

Human Rights Council

**28th Session of the UPR Working Group
(November 2017)**

Universal Periodic Review (UPR) of Sri Lanka

Joint Stakeholders' Submission on Port City Project

Submitted by:

The People's Movement against the Port City, Dominicans for Justice and Peace (Order of Preachers) and Franciscans International

March 2017

PORT CITY PROJECT

I. INTRODUCTION

1. This report is a joint submission for the 3rd Cycle of the UPR of Sri Lanka that will take place during the 28th session in November 2017. The report concerns the Port City project and its negative impacts on human rights and the environment. This submission aims to address in details the consequences that this megaproject has on the right to an adequate standard of living, the right to health, including the protection of a healthy environment, and the right work.

2. This report is submitted by The People's Movement against the Port City, Dominicans for Justice and Peace (Order of Preachers) and Franciscans International.

II. SECOND CYCLE UNIVERSAL PERIODIC REVIEW RECOMMENDATIONS OF SRI LANKA

3. In November 2012, the Government of Sri Lanka accepted various recommendations of Member States on the reduction of the poverty and the economic disparity as well as on the achievement of the Millennium Development Goals (MDGs).¹ MDGs 1 and 7 call on States to, among others, achieve full and productive employment and decent work for all, to integrate sustainable development into country policies and programs, to reduce biodiversity loss and to halve the proportion of the population without access to safe drinking water and basic sanitation.²

4. However, the Port City project, planned since 2011 and launched in 2014, becomes an obstacle to the implementation of those recommendations accepted by the Government of Sri Lanka in the 2nd Cycle of the UPR.

III. BACKGROUND OF PORT CITY PROJECT

1. Context

¹ See recommendations 127.46, 127.100, 127.101, 127.102, 127.103, 127.104, 127.105, 127.106, 127.107, 127.108, 127.109.

² See the list of MDGs and their targets at : <http://www.un.org/millenniumgoals/>

5. The history of the project goes back to 1998 when the Singaporean construction company CESMA proposed a project similar to Port City. However, it was the former President Mahinda Rajapaksa who had been the instigator of the Port City project. His inspiration came from the inspection of a landfill under construction for the Colombo South Port.³

6. A concrete project has been proposed by China Harbour Engineering Company, partner of China Communication Corporation Co. Ltd (CCCC).⁴ The Standard Cabinet Review Committee (SCARC) of Sri Lanka, through the Department of Public Finance (Treasury) accepted the proposal. After various agreements between the Sri Lanka Ports Authority (SLPA), the Board of Investment (BoI), the Urban Development Authority (UDA) and China, the Port City project has been launched in September 2014. The budget for the first stage of the project was estimated to US\$1.5 billion.

2. Temporary Suspension of the Project

7. During the presidential election campaign in 2014, the Common candidate, Mr Maithreepala Sirisena, and the leader of opposition, Mr Ranil Wickramasinha, undertook to halt the Port City project, claiming that it would be unsustainable for the environment: “the western coast would be severely affected as a result of the construction activities of the Port City project. We ought to protect the coast. The coastal belt from Colombo to Kalpitiya and from Colombo to Hikkaduwa will be lost as a result if it is carried out”⁵.

8. In 2015, Mr Sirisena and Mr Wickramasinha took office as President and Prime Minister respectively. The project was halted not long after. According to officials, the reasons of the suspension were the lack of permits and approvals as well as the adverse environmental impacts. The new Government promised to re-examine the agreements made between the former Sri Lankan President and China to ensure they would be environmentally viable and corruption-free.

9. Despite those promises, an agreement was signed in 2016 among the Ministry of Megapolis and Western Development (on behalf of the Government), UDA and the project company. Following negotiations with China, the ban was finally lifted and the construction of Port City could go ahead. The project was renamed by Mr Wickramasinha as “The

³ Abdul H. Azeez, *Formula One Track To Be Built On Planned ‘New Port City’ Colombo*, The Sunday Leader, 2 May 2014. See article at <http://www.thesundayleader.lk/2011/01/09/formula-one-track-to-be-built-on-planned-‘new-port-city’-colombo/>

⁴ Dulip Jayawardane, *Critical Analyses of Colombo Port City Project*, Daily Mirror, 16 February 2015. See article at <http://www.dailymirror.lk/63749/critical-analysis-of-colombo-port-city-project>

⁵ Statement held during a media conference during the Presidential Election campaign in 2014. Colombo Telegraph, *People’s Movement Against Port City Wants Project Halted*, 17 March 2016. See article at <https://www.colombotelegraph.com/index.php/peoples-movement-against-port-city-wants-project-halted/>

Colombo International Financial City”. According to the new plan, 269 hectares are to be reclaimed from the sea.

3. Objective

10. Port City is expected to be a city-on-the-sea, a financial centre with its shopping complexes, hotels, marina and office complexes (See **Annex I**). According to Mr Dulip Jayawardene, a retired Economic Affairs Officer of the UN ESCAP, the main objective of the project is “to create not only a major maritime hub but also a harbour city for attracting major overseas private investors with tax holidays, etc.”⁶

IV. HUMAN RIGHTS AND ENVIRONMENTAL IMPACTS

11. There is a correlation between biodiversity with the enjoyment of human rights, including the right of life, health, food and water. The UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment stated that the full enjoyment of human rights depends on biodiversity, and the degradation and loss of biodiversity undermine the ability of human beings to enjoy the human rights, therefore States have a general obligation to protect ecosystem and biodiversity. Further, the Special Rapporteur recommended the States, among others, to provide public information about biodiversity, including environmental and social assessments of proposals, and ensure that the relevant information is provided to those affected in a language that they understand; and provide for and facilitate public participation in biodiversity-related decisions.⁷

12. The Port City project is strongly criticised since many years by various engineers, university dons, environmentalists and marine biologists.⁸ In addition to its lack of transparency, the negative impacts of Port City project on the enjoyment of human rights especially the right to an adequate standard of living, the right to health, including the protection of a healthy environment, and the right to work.

⁶ Dulip Jayawardane, Critical Analyses of Colombo Port City Project, Daily Mirror, 16 February 2015. See article at <http://www.dailymirror.lk/63749/critical-analysis-of-colombo-port-city-project>

⁷ See the report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to the 34th Session of the UN Human Rights Council, A/HRC/34/49.

⁸ Mr. Jinadasa Katupotha, Emeritus Professor at the Department of Geography of the Faculty of Humanities and Social Sciences of the University of Sri Jayewardenepure, Ms Carmel Corea, Marine Biologist, Mr. Dulip Jayawardane, retired Economic Affairs Officer of the UN ESCAP and Sellakapu S. Upasiri de Silva, Former Construction Expert CFTC/UN, are to name a few.

13. Those rights are guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Sri Lanka is a state party. They are also a major component of the MDGs, to which Sri Lanka has pledged its support. The construction of Port City is therefore of serious concern and is also a major hindrance to the implementation of the 2nd Cycle UPR recommendations on the reduction of poverty and the achievement of the MDGs. It also brings the question as to whether Sri Lanka will follow in practice its commitment to realise the Sustainable Development Agenda (SDG) 2016-2030: “As the first country in the Asia-Pacific Region to establish a separate Ministry for Sustainable Development, and as the current Chair of the Asia-Pacific Forum on Sustainable Development, Sri Lanka is in a unique position to implement the Sustainable Development Goals at national level”.⁹

1. The protection of a healthy environment as a prerequisite for the right to health

14. A healthy natural environment is one of the determinants for the realisation of the right to health in Art. 12 of the ICESCR.¹⁰ In order to fulfil its obligation emanating from this provision, Sri Lanka is required to adopt measures against environmental health hazards. The Government of Sri Lanka should therefore implement policies that aim at reducing or eliminating air, water and soil pollution.

15. Sri Lanka has also committed itself to ensure environmental sustainability in its pledge to achieve the MDGs.¹¹ The Government reiterated its commitments in 2012 at the UPR when it accepted all recommendations made by the States parties on the achievement of the MDGs.

16. The protection of a healthy environment for the benefit of the communities is also enshrined in the Constitution of Sri Lanka : “The State shall protect, preserve and improve the environment for the benefit of the community.” (Art. 27(14)) Yet, those national and international commitments are completely neglected by the authorities since the pursuit of the Port City project. The project is strongly criticised for its negative impacts on the environment and the health of the community.

⁹ Statement by H. E. Dr. A. Rohan Perera, Ambassador and Permanent Representative of Sri Lanka to the United Nations, “The Sustainable Development Goals: a universal push to transform our world”, 71st Session of the United Nations General Assembly General Debate of the Second Committee, 3rd October, 2016.

¹⁰ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), § 4.

¹¹ UNDP, Eight Goals for 2015. See website : <http://www.lk.undp.org/content/srilanka/en/home/post-2015/mdgoverview.html>

17. Sri Lanka is an island of approximately 25,333 square miles with a population of 21 million. This island has the highest biodiversity per unit area in Asia, and is now a global biodiversity hotspot. However, the natural and rich heritage of biodiversity of the country will be dramatically impacted by the sand and rock mining entailed by the project.

18. The sand mining is expected to be done in the sea. Around 200 million cubic metres of sand will be extracted offshore and dumped outside Galle Face (urban park on the coast) to construct Port City. The process of landfill has currently started. Environmentalists claim that no proper environmental impact assessment (EIA) was done with regard to this massive extraction. Without proper impact assessment, there are high risks that it will adversely affect the western and southern coastline, including Panadura, Angulana, Mount Lavinia, Uswetakeiyyawa, and Negombo, which are important towns and tourist beach resorts. When sand is mined in quantity offshore, the affected sea area is filled by coastal erosion, altering the marine diversity. It adversely impacts marine seabed weeds, depletes mangrove coastal areas as well as sea grass habitats and nesting places of endemic and endangered fauna. To re-sand a 1.5 to 2km stretch of beach requires 300,000 cubic meters of sand from deep sea at a current cost of 600,000,000 Sri Lankan Roupies. It would last about two years and be washed to another area. Coral reefs around Sri Lanka are important for the safety of this island. They protect the coast from storms and erosion. Sand mining and dumping and its resulting environmental disturbance will seriously affect coral reefs and possibly cause their destruction. Coral reefs are one of the most valuable ecosystems on earth. A unit of coral reef supports more species than any other marine environment; thousands of creatures rely on coral reefs for their survival. They are the habitat for spawning and nursery ground for economically important fish species. The destruction of coral reefs and spawning grounds and habitats of fish due to sand mining is already evident in Sri Lanka.

19. Regarding the rock mining, it is expected to be done in three districts: Colombo, Kalutara and Gampaha. Around 3.45 million cubic metres of large granite blocks are to be needed for the construction of Port City. However, experts believe that this amount has been vastly down played. Mr Jinadasa Katupotha, Emeritus Professor at the Department of Geography of the Faculty of Humanities and Social Sciences of the University of Sri Jayewardenepure, informs that “Port City requires nearly two-third of the rocks from both Sigiriya and Pidurangala put together”.¹² The granite will be mined from the hill country of Sri Lanka, using explosives. These stones will then be dumped in the sea for the construction. There will be undeniable environmental impacts of these mining activities, including the loss of habitat for endangered flora and fauna in the water catchment areas on the mainland.

¹² Daily Financial Times, “Colombo Port City should never commence”: Prof. Katupotha, 8 July 2016. See article at : <http://www.ft.lk/article/553419/-Colombo-Port-City-should-never-commence---Prof--Katupotha>

20. Besides the adverse impacts of the mining activities on the environment, the discharge of raw sewage in the sea will obviously be greater than before. Mr. Nihal Fernando, Project Director of Port City and Deputy Director General of UDA, publicly disclosed in 2016 that the population would have to wait 5 to 7 years before the sewerage disposal system would be modernised.¹³ The construction of Port City is therefore adding to the already unacceptable current pollution levels, which is accelerating the destruction of the marine and coastal environment as well as negatively impacting on the health of the affected communities.

Lack of a detailed environmental impact assessment

21. The EIA is enshrined in the National Environment Act No 56 of 1988 amended in 2000 as Act No 53. It is stated that a license must be obtained for the “activities which involve or result in discharging, depositing or emitting waste into the environment causing pollution”.¹⁴ To date, Port City project is still lacking a proper environmental impact assessment.

22. In 2011, the private company Lanka Hydraulic Ltd (LHI) had conducted an environmental study and sent an ‘Environment Evaluation Certificate’ (EIA 2011) to the SLPA. Such study had however not been conducted in depth. The CEO of the company even recognised the absence of a real environmental impact assessment particularly on the sand mining activities, but believed that this was not necessary: “although an in-depth study has not been carried out by the [company] or any other institute, there is unlikely to be a major impact on the environment beach and land erosion.” He also noted that the project would “not rule out long-term impact on marine resources.”¹⁵ In 2013, an additional assessment (EIA 2013) has been made but the examination remained unsatisfactory. They contained contradictory statements and false or misleading facts. Ms. Carmel L. Corea, Marine Biologist and environmental researcher stated the following concerning EIA 2011/2013:

“The Environmental Impact Assessment (EIA) and Supplementary Environmental Impact Assessment (SEIA) reports have been criticised for not stating how biodiversity will be protected, how disposal of dredged spoil will take place and how construction of piers, break waters and other water side structures and erosion will lead to short and long term impact on the aquatic and shore line habitats. There is no mention also of the direct impact on removal of sea floor covering, change in water flow patterns and related sedimentation,

¹³ Nihal Fernando, *Port City Project: Megapolis Ministry clarifies*, The Sunday Times, 19 June 2016.

¹⁴ Art. 2(1), National Environmental (Amendment) Act, No. 53 of 2000 [Certified on 18th August, 2000]

¹⁵ Mr Dulip Jayawardane, *Critical Analyses of Colombo Port City Project*, Daily Mirror, 16 February 2015. See article at <http://www.dailymirror.lk/63749/critical-analysis-of-colombo-port-city-project>

change in water quality due to storm water and waste water as a result of this project. [...]”¹⁶

23. In 2015, a supplementary assessment was made (SEIA 2015), which came under further criticisms by the same group of experts. Among the various weaknesses of SEIA 2015, there was a clear lack of expertise in marine land reclamation and of knowledge of coastal processes.

24. With such an important construction on coastal zones, a fragile environment in constant state of change, it is imperative that a comprehensive and detailed EIA is conducted. Moreover, since 2011, the details of the project were never made known to the public. The population has been kept in the dark and no reliable information of this massive project, including on the impacts on the environment and consequently on the health of the affected communities, have been in the public domain.

Recommendations:

- Suspend the project until a comprehensive and objective EIA is carried out to identify all potential short and long-term environmental impacts.
- Conduct participatory and meaningful consultation with all stake holders including the local authority and community that will be affected and the results must allow them to properly understand the impact of the proposed development.
- Take immediate and concrete steps to stop the health hazards posed by the activities surrounding the construction of Port City.

2. Right to an adequate standard of living

25. According to Art. 11(1) of the ICESCR, the right to an adequate standard of living entails that the State must take appropriate steps to ensure adequate food, including drinking water. The right to adequate food and to water are essential for guaranteeing the survival of human beings and are inextricably related to the right to health.¹⁷ MDG 7 includes the requirement for States to improve sustainable access to safe drinking water. The realization of those rights are preconditions to the alleviation of poverty. While Sri Lanka accepted all recommendations made by States parties at the 2nd UPR Cycle on the reduction of poverty

¹⁶ Carmel L. Corea, International Financial City must be a win-win project, The Sunday Time, 2 October 2016, See at <http://www.sundaytimes.lk/161002/sunday-times-2/international-financial-city-must-be-a-win-win-project-210995.html>

¹⁷ CESCR General Comment 15 (Twenty-ninth session, 2002): The Right to Water (arts. 11 and 12 of the Covenant), E/2003/22 (2002) 120 at para. 3

and on MDGs, there are real challenges in terms of their implementation today with the construction of Port City.

26. Sri Lanka is classified as a developing country. According to UNICEF, almost one-third of children and one quarter of woman are affected by malnutrition in the country.¹⁸ The organization also informs that around 29% of the children under the age of five are reported to be underweight and about 14% of these children are suffering from acute malnutrition. The situation is apparently not improving with the recent increase of 1.4 million applicants for the Samurdhi National Programme for Poverty Alleviation, the main social assistance program in Sri Lanka.¹⁹

27. Fish netted from the coastal waters, the cheapest fish on the market, provide two-thirds of the protein consumed by the population.²⁰ However, the sand mining for the construction of Port City will have important consequences on the coastal fishing industry, resulting in a deprivation of the population from obtaining essential protein. This obviously affects the poorest, who have limited resources to buy nutritious food. The impacts of Port City on the fishing community are already visible. Due to the sea erosion caused by mining sand, homes of the fishing villages are washed away and the places to park fishing boats are more limited.

28. Rock mining activities can also have serious consequences on the quality of water. For Prof. Katupotha, the possible deprivation of sources of drinking water due to mining activities is of serious concern: “In the event of a short supply of rock material, rock miners will go in to the interior rock outcrop areas to get their supplies, which would not only cause earth slips and landslides at an accelerated rate but also sharply reduce ground water levels and obtainable water supplies”.²¹ Another concern is the high level of noise pollution that will be caused by the multiple explosions used for such type of mining.

Recommendations:

- Take concrete measures to ensure the food security for all communities affected by the construction of Port City, with a special attention to the poorest.
- Take all necessary measures to ensure that access to drinking water is guaranteed to all communities affected by the construction of Port City, with a special attention to the poorest.

¹⁸ UNICEF, Malnutrition, See website at : https://www.unicef.org/srilanka/activities_1667.htm

¹⁹ ILO, Social Security Department, See website at : http://www.ilo.org/dyn/ilossi/ssimain.viewScheme?p_lang=en&p_geoaid=144&p_scheme_id=70

²⁰ Carmel L. Corea, *Why the Port City is bad for the country*, The Sunday Times, 12 June 2016, See article at : <http://www.sundaytimes.lk/160612/sunday-times-2/why-the-port-city-is-bad-for-the-country-196859.html>

²¹ Daily Financial Times, “*Colombo Port City should never commence*”: Prof. Katupotha, 8 July 2016. See article at : <http://www.ft.lk/article/553419/-Colombo-Port-City-should-never-commence---Prof--Katupotha>

3. Right to work



29. The right to work, guaranteed in Art. 6 of the ICESCR, includes the obligation of the Member State to ensure the right to individuals to choose freely their work, and this includes the right not to be deprived of work unfairly. A major concern is that the Port City project presents a high risk of deprivation of work for the communities of fishermen. It is estimated that the number of fishermen directly affected goes up to 30 000 in the city of Negombo alone. The overall figure including those engaged in associated trades is estimated to be more than 600,000 people. The number of fishermen registered in the EIA is almost four times lower than it is in reality. The Government will compensate only 9000 fishermen. Hence, thousands of fishermen will be deprived of their livelihoods for years. Such projects can seriously widen the gap between the rich and the poor.

Recommendations:

- Conduct participatory and meaningful consultation with all potentially affected groups and other relevant stakeholders, including the fisher folk, with the view to accurately assess the economic impacts of Port City on each group.

ANNEX I: MAP OF PORT CITY PROJECT

Source: www.yamu.lk