply with and give effect to any recommendation relating to environmental pollution. The discharge, deposit or emission of waste into the environment which will cause pollution is prohibited except a) under a license issued by the authority and b) in accordance with such standards and other criteria as may be prescribed under this act. The pollution of soil or the surface of any land is prohibited as is the pollution of inland waters.

The **Marine Pollution Prevention Act No. 59 of 1981** authorises the Marine Pollution Prevention Authority (MPPA) to implement and take necessary steps to prevent Marine Pollution. The **Nuisance Ordinance enacted in 1862** includes provisions to protect against pollution and public nuisance.

The **Penal Code enacted in 1880** has provision for environmental protection in terms of Section 261 where any person/s is prohibited from causing public nuisance such as noise, odour, and other irritant that causes harassment to society.

## Activities that require special approval or assessment procedures

*The application of special assessment and approval procedures is required by law for certain types of construction, or when building takes place in ecologically or culturally sensitive areas.*

### ***Environmental impact assessment***

The **National Environmental Act No. 47 of 1980, Gazette No. 772/22 – 1993** sets out in detail the projects and undertakings for which approval is required and Environmental Impact Assessments necessary. These include, but are not limited to:

- Housing and building;
- Resettlement;
- Water supply;
- Pipelines;
- Hotels;
- Fisheries;
- Disposal of waste;
- Transport systems;
- Port and harbour development;
- Power generation and transmission;
- All river basin development and irrigation works (except minor irrigation works);
- Clearing of land exceeding 50 hectares;
- Reclamation of land and wetland areas exceeding 4 hectares;
- Extraction of timber covering land areas exceeding 5 hectares;
- Conversion of forests into non-forest uses covering areas exceeding 1 hectare.

As described above, it should be noted that under the **Coast Conservation Act** an Environmental Impact Assessment may be required as part of the process by which the issuing of a permit to build in the Coastal Zone is considered.

### ***Archaeological impact assessment***

Under Section 40 (g) of the **Antiquities (Amendment) Act No. 24 of 1998**, the Director General of Archaeology is empowered to demand an Archaeological Impact Assessment of areas that may be affected by development, industrial or other projects, and to require the implementation of any mitigative measures that may be required. Sections 43 (A) and 43 (B) govern the Impact Assessment Procedure to be complied with in the event that the Director General deems it necessary.



## Summary of laws relevant to the reconstruction process

**Agrarian Development Act** No. 46 of 2000 Section 32 of this Act prohibits the conversion of paddy land for a purpose other than agricultural cultivation without the written permission of the Commissioner General shall be a punishable offence under this Act.

**Antiquities Ordinance** No. 9 of 1940 as amended provides for the Director General of Archaeology to declare certain areas as Archaeological Reserves. Encroachment of any kind, for whatever purpose is deemed an offence under Section 34 of the Ordinance.

**Antiquities (Amendment) Act** No. 24 of 1998 Section 40 (g) empowers the Director General of Archaeology to conduct an Archaeological Impact Assessment of areas that may be affected by development, industrial or other projects proposed by the Government or any person and implement any mitigatory measures that may be required. Sections 43 (A) and 43 (B) govern the Impact Assessment Procedure to be complied with in the event the Director General deems it necessary.

**Acquisition of Land Act** No. 33 of 1950 as amended should be complied with when considering land use and allocation.

**Coast Conservation Act** No. 57 of 1981 as amended Section 42 defines the coastal zone; Section 14 lists activities that are prescribed within the coastal zone.

**Coast Conservation Regulation** No. 1 of 1982 as set out in Gazette Notification No. 260/ 22 – 1983 sets out in details the regulations pertaining to development activities that are permitted and prohibited.

**Common Law of Sri Lanka**

**Customary Laws of Sri Lanka**

**Criminal Procedure Code** No 15 of 1979 Section 98 in concurrence with Section 261 of the Penal Code further elaborates on Public Nuisance.

**Fauna & Flora Protection Ordinance** No. 2 of 1937 as amended, specifies the areas under the jurisdiction of the Department of Wildlife Conservation in which no construction or developmental activities can occur; specifies the areas under the jurisdiction of the Department of Wildlife Conservation in which a permit is required from the Director of Wildlife Conservation for construction or developmental activities can occur; specifies activities which are prohibited within national, reserves, sanctuaries and buffer zones as well as fauna and flora that are protected nationally.

**Forests Ordinance** No. 16 of 1907 as amended specifies the areas and activities prohibited in designated forest areas. The felling of tress, cultivation and the construction of buildings and roads are prohibited activities together with poaching, cattle grazing etc.

**Fisheries and Aquatic Resources Act** No. 2 of 1996 Section 36 specifies areas that are demarcated and protected as Fishery Reserves. Any development activity in a fishery reserve requires the permission and approval of the Director of Fisheries and Aquatic Resources.

**Land Acquisition Act** No. 9 of 1950 as amended should be complied with when considering land use and allocation.

**Land Development Ordinance** No. 19 of 1935 as amended should be complied with when considering land use and allocation.

**Land Grants (Special Provisions) Act** No. 43 of 1979 as amended should be complied with when considering land use and allocation.

**Land Settlement Ordinance** No. 20 of 1931 as amended should be complied with when considering land use and allocation.

**Marine Pollution Prevention Act** No. 59 of 1981 authorises the Marine Pollution Prevention Authority to implement and take necessary steps to prevent Marine Pollution.

**Municipal Councils Ordinance** No. 29 of 1947 should be complied with when considering land use and allocation.

**National Environmental Act** No. 47 of 1980 as amended, Gazette No. 772/ 22 – 1993 sets out in detail the projects and undertakings for which approval is required and Environmental Impact Assessments necessary, whether they be wholly or partly outside the Coastal Zone as defined by the CCA; Section 33 defines pollution and waste.

**National Heritage Wilderness Act**, No 3 of 1988 defines areas of exceptional ecological value that need protection.

**National Housing Development Authority Act** No. 17 of 1979 as amended empowers the National Housing Development Authority it in terms of Section 4 of the Act to engage in all housing and construction issues at a National level and its powers and functions are more specifically set out in Section 5 of the Act.

**Nuisance Ordinance** enacted in 1862 with provisions to protect pollution and public nuisance.

**Penal Code** enacted in 1880 Section 261 provides for environmental protection where any person/s is prohibited from causing public nuisance such as noise, odour, and other irritant that causes harassment to society.

**Pradeshiya Sabha Act** No. 15 of 1987 should be complied with when considering land use and allocation.

**State Lands Ordinance** No. 8 of 1947 as amended should be complied with when considering land use and allocation.

**State Lands (Recovery and Possession) Act** No. 7 of 1979 as amended should be complied with when considering land use and allocation.

**Urban Development Authority Law** No 41 of 1978 as amended The area lying within the limits of one kilometre (1 km) landwards of the Mean High Water line of the sea is suitable for development and by order of the Government of Sri Lanka declared to be an Urban Development Area; promotes integrated planning and implementation of economic, social and physical development in areas declared as urban development areas, all development activity within the said areas as set out in Section 8 of the UDA Law shall fall within the purview of the UDA.

**Urban Councils Ordinance** No. 61 of 1939 as amended should be complied with when considering land use and allocation.

**Urban Development Authority Planning and Building Regulations** 1986 as set out in Gazette No. 392/ 9 sets out the regulations covering any development activity, including reconstruction and rebuilding within the area demarcated as falling within one kilometre landwards from the Mean High Water line as set out in Gazette No. 223/ 16 – 1982 as mentioned more specifically above.

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