

Women's Access to Land and Finance

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Key words: Slum Upgrading, Public Private Partnerships, Finance Facility, Women's empowerment, adequate housing, non-discrimination, Credit-Worthy

SUMMARY

'All rights are universal, indivisible, interdependent and interrelated and that women's equal ownership, access to and control over land and the equal right to own property and to adequate housing contribute to the full realization of human right'.

Human Rights Resolution 2005/25

Slum Upgrading Facility (SUF) of UN-HABITAT's work is directly related to achieving the United Nations Millennium Declaration, particularly the goals of member States to improve the lives of at least 100 million slum dwellers by the year 2020, Target 11, Millennium Development Goal No. 7. This paper highlights the reality that this will be difficult to be achieved without a gender-sensitive perspective. Drivers for urban in migration range from economic hardships due to unemployment and lack of employment opportunities to disinheritance and abuse. Hundreds of women move to urban settlements with their families in the hope of building a fruitful future.

The contribution of slum dwellers to the urban economy, specially that of women cannot be overlooked. They contribute by providing essential yet low-paid low-status services such as domestic work, day labour and small businesses. In keeping with the MDG of improving the lives of slum dwellers Slum Upgrading Project SUF in Sri Lanka has created public private partnerships in helping low income families in the slum community in upgrading their living conditions. This is an alternative in a situation where the state does not have sufficient funds to guarantee adequate housing to these slum dwellers. Microfinance is crucial in addressing the problem of adequate housing to slums dwellers because of the perception of them not being credit worthy by the formal financial institutions.

Empowering Women's to mobilize resources and institute action – It is important to accept that communities are in a position to find solutions for their problems provided they are being empowered and organized to do so. Involvement of women of respective communities in decision making – Internal design of housing and facilities to be placed are best known by the women who mostly handle the family requirements. Their involvement in deciding options designs need to be seriously taken into account. Provision of housing finance at low interest with no mortgages for low income households – Formal financial institutions could be reached only by those households who could demonstrate the repayment capacities. However, experience shows that the informal micro finance institutions have reached out to those deprived groups successfully and ensured higher rates of repayments compared to those of 'credible borrowers'. SUF with the Government of Sri Lanka working on a Guarantee mechanism that could therefore be implemented if the formal sector financial institutions are restructured to function through informal micro finance institutions

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Ms. Ayanthi GURUSHINGE, Sri Lanka

1. INTRODUCTION

Women's access to land and finance is an important corollary to the examination of the place of the woman in Sri Lankan society. Despite the commitment that has been shown by the government on paper, for example in being signatories to important policy documents with regard to this as well as the work of many leading organizations in the field of Women's empowerment, employment and development there continues to be a startling disparity between what has been visualized and its implementation in reality. This paper will examine the issues of land and finance that women face not merely as a legalistic or rights based issue but also as a part of a wider understanding of the place of women in relation to men in Sri Lanka. As such this paper seeks to be wide-ranging and inclusive in order to present a better understanding of the role of women in the socio-cultural and politico-economic fabric of Sri Lanka. It is also important to note that access to land and finance plays a crucial role in the promotion of socially and environmentally sustainable human settlements development as well as for the achievement of adequate shelter for all. Thus this paper recognizes the dynamic role that women must play in the achievement of such an ideal and highlights the present condition of women in Sri Lanka as being woefully under-appreciated as actors within the extremely patriarchal conception of the house and finance.

Access to land and legal security of tenure are strategic prerequisites for the development of housing. One of the important roles of the Government would be to ensure that each family will get a piece of land for them to construct their own house or take proper measures to ensure the security of tenure of the land where they are presently live, in Sri Lanka, the supply of land to the market is mainly a private sector activity. There are private "Land Sales" enterprises buying large parcels of land and subdivided and offer to individuals for house building purposes. Most of these land plots either served with minimum infrastructure facilities or not at all

Housing is traditionally considered as a responsibility of households. With increasing urbanization and change of economic environment, households alone cannot fulfill their housing requirements. Several institutions, both public and private, have a role to play in the development of housing for a nation. In the developed world, housing, therefore has become a marketable commodity where developers and financiers are working together to produce houses for sale in the market. However, in the developing world, due to low income levels, households cannot depend on the market. In these countries, housing development is a responsibility of several parties where basic facilities to be provided through the public and private sector institutions facilitating the households to build their own houses.

Being a developing country with a traditional system of housing construction by households themselves and production of houses for an emerging market for the upper middle and high income groups, the National Housing Policy of Sri Lanka (which is being prepared by

Ministry of Housing funded by UN Habitat) should necessarily address both the above aspects. It is therefore essential to find ways and means of facilitating the essential infrastructure facilities to strengthen the housing development of the country. This includes provision of land for housing with service facilities such as access roads, electricity, water supply and sanitation, transport services and socio cultural amenities including schools, health care services, recreation, cultural and community centers, within the neighbourhood.

Infrastructure availability is a key factor for housing development In Sri Lanka, there are public sector institutions responsible for the provision of all the infrastructure facilities. These institutions should coordinate the infrastructure development projects with respective local authorities so that the individuals and private developers could select building sites in locations where infrastructure development takes place.

A pre-requisite for the implementation of Habitat Agenda and the action plan set out in the implementation of the Election Manifesto, would require the formulation and follow up of a well focused Housing Development Policy. As stated in the preamble to the Shelter Policies of the Habitat Agenda, it is stated that “a fundamental principle in formulating a realistic shelter policy is its interdependence with overall macroeconomic, environmental and social development policies. Shelter policies, while focussing on the increasing demand for housing and infrastructure, should also emphasize the increased use and maintenance of existing stock through ownership, rental and tenure options, responding to the diversity of needs. These policies should also encourage and support the people who, individually or collectively act as important producers of housing.”

1.1 Land administration and property rights

The need for equal treatment of the law in terms of women’s right to land and property in Sri Lanka. It will show that despite wide provisions available in international and domestic law, women continue to be treated unfairly. The Universal Declaration of Human Rights (1948) states in Article 25 that,

*‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of this family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’*

The right to housing having been entrenched in the UDHR is further strengthened by the International Covenant on Economic, Social and Cultural Rights (1966) Article 11 (1), in which it states,

*‘The States parties to the present Covenant recognize the right of everyone to an **adequate standard** of living for himself and for his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.’*

This reference is not merely to a right to a house but the right to adequate housing which is defined by the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 (1991) as a holistic meaning that includes the right to live in security, peace and dignity.

'While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context'.

The committee has identified these aspects or criteria which compromise the right to

- adequate housing:

legal security of tenure: regardless of the type of tenure, security must be guaranteed.

availability of services, materials, facilities and infrastructure

- affordability: housing costs should be at such a level that the attainment and satisfaction of

other basic needs are not threatened or compromised.

- habitability: physical security against rain and environmental hazards
- accessibility: taking into account people with special needs such as elders, people living with disabilities etc.

Location which allows access to employment options, health services, education etc
cultural adequacy in that it must be appropriate and in keeping with the cultural needs expressed by the persons concerned.

1.2 Right to Housing in Domestic Law

The right to housing is not a fundamental right under the Sri Lankan constitution and cannot be enforced in a court of law. However, the Directive Principles of State Policy recognize that the State should ensure the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing (Article 27 (2) (C)). While it is generally accepted that domestic laws should be interpreted in keeping with State's international obligations this has not been achieved.

Article 12 (1) in the Sri Lankan constitution provides that all persons are equal before the law and are entitled to the equal protection of the law and Article 12 (2) prohibits discrimination on the basis of sex. The constitution itself contains no direct impediment to women owning land and property. In fact the constitution provides in Article 12 (4) that special provisions can be made by law, subordinating legislation or executive action, for the advancement of women.

1.2.1 Land laws

The plural composition of Sri Lankan society is reflected in its laws. Therefore along side the general law applicable to land and property, Sri Lanka also has three customary laws which govern family matters as well as land and property transactions. In application these customary laws impact women in a significant way.

1.2.2 Land Development Ordinance, Land Grants (Special Provisions) Act

Though there is no implicit restriction on women to own property and land, experience has shown a clear gender bias in allocation of land. ? speaks of the redistributive land reform programmes of the 1950s and 1960s which were modelled on the notion of a unitary male headed household. This was on the premise that the male was the head of the household and the woman the dependant. Titles were granted only to males except in households where there was no male (mostly widows) and thus where women were clearly the heads. Another example of discriminatory practice in intestate inheritance where male descendants are given preference over female descendants. It is obvious that the provisions of the current constitution and these laws do not tally and therefore there is a lot to be done to remedy this situation.

This was further highlighted during the post-tsunami distribution of land, where despite guidelines by the central government to grant title to the person who owned the land prior to the Tsunami, this was not followed and there are instances of title given to the head of the household which meant a male.

Inheritance laws

Despite several reforms to the general law to ?

Personal property laws

Jaffna Matrimonial Rights and Inheritance Ordinance - legal ownership is accompanied by legal restrictions on disposal. For example under the Tesawalamai law (the customary law applicable to the Tamil inhabitants of the Northern Province) a married woman would need her husband's approval to dispose of land which she legally owns. Where there is no legal restriction there may be social constraints.

1.3 Women's Perception on Women's Right to Own Property

The predicament of women's access to land and property was highlighted through the Tsunami devastation and reconstruction process, it is in this context that the Center for Housing Rights and Evictions (COHRE?) commissioned a study to identify the situation of women and their rights over property in the post-tsunami context. According to COHRE 83% of those interviewed were of the firm view that women should have the right to own property while only 4% were of the express view that women need not have such a right. Forty Eight percent (48%) of women were of the view that they would have to face problems in the future as a result of property not being given in their names.

1.3.1 Ensuring Women's Rights to Housing and Property: Why is it so important?

One right is intrinsically linked to the other and this indivisibility of rights means that a lack of adequate housing could lead to a lack in education, the right to vote and security which is linked to the right to housing. The Special Rapporteur on Adequate Housing recognizes that there is a gender dimension to every human rights violation and this is especially true to the right to housing.

'I wish to particularly draw attention to the frequent and widespread nature of violence, commonly experienced by women in situations where their right to adequate housing is also violated. Women are experiencing different forms of violence which are often a result of living in inadequate housing. Or the violation of their right to adequate housing contributes to their vulnerability to gender violence. Violence that relates to women's right to adequate housing occurs at all levels, in the family, the community, by the State and globally'. Statement by Mr. Miloon Kothari, Special Rapporteur on adequate housing, appointed by the UN Commission on Human Rights

(Sepali Kottegoda (2004)?) also makes reference to this effect in 'Negotiating Household Politics – Women's Strategies in Urban Sri Lanka'. According to Kottegoda 'hierarchical structures, based on male dominance in most family-based households limit women's ability to command access to resources such as income, food, savings, education, or to make decisions regarding marriage, inheritance or ownership of land or property'.

The female respondents interviewed by COHRE who endorsed the woman's right to own property recognized the following reasons for such a need, in order to take independent decisions regarding property.

The importance of ownership of property for marriage purposes. This was especially emphasized by Muslim women.

- To have the ability to secure their children's future
- To reduce vulnerability and for security in the future through economic empowerment
- To have equal rights as men with regard to ownership of property
- In order to secure a fall-back position if the husband remarries another
- To have ownership and control over land derived through inheritance.
- Inability to take independent decisions regarding property
- Difficulties that would have to be faced if the children do not provide financial assistance, security and care in the future
- The likelihood of having to depend on them
- Concerns that the husband would sell the property mainly as a result of addiction to alcohol
- Insecurity due to the fear of losing a place to live at any time

1.3.2 How to Achieve the Basic and Fundamental Structure?

It is clear that any attempt at development must first address the discrepancies that continue to disadvantage women. Saama Rajakaruna in her paper titled *'Women's Housing, Land and Property Rights: issues for consideration in post-tsunami Sri Lanka'* identifies three layers that need to be looked at in addressing women's right to housing and property.

- Women's legal right to own houses, land and property
- Actual ownership
- Actual control

In situations concerning widows, most women face the threat of disinheritance or forced evictions by their in-laws. This is one result of migration as the woman is then forced to leave her husband's home in search of a job and somewhere to live. This deprives not only her but also her children of safety and security making her vulnerable to exploitation. A woman's bargaining power is increased when she has ownership of her home.

A research undertaken by the Ministry of Child Development and Women's Empowerment, which looked at the situation of women and their rights over property in Tsunami affected communities in the Northern, Eastern and Southern provinces of Sri Lanka revealed that majority of the property was owned by women prior to the Tsunamis. Of the total sample, 63.98% of land was owned by women in the South and 60.53% of them stated that decisions about the land are taken by the husband. It is important to guarantee that women not only own property but have the bargaining power to make decision regarding the use and disposal of the same.

Sepali Kottegoda (2004) refers to the state policies to 'promote and institutionalize the acceptance of the male-headed nuclear family as the desired model for 'modernization' and development'. This theorization needs to be replaced with a gender-neutral definition that emphasizes the contribution of all members of a family and not just that of the bread-winner.

1.4 Legal Reforms

Housing to be an integral part of regional/Area Development - The subject of Land and housing development, at present, is considered as an isolated activity where an integrated approach is not paid for. However, housing cannot be developed in its own and directly linked with the development of several other sector activities. One of the most important aspects not given much of concern was that it was not considered as an integral part of Regional or Area Development Plans. Planning and implementation of regional development strategies that includes the identification of industrial complexes, schools and medical institutions and infrastructure development activities must necessarily include the demarcation of areas for "residential". (Legal) reforms should be made into the Local Authority Acts (MC, UC and PS Acts) not to allow housing development outside the prescribed areas and no plans should be approved thereof. This would help to restrict construction of new houses within reservations or environmentally sensitive areas.

Local Authorities to play a larger role taking initiatives to provide infrastructure facilities for housing – Present housing complexes implemented by public institutions do not take LA approval prior to such implementation and face difficulties in the provision of necessary infrastructure. All housing schemes planned by public or private developers must necessarily coordinate with LAs for the provision of infrastructure facilities in advance and LAs have to coordinate with respective organizations on infrastructure development.

Transfer deeds of Government institutions (e.g. NHDA and UDA) to be free of conditions - At present, the NHDA Law allows sale of land or houses and issue the deed on the condition prohibiting their transfers for a period of 10 years, without prior approval. UDA Law does not allow other than under special circumstances an outright sale of properties. Any transfer of property has to be on lease for a maximum period of 99 years.

2. PROVISION OF FINANCIAL SERVICES

There are only two major housing finance institutions, the State Mortgage and Investment Bank (SMIB) and the Housing Development Finance Corporation (HDFC), both are public sector housing banks, available for provision of mortgage loans for housing construction. However, both these institutions are presently under the supervision of the Ministry of Finance and the Ministry of Housing and Construction, which is responsible for the implementation of the National Housing Policy has no mandate to give any directives. Other commercial banks also provide mortgage financing facilities for housing construction but are not accessible to the low and middle income households due to high interest rates and terms conditions of lending.

As an integral component of the National Housing Policy, it is proposed that these two housing banks, while as financial institutions must come under the direct supervision of the Central Bank of Sri Lanka, shall be within the policy supervision of the Ministry of Housing and Construction.

Since shortage of low cost funds is a major constraint faced by all housing finance institutions, action need to be taken to mobilize resources towards meeting this requirement.

2.1 Slum Upgrading Facility in Sri Lanka

UN-HABITAT's Slum Upgrading Facility (SUF), which is being piloted in four countries in Asia and Africa with Sri Lanka being one of these four countries, is designed assist Governments to lead and coordinate technical cooperation and seed capital initiatives to develop bankable projects that promote affordable housing for low-income households, the upgrading of slums, and the provision of urban infrastructure in cities of the developing world. The central objective of SUF is to assist developing countries to attract domestic capital for their slum upgrading and related infrastructure activities. The SUF achieves its objectives through dedicated technical assistance and targeted credit enhancement

2.1.1 Sri Lanka Financial Services for Underserved Settlements (LFSUS)

This new initiative seeks to develop bankable projects that promote affordable housing for low-income households and the upgrading of slums. The key feature of the effort is to mobilize the required resources locally and to develop a sustainable low income housing finance programme. Housing finance is an attractive banking product. However, an analysis of the low income groups in the country reveals that approximately 80% of the low income groups would fall into non salaried categories. This proposal is aimed at making these groups bankable.

This would be achieved by community mobilization through microfinance and such intermediaries. The mobilization would involve, becoming responsible for their housing needs including the financial obligations that would arise. It is also proposed to create an acceptable legal entity that would provide a facilitation process by way of guarantees to the banking sector on behalf of the intermediaries and low income groups.

The Entity

The entity will capture and translate the global Slum Upgrading Facility (SUF) vision and objectives of UN-Habitat to the Sri Lankan environment and will be the vehicle that will conceptualize appropriate strategies for the country and implement plans and programmes derived from such strategies with the view of achieving both the global and country specific objectives. The key objectives to be achieved would be To undertake/facilitate mobilization of resources for country wide slum upgrading activities, To implement a country wide housing finance programme for the low income segments, and To provide credit enhancements/guarantees on behalf of beneficiaries/intermediaries/MFIs/CBOs to access financing for housing finance or for slum upgrading activities.

The Women's Bank in Sri Lanka, one such intermediary also aims to empower women through increased economic participation. It aims at providing low interest loans for women from slums communities who would otherwise not have access to microfinance because of the perception of being credit unworthy. Most women successfully modify their homes and ensure a healthier and safer environment for their families. (refer Annex one)

2.2 Access to Finances and Loans: Making Poor Women Credit Worthy

Women's access to micro credit is limited despite the interest shown in initiatives such as Women's Bank and the co-relation to the level of poverty. It is a proven fact that women from low-income families look to micro credit to engage in economic activities and are successful in paying the loans taken. In low-income families it is the women who is the real breadwinner and this despite the poor conditions in which she has to work with. Access to microfinance must be made a high priority for poor women. This is especially relevant to the women living in slum communities.

A lack of state funds combined with state regulations makes it impossible for the state to provide better living conditions to these families. In such a context the women look to the private sector and microcredit institutions for loans to build their homes. Through LFSUS SUF of UN HABITAT works to build confidence in the minds of commercial banks in granting loans to these women by proving that they are credit-worthy.

3. JOINT HEADS OF HOUSEHOLDS

The Center for Housing Rights and Evictions promotes the concept of joint heads of households, which is a gender-neutral term and reflects better the realities of homes in Sri Lanka. SUF Project encourages all slum communities to register ownership as joint owners instead of registering the land only to the male. Sensitization needs to take place at not just the policy level but also at the implementation level if not women will continue to be disadvantaged.

4. CONCLUSION

The slum communities provide specific services to the urban community which needs to be recognized and appreciated. SUF project of UN-HABITAT encourages great public-private partnerships in addressing the needs of these low-income families by providing low interest loan facilities to women. Adequate housing is essentially a female issue as its adverse effects are mainly felt by women. This paper has shown the importance of women's access to land and property and also heard from the women themselves on why they think it is important for them to have ownership of their homes. Coupled with the problem of increased urbanization and discrimination in owning property and land, women will continue to be marginalized. Therefore in addressing the larger problems of housing and urbanization all initiatives should have a gender-sensitive perspective addressing the disparities between males and females, especially those living in poverty.

It is important to address the gender based realities of property ownership, in that it is better to ensure that all property is jointly registered in both the husband and wife's name, rather than only to the male head of the household. Equal opportunity for both men and women to command over property can only be realized if both sexes are given the opportunity for and the recognition as joint owners. Women's participation in the decision making process (must not be hindered?) by her access to and command over property. Similarly, economic empowerment of woman and equal opportunities to employment is of paramount importance in the context of hierarchical structures, based on male dominance in most family based households which limit women's ability to command access to resources such as income, food, savings, healthcare, education, or even in making decisions regarding marriage, inheritance or ownership of land and property

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APPENDICES

Annex one

SUF PROGRAMME IN SRI LANKA

LANKA FINANCIAL SERVICES FOR UNDERSERVED SETTLEMENTS (LFSUS)

This new initiative seeks to develop bankable projects that promote affordable housing for low-income households and the upgrading of slums. The key feature of the effort is to mobilize the required resources locally and to develop a sustainable low income housing finance programme. Housing finance is an attractive banking product. However, an analysis of the low income groups in the country reveals that approximately 80% of the low income groups would fall into non salaried categories. This proposal is aimed at making these groups bankable.

This would be achieved by community mobilization through microfinance and such intermediaries. The mobilization would involve, becoming responsible for their housing needs including the financial obligations that would arise. It is also proposed to create an acceptable legal entity that would provide a facilitation process by way of guarantees to the banking sector on behalf of the intermediaries and low income groups.

The Entity

The entity will capture and translate the global Slum Upgrading Facility (SUF) vision and objectives of UN-Habitat to the Sri Lankan environment and will be the vehicle that will

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conceptualize appropriate strategies for the country and implement plans and programmes derived from such strategies with the view of achieving both the global and country specific objectives.

The Objectives

The key objectives to be achieved would be:

- To undertake/facilitate mobilization of resources for country wide slum upgrading activities.
- To implement a country wide housing finance programme for the low income segments.
- To provide credit enhancements/guarantees on behalf of beneficiaries/intermediaries/MFIs/CBOs to access financing for housing finance or for slum upgrading activities.

Role and Functions

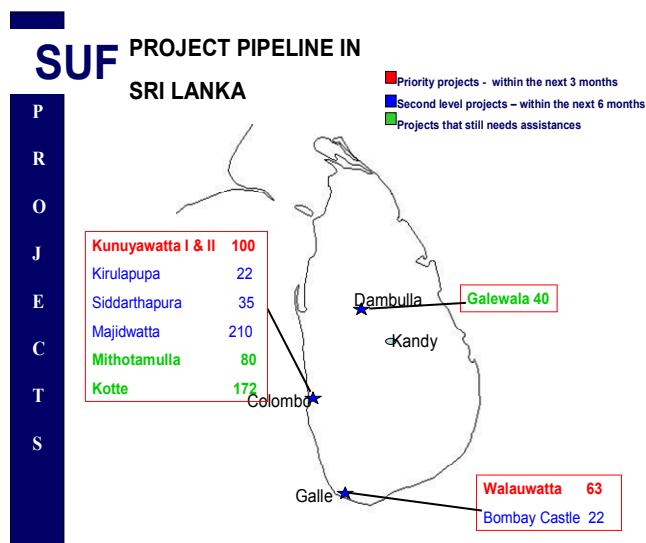
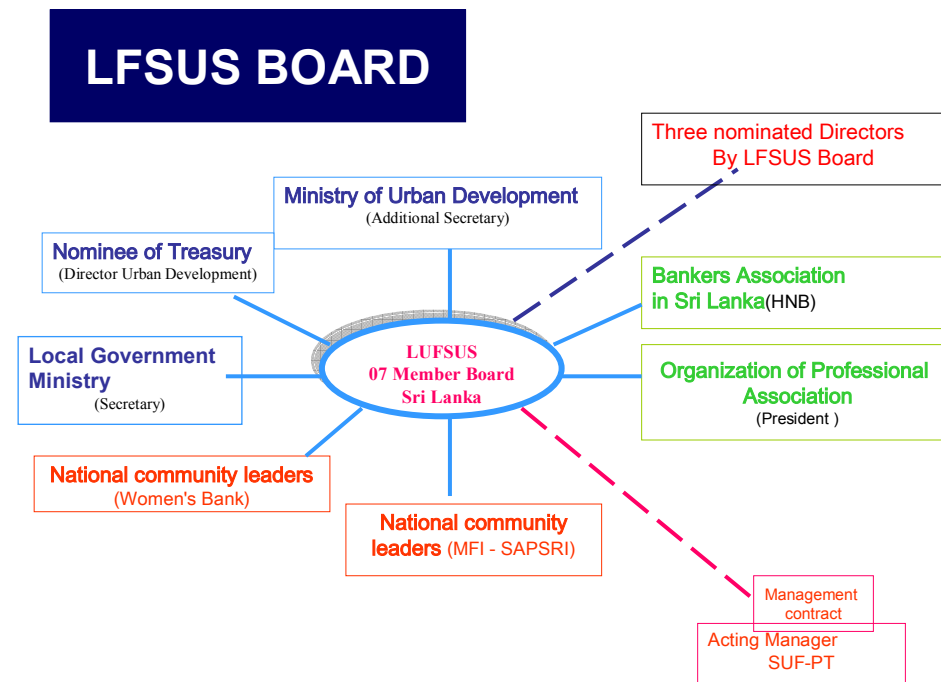
The critical role and functions are:

- Conceptualize country specific strategies and plans to achieve the broad SUF objectives
- Interact with central government/relevant ministries/municipalities/local government authorities with a view to making them support and participate in the envisaged strategies and plans.
- Mobilize and sensitize the potential beneficiaries, both individual households and communities to the belief that “if they have the will, there is a way”
- Identify, select, build up and provide support to appropriate intermediary channels, such as micro finance institutions, community based organizations etc that can create/reach a wider segment of beneficiaries and larger geographic area
- Promote the idea that there is a viable business opportunity with the low income segments of society for banking and financial institutions, that have the financial resources,
- Create and put in place guarantee mechanisms that would give comfort and incentive to the banking and financial institutions to reach out to the poorer segments through the different distributional channels
- Mobilize the required financial resources from local and multilateral sources to provide the required guarantees
- Manage the funding resources effectively with a view to enhancing the value of these resources so that optimum utilization can be achieved

Legal Status

Registered as a Not for Profit Company under section 21 of the Company’s Act, given the development nature of the business. No share capital contribution is envisaged from the associating interest groups in the formation of the company.

Board and Management – A Public Private Partnersip

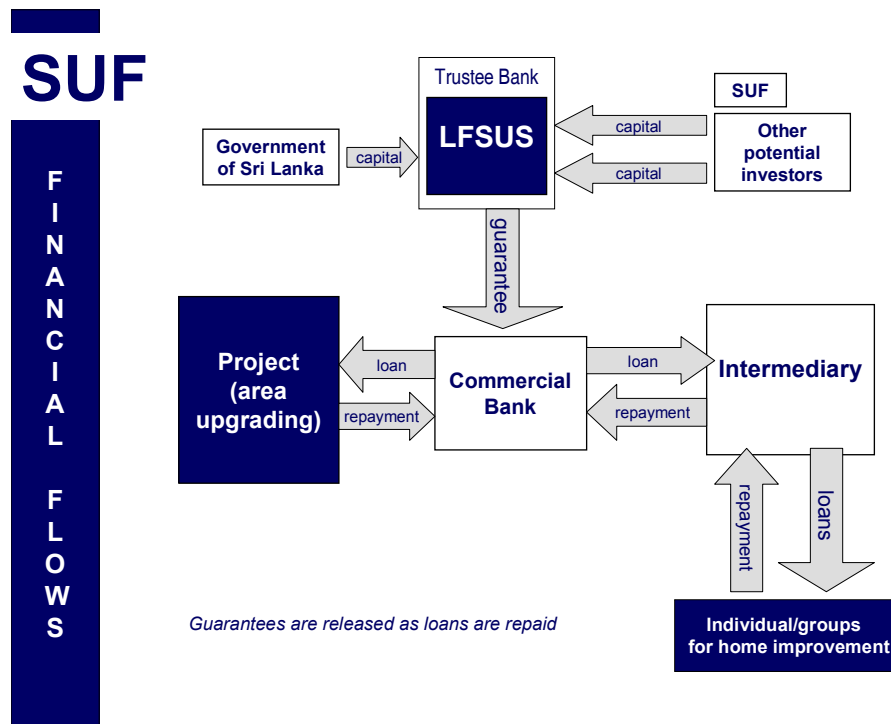


Slum Upgrading Project locations in Sri Lanka

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LFSUS Guarantee Mechanism



BIOGRAPHICAL NOTES

Mrs. **Ayanthi Gurusinghe**, Country Coordinator for Slum Upgrading Project (PT) of UN HABITAT in Sri Lanka.

She is responsible for managing the Slum Upgrading Project and creating the NATIONAL finance facility of LFSUS (*the above explained fund*) develop bankable projects that promote affordable housing for low-income households and the upgrading of slums. The key feature of the effort is to mobilize the required resources locally and to develop a sustainable low income housing finance programme.

Her past experience includes 12 year Commercial Banking experience from Deutsche Bank AG, and was also involved in Corporate Social Responsibility activities of the Bank.

She is an author of the article on the publication of Mrs. Rupa Silva, President of the Women's Bank, who won the Prize for Women's Creativity in Rural Life in Geneva 2007

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