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## **Changes in the cultural landscape and their impacts on heritage management : a study of Dutch Fort at Galle, Sri Lanka**

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## 7. Laws in Practise and Perceptions of Justice

*The chapter focuses on how legislation is applied to Galle Fort, based on the legislation analyzed in chapter 4, in order to identify why it is challenging for heritage institutions to manage the drastic landscape changes. While the first part deals with the general legislative application, the second part focuses on how the country copes with UNESCO's guidelines and local heritage laws in making critical decisions that affect the cultural landscape of Galle Fort.*

### Part I

#### 7.1 HERITAGE LAWS AND CONFLICTING INTERESTS

This sub-chapter analyses the community awareness and perceptions of the prevailing heritage laws, while identifying how the laws have created conflicting interests among stakeholders.

##### 7.1.1 DO THE RESIDENTS KNOW THE LAW?

It was identified that the majority of the interviewed residents (72%, 24 out of 33) were not familiar with the heritage laws by name. Some identified the laws as the “Archaeology Law” (Antiquities Ordinance of the Department of Archaeology) or “UDA law” (Special Regulations, 2009 or the building regulations of Urban Development Authority) by their respective implementing institution. In fact, only one had a proper idea of both these laws, as he had explored them when he was accused of “illegal” development.<sup>649</sup> Further, only one of them had an idea about the 400-yard law (365.76-metre) implemented by the Department of Archaeology

(hereafter also referred to as “DOA”), discussed in sub-chapter 4.2.2.

Twenty of the 33 (60%) interviewed residents stated that they did not receive sufficient information on the Special Regulations (Planning and Building), 2009. However, five of them stated there was an awareness programme some years back, which was also confirmed by the Regional Assistant Director (South) of the Regional Archaeology Office, Fort.<sup>650</sup> Interestingly, 27 out of 33 (81%) of the interviewed residents mentioned that it is useful to know about heritage laws, especially the Special Regulations, 2009. In fact, two of them requested copies of the Special Regulations, 2009 during the interview.<sup>651</sup> However, informal conversations with a number of residents proved that some of them are well aware of heritage laws, including lawyers and some regarded as community leaders.<sup>652</sup>

Despite their responses asserting a lack of awareness, it was revealed that nearly half of the interviewed residents had a general idea about the building regulations of the fort. When they were asked what kinds of developments are allowed without the permission of the heritage authorities, half of them correctly answered that none are permitted. However, a substantial number mistakenly thought that some exterior changes are allowed without permission. Day-to-day informal conversations with residents proved that almost all knew it was necessary to obtain a development permit for a development.

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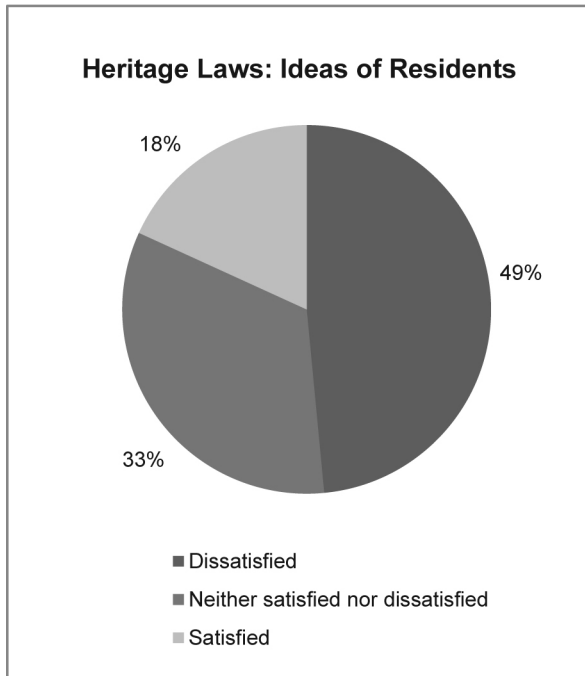
650 Interview with the Regional Assistant Director (South), Regional Archaeology Office, Galle Fort, 2 February 2016.

651 The two residents were later provided with these copies.

652 I.e., residents who have a voice in the community; generally, these are the ones who represent different groups within the community, such as the Muslim community, Sinhalese community and local business community.

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649 Interview with Mr Rodrigo, 9 September 2015.



**Fig. 262** Ideas of residents on heritage laws.

#### 7.1.2 PERCEPTION OF HERITAGE LAWS: “THE LAW IS NOT EQUAL TO ALL”

Informal conversations with the community (both residents and the business community) revealed that they show a strong dislike of the heritage laws (especially on building regulations, the Special Regulations, 2009) and the officers who implement the law, as well as heritage institutions. However, only half of the interviewed residents (16 out of 33) mentioned they were dissatisfied with the heritage laws, while 11 were neutral. Interestingly, there were six who expressed satisfaction with the law (Fig. 262). Although a larger majority of them (27 out of 33) think that heritage laws are useful in preserving the fort’s heritage, only 19 of them think it has succeeded in practice so far.

The reason for this lies in the practical issues of implementing the law. The majority of residents stated that “although the law is good, it is not equal to all” (Fig. 263). This idea is mainly related to the building development procedures, and thus this matter is elaborated separately in sub-chapter 7.5.

Moreover, there are a number of residents who believe that the laws, especially the Special Regulations (Planning and Building), 2009, are too strict regarding private properties. According to Mr Rodrigo, “a monumental law has been enforced for privately owned residential properties in the fort.”<sup>653</sup> In addition, some are disappointed with the inability of heritage laws to fulfil the modern living and business requirements of the community. Mr Marikar, a young businessman who runs an exquisite tea and spice shop, states, “The Archaeology Law is 100% a colonial law.” According to him, the requirements of the heritage institutions, as manifested in the heritage laws, and the aspirations of the community goes in two different directions, which he expressed with the Sinhala saying *ela harakai, mī harakai wagē* (“like the mismatch between a dairy cow and the buffalo”).<sup>654</sup> The idea is better expressed by Mr Miguel, who states, “the heritage authorities expect to maintain the old conditions [of the buildings] rather than the comforts of the people.”<sup>655</sup> Thus, a conflict of interests can be identified between the development needs of the community and those of the heritage institutions, as further elaborated in sub-chapters 7.1.4 and 7.1.5.

#### 7.1.3 THE HERITAGE INSTITUTIONS, OFFICIALS AND COMMUNITY EXPECTATIONS

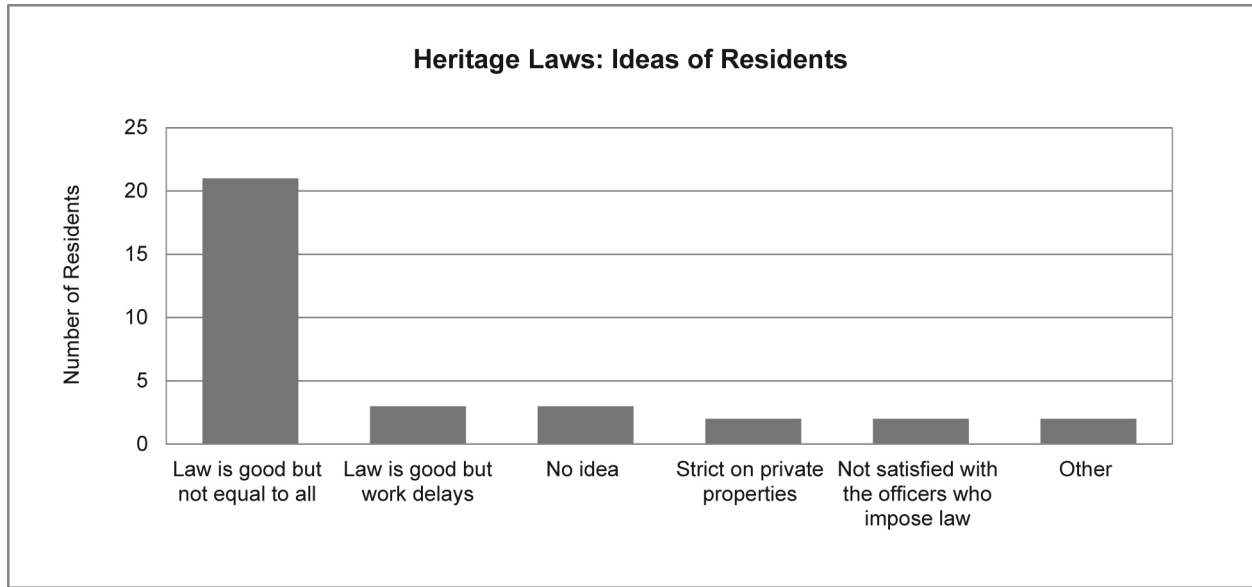
In general, the majority of the interviewed residents expressed their satisfaction with Galle Heritage Foundation (43%), were neutral towards the Department of Archaeology (43%) and had no specific idea about either the Urban Development Authority or Galle Municipal Council (46% and 37%, respectively). The interviews revealed that the popularity of Galle Heritage Foundation

<sup>653</sup> Interview, 9 September 2015.

<sup>654</sup> Ibid. This expression also illustrates how the Moor community of the fort uses the Sinhala language almost like native Sinhala speakers, which I noticed often. These Moors, who live within a Sinhalese community (unlike the Moors of the eastern part of the country), have mostly studied in prestigious Sinhala-medium schools in Galle. In general, the upper and middle class are trilingual, fluent in Tamil, Sinhala and English. As one of them mentioned one morning, showing me his newspaper: “We read either the English or Sinhala newspaper; this is the difference with the Moors of the fort.”

<sup>655</sup> Interview, 1 March 2016.





**Fig. 263** Ideas of residents on heritage laws.

(hereafter also referred to as “GHF”) is mainly due to the Preservation of Private Houses Project, funded by the Dutch government and carried out by GHF (2006–2009).<sup>656</sup> In contrast, there were also residents who demonstrated a certain level of suspicion towards the finances of GHF. This was highlighted by a resident at the Village Security Council meeting, held at the fort’s Buddhist temple in February 2016: “We have to request a percentage of the money earned by GHF from the fort for the benefit of the community.”<sup>657</sup> At this juncture, a community member negatively mentioned that a higher official affiliated with the GHF recently received a large pay raise, indicating that heritage officers benefit from their resources.<sup>658</sup> One heritage officer agrees with these views of the community members, insofar as “the foundation has large sums of money that it could have utilized for the benefit

of the community.”<sup>659</sup> However, GHF has legal provisions to invest and save money.<sup>660</sup>

Similarly, the Urban Development Authority (hereafter also referred to as “UDA”) and the DOA were also criticized for being partial to certain developments handled by the Planning Sub-Committee, in which they are key members (as discussed separately in sub-chapter 7.5).<sup>661</sup> In general, the behaviour of these institutions in the heritage city is not much appreciated by the community, although they expressed different ideas during a formal interview.

The respective middle-level officers of these institutions who handle development procedures were either criticized heavily or appreciated, depending on the personal experiences of the community members with their developments. When one of these officers was transferred from

<sup>656</sup> Also mentioned in chapter 5. The project was administered by GHF in collaboration with the Faculty of Architecture, University of Moratuwa. It gave a colonial appearance to or enhanced the colonial appearance of nearly 60 private houses. Introducing or enhancing the verandahs was the major aim of the project.

<sup>657</sup> A resident at the Village Security Council meeting, held at the fort’s Buddhist Temple on 17 February 2016.

<sup>658</sup> Discussion at the Village Security Council meeting, held at the fort’s Buddhist Temple on 17 February 2016.

<sup>659</sup> Personal conversation with a Galle-based heritage officer, June 2018.

<sup>660</sup> “...to invest any moneys belonging to the Foundation including any unapplied income, in any security in which, under the provisions of section 20 of the Trusts Ordinance (Chapter 87) or of any other written law, it is lawful to invest trust moneys or to invest any such moneys in the purchase of immovable property in Sri Lanka or vary such investments or to place in fixed deposit in any bank any portion of such moneys not required for immediate expenditure” (Sec 4 k, Galle Heritage Foundation Act, No 7 of 1994).

<sup>661</sup> This is the general idea of community as expressed during informal conversations; however, this changed totally during the formal interviews, where the residents were more polite.

Galle to another location in 2017, several residents expressed their happiness, as the officer was “too strict and had no cordial relationship with the community.”<sup>662</sup>

Some of these officers were criticized vehemently for being partial to and having a bias towards certain investors and residents. In 2017, a foreign investor complained to the Director General of Archaeology about the “unjustified attitudes and biased decisions” of an officer.<sup>663</sup> However, the DOA’s Regional Assistant Director of the Regional Archaeology Office (south), Fort claimed that the officer was impartial.<sup>664</sup> The long-term work of one officer at the fort, who had never been transferred, was also criticized by a community member, as it led to his building relationships with some residents and forming a bias in favour of them.<sup>665</sup> In addition, heritage officers were also alleged to have taken bribes regarding building developments, although there is no satisfactory evidence to prove this so far. In contrast to these negative criticisms, there are also a number of cases where these officers have supported the local community in their developments, as elaborated in sub-chapter 7.6.

In general, the residents expected the heritage institutions to support their developments (33%, 11 out of 33). This included the expectation that the institutions would “approve our plans,” “allow us to change our houses as we wish,” “give priority to long-term residents with respect to developments,” “consider our development needs” and “allow us to live peacefully by processing our plans.”<sup>666</sup> One of them stated, “The fort is almost completely changed; why we are not allowed to change our houses as we wish?”<sup>667</sup> Furthermore, the residents expected the heritage officers “to be fair to everyone,” “to cooperate with the community [on developments]”

and “not to be corrupt.” There was also one who expected financial support for house repairs.<sup>668</sup> The cleanliness of the fort and maintenance of the underground drainage system were also expected, which are the responsibilities of Galle Municipal Council (hereafter also referred to as “GMC”); however, residents were generally not happy about their work.

#### 7.1.4 CONFLICTING INTERESTS: DEVELOPMENT VS. PRESERVATION

*“We can keep our façades as they are, but we should be allowed to make interior changes as we wish. These are our houses and we are the owners. But heritage officers talk about our houses as if they own them!”* — Ms Azeez, a resident<sup>669</sup>

The main conflict between the community and heritage institutions could be identified as reconciling development needs with the preservation of privately owned properties. Not only the residents and the business community, but also several other institutions (including the public) have similar needs, as discussed in sub-chapter 7.1.5. These development needs are due chiefly to the reasons below, according my reasoned observations, interviews and conversations with the community:

- the age of residential buildings and the requirements of modern living standards;
- the limited space in the majority of houses and requirement of more space with family expansion;
- requirements of space for the purposes of lucrative tourism businesses;
- houses/buildings not being compatible with the required business purpose;
- institutional requirements and institutional expansion (especially for schools);<sup>670</sup> and
- typical Sri Lankan desires of building a new house.

Repairs due to the age of the houses are very common in the fort. Many residents request permission from the Regional Archaeology Office for minor repairs, especially the repair of deteriorated or dilapidated

662 Personal conversations with four residents, 2017.

663 Letter from a foreign businessman to the Director General of Archaeology on “Complaint Against [name not mentioned],” Divisional Archaeology Office Fort, Galle, 28 June 2017.

664 Letter from the Regional Assistant Director (South), Regional Archaeology Office, Galle Fort to the Director General of Archaeology on “Complaint Against [name not mentioned],” Divisional Archaeology Office Fort, Galle, 4 August 2017.

665 A criticism expressed during an interview with a resident on 14 February 2016.

666 Interviews with residents, during January, February and March in 2016.

667 Interview with a resident, January 29, 2016.

668 Interviews with residents, during January, February and March in 2016.

669 Personal conversation, 13 January 2016.

670 A short case will be discussed under the next sub chapter.

old walls. In February 2016, a resident requested the DOA's permission to repair his collapsed kitchen.<sup>671</sup> In the Sri Lankan context, it is very common that people prefer to build their own new houses, as living in old houses is not much appreciated. Although this way of thinking and the age of the houses have had an impact on the increasing developments, it is the fort's flourishing tourism that has most remarkably increased the developments.

Although building developments is one of the primary interests of the institutions, sometimes they have different requirements that are not directly related to the larger category of developments. One of the regiments of the Sri Lanka Army located in the fort requested the permission of the DOA to build a cricket pitch on the regiment's grounds in 2015.<sup>672</sup>

### **The Conflicting Building Development Needs and the Special Regulations (2009)**

Against this background, the Special Regulations, 2009 have become the main obstacle to the much-needed developments, the latter being the priority of the community. Firstly, any development requires a permit, which is expensive in addition to requiring a long bureaucratic process, as elaborated in sub-chapter 4.3.2. An applicant has to deal with two main institutions, representing the Planning Sub-Committee–Urban Development Authority (Galle) and Galle Municipal Council, in clearing their plans. The situation has changed as of February 2017, with the UDA handling the clearance process without the involvement of GMC.<sup>673</sup> The high cost of the process is discussed separately in sub-chapter 7.2.1.

Secondly, one cannot build a house according to their wishes, due to the legal restrictions discussed in sub-chapter 4.3.2. The most critical issue is the difficulty of increasing the floor area, a much-needed desideratum for both residential and commercial

purposes, due to height restrictions. It was discussed in sub-chapter 6.3.4 that the majority of the fort's houses are less than 3 perches (75.88 sqm), and the only possible way to increase the floor area is by vertical expansion, which is restricted to two floors depending on the streetscape. This means that a resident can only add another floor if the neighbouring house had two floors at the time of the fort's World Heritage recognition. The DOA usually cross-checks the information provided by the applicants with its building documentation from 1992.

Mr Rahman, who required another floor, went to Planning Sub-Committee more than 15 times with his building plan.<sup>674</sup> He was allowed a hidden floor, as the neighbouring houses were single-storeyed. Mr Rahman was not happy with the decision, as the floor was small and did not have enough ventilation.<sup>675</sup> Thus, it is common that the recommendations of Planning Sub-Committee conflict with the requirements of the residents. However, in practice, three floors within the space of 10 metres are allowed (depending on the streetscape): two floors and a hidden attic. In contrast, in some cases, the third floor is not hidden, as discussed in sub-chapter 5.4.3.

These development restrictions directly lead to social issues in the fort. The majority of the fort's residents are Muslims with extended families, who desperately need to increase the floor area, especially for dowry purposes upon a daughter's marriage. According to one architect, whose client's daughter was set to marry, he tried for nearly nine months to get the approval for the second floor; the architect stated, "I fear that my client will have a heart attack at any moment." This, together with the high land prices, has led the Moors to sell properties and move out of the fort, as in the short example provided in sub-chapter 6.6.2.

The addition of a verandah, which is usually mandatory (as a colonial feature), has also become a burden to the smaller property owners, as it requires a certain amount of space. Yet, controversially, some developers are allowed not to have a verandah.<sup>676</sup> Parking, another restriction, has created another serious issue for the present-day community, since garages are not allowed by the Special Regulations,

671 Letter from a resident to the Assistant Commissioner, Department of Archaeology, Fort, Galle, "Regarding the Collapsed Kitchen," 23 February 2016.

672 Letter from the Acting Commanding Officer of the 2<sup>nd</sup> Gemunu Watch Regiment, Fort, Galle to the Assistant Director (South), Department of Archaeology, Fort, Galle, "Requesting Permission to Construct a Cricket Pitch," 15 December 2015.

673 Until February 2017, the UDA was only responsible for granting Preliminary Planning Clearance, while the rest was the responsibility of the Planning Committee of Galle Municipal Council, since these powers of the UDA were delegated to local government authorities back then.

674 Personal conversation, 20 January 2018.

675 Ibid.

676 Examples will not be provided due to privacy concerns.

2009, and a majority of the fort's houses did not originally have garages. However, vehicle ownership has increased considerably due to the tourism economy of the fort. While some households have more than two vehicles, the vehicles of the employees of growing businesses have contributed substantially to the issue. As yet, there has been no satisfactory solution to this issue.

Although it is not mentioned in the law, air-conditioned rooms are not allowed for residential purposes (but they are allowed for commercial purposes).<sup>677</sup> A large number of families provide homestay accommodation nowadays, and thus this is a must for them in the tropical climate of Galle. Similarly, the business community also has similar conflicts of interests over developments. Having swimming pools, which is not allowed by the law, is discussed separately under sub-chapter 7.5.4.

As the decisions of Planning Sub-Committee mostly conflict with the expectations of the community, the community requested the ministry responsible to allow them to have a community representative in the Planning Sub-Committee (2017) in order to ensure their voices are heard.<sup>678</sup> When this was requested of a heritage authority in 2018, the response was that the matter has to be addressed within the prevailing law, which, however, does not make such provisions.<sup>679</sup>

### Conservation Priorities and the Community Needs

When compared to the conflicts of interest over developments, the rest seems minor. One such contradiction is the conservation priorities of the heritage institutions versus the community; the following is an example.<sup>680</sup>

677 Interview with architect Mahesh Arunadeva, 14 February 2016.

678 A letter from Additional Secretary (Development and Planning), Ministry of Education to the Director General of Archaeology and Director General of the Central Cultural Fund, "Facts Discussed at the Meeting to Obtain Community Ideas on the Proposed Action Plan Formulated According to the Management Plan of the World Heritage City of Galle Fort," 8 March 2017.

679 Personal conversations with a Galle-based heritage officer, June 2018.

680 Observations from the meeting held at the Information Centre of GHF on community's awareness of the "Galle Fort Rampart: Sky Walk Way Improvement" project proposed by the UDA and the line ministry, Ministry of Megapolis and Western Development, 26 November 2015.

### The Sky Walkway Project, 2015

On 26 November 2015, the UDA, together with the DOA and GHF, called a meeting to apprise community representatives of the World Bank-funded rampart improvement project ("Sky Walkway Improved Project," by SCDP, the Strategic Cities Development Project). Some of the community representatives strongly indicated that the conservation priority should be the Dutch-period sewage system, whose ill repair contributed to the risk of dengue, and thus mentioned that the project only addressed the needs of tourists while neglecting the requirements of the residential community.

Another criticism of the project by the local community was not including residents as stakeholders in the project's introductory leaflet. Some community representatives were unhappy that their ideas were not surveyed in the planning process; Mr Fowzie indicated this has also negatively affected the community in previous projects.

**Strengths:** As the community pointed out impractical features of certain proposals of the project, the UDA agreed to make amendments accordingly.

**Pitfalls:** While a community representative later mentioned he was happy with the project, he was silent amid the strong voices of the powerful representatives, an indication that neither the voices of the powerless nor the overall community were represented.

**Challenges:** Practically, reaching a solution that makes everyone happy is also difficult.

**Lessons:** Try to survey the overall views of the community prior to decision-making, which is expensive, and thus a challenge!





However, making decisions based on the community will so as to avoid conflict is also risky, as pointed out by the Project Planning Officer of GHF.<sup>681</sup> The officer identified one such unsuccessful project as the paving of the fort's roads with interlocking cement bricks (to replace the former tar roads), carried out by Galle Heritage Foundation in response to the strong community request (2011).<sup>682</sup> It made a substantial visual difference, yet conflicted with the fort's earlier appearance.<sup>683</sup> Despite the appreciation of some of the community, a number of community members are now unhappy about the project.<sup>684</sup> The interlocking cement paving blocks substantially increased the warmth of the environment, while it led to floods in certain places where the road level is higher than the ground level.<sup>685</sup>

Promoting tourism also creates conflicts over the social life of the residents, despite its economic benefits. Some feel that the rampart—their former playground—has been taken away from them, as one resident complained during the Village Security Council meeting in February 2016.<sup>686</sup> Pointing out one incident, another resident mentioned, “The rampart is part of *apē gama* (“our village”). Our children cannot play in the rampart now; the police chase them away.”<sup>687</sup> In 2017, a devout Catholic

lamented, “I wonder how they built big hotels close by the church.”<sup>688</sup>

### Outcomes of Conflicts

Conflicts over developments are the most significant disagreements at the fort, and result in negative outcomes for both parties. The most common reaction of heritage officers to conflicts is taking legal action, which is discussed separately in sub-chapter 7.4. The reactions of the community include “illegal” development, verbal insults, “bribes” (although not proven), complaints against heritage officers, attempts to influence officers, threats to heritage officers and legal actions. Most of these are discussed in the following sections, while “illegal” development, the most common outcome, is discussed separately in sub-chapter 7.3.1. In June 2015, a resident complained to the President of Sri Lanka about the heritage officers granting permission to demolish her common wall with a foreign neighbour.<sup>689</sup> Although verbal insults are not very common, DOA officers were severely insulted by a professional over an “illegal” development in his house at the end of 2014; he later apologized to the officers for the inconvenience caused.<sup>690</sup> In a few cases, the officers responsible for developments have been threatened by developers.<sup>691</sup> Recently, in a few cases, conflicts over developments have led to disciplinary action against heritage officers.<sup>692</sup> Against this background, officers are not happy to handle developments in the heritage city; they follow the law strictly so that they cannot be charged.<sup>693</sup>

681 Personal conversations with the Project Planning Officer (GHF), June 2018.

682 Ibid.

683 Ibid.

684 Interviews and personal conversations with nearly ten residents in 2016.

685 Personal conversations with at least five residents in 2016.

686 Statement of a resident at the Village Security Council meeting, held at Sri Sudharmalaya Buddhist Temple on 17 February 2016. It was mentioned in sub-chapter 6.2.1 that the rampart and the current Court's Square served as children's playgrounds.

687 According to the resident, the children used play football by the lighthouse in the ramparts, until a policeman asked them to not to play there, indicating that they might disturb the tourists. The children were urged to play at the shore, which was not safe. The disappointed parents went to complain at the Archaeology Office, but the “boss” was not there. So they went to the “Galle Heritage” [Foundation's information centre]. The person who was there told the parents that the children cannot play. As they felt that the person was not the responsible officer, the parents went to the “big office” [of GHF]. The officer there told them that the children can play in the ramparts. The resident further mentioned, “This is how things are happening now. If the children throw a ball at a tourist by mistake, they won't mind it. Sometimes they even play with our children” (personal conversation with a resident, December 2015).

688 A Catholic and a native resident, referring to the two newly constructed high-end boutique hotels close to All Saints' Church; personal conversation, January 2018.

689 Letter from a resident to the President on “Opposing the Decision to Grant Permission to Demolish the Common Wall,” 22 July 2015 (copy of the letter received to the DOA by the President's Office on 5 August 2015).

690 Personal conversation with the Site Manager of Galle Fort (DOA), 23 January 2018.

691 Personal conversations with officers of the UDA, GHF and DOA in 2016 and 2018; interview with an officer responsible for developments, 9 March 2016.

692 Personal conversations with heritage officers and observations in 2017, 2018 and early 2019.

693 Ibid.

### 7.1.5 CONFLICTING INTERESTS: THE BOUNDARY WALL OF A PRESTIGIOUS SCHOOL

Although the conflicts between heritage authorities and the community over developments are very common at Galle Fort, (powerful) public institutions are no exception. One such significant institution is one of the most prestigious schools in Galle, located in the historic centre since the British occupation. The school authorities have been subjected to more than five police investigations on behalf of the Department of Archaeology for “illegal” developments.<sup>694</sup>

The most controversial of these cases was that of the school’s boundary wall, constructed in January 2011. In 2010, the principal of the school submitted a proposal to the Planning Sub-Committee to build a wall at its boundary, facing one of the fort’s outermost streets.<sup>695</sup> Boundary walls are a common requirement for schools, public institutions and residential properties in the local context. However, they are not permitted in the fort as per Special Regulations, 2009, although walls not exceeding one metre are permitted by the law in certain cases.<sup>696</sup> Thus, the school was recommended to build a one-metre-high wall, similar in shape to the wall of the neighbouring property,<sup>697</sup> which had the typical shape for the boundary walls in Galle (Fig. 264). The decision was conveyed to the principal, indicating that a development permit should be obtained from the municipality prior to the development.<sup>698</sup> Apparently, the school’s demands were not fulfilled by the decision. The school authority started constructing a wall higher than two metres without obtaining the development permit;<sup>699</sup>

this was carried out at night over a long weekend, and the DOA claimed the shape of the wall “conflicts with the historical value of the fort.”<sup>700</sup>

The DOA notified the principal to stop the construction, both verbally and in writing, which she did not agree to, causing the DOA to file a case against the principal.<sup>701</sup> Subsequently, one of the leading Galle district parliamentarians requested a speedy solution to the matter before the court hearing.<sup>702</sup> Furthermore, the Governor of the Southern Province organized a meeting regarding the matter with all stakeholders, including the School Development Board.<sup>703</sup> However, the decision of the Planning Sub-Committee did not change, as the school authorities were again informed. The Director General of Archaeology firmly stated “I did not allow that wall” during an interview in 2016.<sup>704</sup>

At this juncture, the school authority demolished the wall by using bulldozers, and carried out a media smear campaign indicating that the Department of Archaeology carried out the demolition.<sup>705</sup> However, the Antiquities Ordinance has no provision to make demolition orders, and no demolitions have been ever carried out in the fort by either the DOA or UDA. Although the DOA advised the School Development Board to submit a request to the Planning Sub-Committee to build a temporary wall until the permit to build a permanent wall was granted, this advice was not followed by the school authorities.<sup>706</sup> A chain-link fence of nearly 2 metres high replaced the demolished wall (Fig. 265).<sup>707</sup> At the end of 2013, a march was organized at the governor’s residence by

694 Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

695 Interview with architect Prof. Samitha Manawadu, who was a member of the Planning Sub-Committee and a former President of ICOMOS Sri Lanka, 1 March 2016.

696 “No boundary walls are permitted in front of the buildings facing the roads; only boundary walls, fence or live fence are permitted (on either sides of the buildings) not exceeding one meter in height” (Article 70.21 Boundary (a), Special Regulations (Planning and Building), 2009).

697 Interview with architect Prof. Samitha Manawadu, 1 March 2016.

698 Letter from the Regional Assistant Director (South), Regional Archaeology Office, Fort, Galle to the Director General of Archaeology on “The News Reported by *Dinamina* Newspaper on Minister of Education Take Steps to Build the Collapsed Wall of Southlands College dated 20.01.2015,” 21 January 2015.

699 Ibid.; Interview with architect Prof. Samitha Manawadu,

1 March 2016.

700 Letter from the Regional Assistant Director (South), Regional Archaeology Office, Fort, Galle to the Director General of Archaeology on “The News Reported by *Dinamina* Newspaper on Minister of Education Take Steps to Build the Collapsed Wall of Southlands College dated 20.01. 2015,” 21 January 2015.

701 Ibid.

702 Ibid.

703 Ibid.

704 Interview with Director General of Archaeology, 26 April 2016.

705 Letter from the Regional Assistant Director (South), Regional Archaeology Office, Fort, Galle to the Director General of Archaeology on “The News Reported by *Dinamina* Newspaper on Minister of Education Take Steps to Build the Collapsed Wall of Southlands College dated 20.01. 2015,” 21 January 2015; personal conversation with the officer responsible for developments (DOA) who handled the matter, January 2017.

706 Ibid.

707 Observations, December 2015.



**Fig. 264** Wall of the neighbouring property, showing the typical shape of the walls of Galle (right), and the chain-link fence of the school at left (2016).

supporters of the school from Galle town, defaming the DOA.<sup>708</sup> On 17 April 2014, the DOA withdrew the case against the principal at Galle Magistrate's Court.<sup>709</sup>

When the new regime came to power in 2015, a local newspaper blamed the "[then] powerful politicians of the South and the governor" for their influence on demolishing the school's wall, "permitted by the Planning Sub-Committee."<sup>710</sup> Furthermore, it reported that the new Minister of

Education has realized the need for a boundary wall at the school, which is the "only girls' school located within a World Heritage city."<sup>711</sup> In response to the information provided by the newspaper, the DOA's Regional Assistant Director (South) reacted the following day by requesting the Director General of Archaeology to inform the new Minister of Education on the matter;<sup>712</sup> the latter also happened to be the minister then responsible for Archaeology. The continuous attempts to rebuild the boundary wall have so far failed.<sup>713</sup>

708 Letter from the Regional Assistant Director (South), Regional Archaeology Office, Fort, Galle to the Director General of Archaeology on "The News Reported by *Dinamina* Newspaper on Minister of Education Take Steps to Build the Collapsed Wall of Southlands College dated 20.01. 2015," 21 January 2015.

709 Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

710 "Minister of Education Take Steps to Rebuild the Collapsed Wall of [name of the school will not be mentioned]," *Dinamina* Newspaper, 20 January 2015.

711 Ibid.

712 Letter from the Regional Assistant Director (South), Regional Archaeology Office, Fort, Galle to the Director General of Archaeology on "The News Reported by *Dinamina* Newspaper on Minister of Education Take Steps to Build the Collapsed Wall of Southlands College dated 20.01. 2015," 21 January 2015.

713 There were discussions regarding this matter at the District Coordinating Committee meetings at the Galle District Secretariat in 2016. Thus, the Director (Planning) of the District





**Fig. 265** The chain-link fence with the school in the background, 2016.

## 7.2. SPECIAL REGULATIONS, 2009: A BURDEN FOR ORDINARY LOCALS?

In this sub-chapter, I explore whether the building regulations of Galle Fort have become a burden to the ordinary local community, based on input from the community, practising architects, heritage officers and my own reasoned observations.

### 7.2.1 THE HIGH COST OF CHARTERED ARCHITECT'S SERVICES

*“The law is good, neither strict nor simple, but the architect’s service fees are too high.”* — Mr Vidanage, a resident and businessmen<sup>714</sup>

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Secretariat raised the possibility of getting the approval of the Department of Archaeology to build the wall of the school in his letter to the Regional Assistant Director, Regional Archaeology Office, Fort, Galle, on “Forwarding the Proposals Submitted to the District Coordinating Committee to Take Future Actions,” on 25 June 2016.

<sup>714</sup> Interview, 10 November 2015.

Through interviews and informal conversations with residents, it was determined that obtaining the services of Chartered Architects, which is obligatory in the preparation of building plans per the Special Regulations (Planning and Building), 2009 (Article 70.4 (3)), has become a financial burden to the ordinary locals, especially to the poor. In fact, the interviews showed that this is well known to heritage officers, professionals and heritage policymakers.<sup>715</sup>

In the Sri Lankan context, the majority of residents hire draughtsmen’s services for the preparation of building plans, which is less costly. According to the architect Mahesh Arunadeva, who has prepared approximately 40 plans for Galle Fort, “nearly 5% of the people in Colombo take

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<sup>715</sup> Interviews with Prof. P.B. Mandawala, who collaborated in formulating the Integrated Management System 2015; Director General of Archaeology, 12 September 2017; Director of Galle Heritage Foundation, 9 March 2016; Regional Assistant Director (South), Department of Archaeology, 2 February 2016; Project Planning Officer of GHF, 9 March 2016; and architect Mahesh Arunadeva, 14 February 2016.

the service of a Chartered Architect, which has however become obligatory in an outstation like Galle Fort. This is a lifelong grievance for the poor class of the community, who could not even retain an architect.<sup>716</sup> However, a leading conservation architect who represented Planning Sub-Committee and also prepared a number of building plans for the fort has an opposing view. According to him, the residents are affluent and capable of affording such services due to the lucrative tourism industry, despite “professionalism being expensive.”<sup>717</sup> Although this is partly true in the current context, there are a number of resident families who do not engage in tourist-oriented businesses. In fact, half of the interviewed residents (15 out of 33) did not engage in such businesses (2016).

Upon the introduction of the Special Regulations (Planning and Building) 2009, a few pioneering conservation architects dominated the field (private consultation); these individuals also represented the Planning Sub-Committee. This created the impression in the community that the building plans prepared by them would be approved by the committee. On one occasion, a local resident questioned the ethics of having such architects in the committee and, as a result, one of the architects opted for private practice.<sup>718</sup> Thus, one local resident has ironically stated that “the architects realized private consultation is more profitable than sitting for the committee.”<sup>719</sup> According to a Galle-based heritage officer, these renowned conservation architects no longer dominate the field. The heritage officers realized the disadvantages of this strategy and encouraged local residents to retain the services of other architects they recommended, and who charge relatively less compared to the more reputed architects.<sup>720</sup> It can be observed that the majority of local residents prefer the architects who charge comparatively less. In contrast, the elites usually retain the services of more reputed architects and architectural firms.

In practice, the Planning Sub-Committee discusses the submitted building plans with the applicants and their architects, and usually recommend making changes in order to adhere to building regulations, which sometimes requires amendments in the plan. Thus, the applicant has to pay again, which is financially unmanageable for some residents. In January 2018, a resident explained her financial difficulties to the DOA officer responsible for developments with regard to amending the plan she submitted.<sup>721</sup> “I need more money get the signatures of Chartered Architect, Structural Engineer and the Technical Engineer after the proposed amendments. I am unable to afford any more, and I feel I should sell my house.”<sup>722</sup> Thus, obtaining approval for their plans was delayed until they submitted the proposed amendments. In contrast, the investors, both local and foreign, are capable of finalizing such amendments quickly, creating the impression that they are treated better than ordinary locals in the development procedure.

According to architect Mahesh Arunadeva, although some of the heritage institutions employ their own architects, none of these institutions has seriously considered providing their services to the community at a reasonable price, as well as free for the poor.<sup>723</sup> A number of residents stated that such a service would be a relief to them.<sup>724</sup> In 2017, the DOA prepared free building plans for three families with lower incomes. Ms Zubair, a fort resident who received the service, said, “I told the [Department of] Archaeology that I am unable to afford this.” In 2017, the Director General of Archaeology stated there would be such a service under the Galle Heritage Foundation in the future, as proposed by the new “Integrated Management System 2015.”<sup>725</sup> This is an initiative under of the proposed Conservation Assistance Fund (Mandawala 2015).

716 Interview, 14 February 2016.

717 Interview with a leading conservation architect, 12 February 2015.

718 Interview with Mr Fowzie, 16 February 2016.

719 Ibid.

720 Interview with a Galle-based heritage officer, 8 March 2016.

721 Observations at the Regional Archaeology Office (south), Galle Fort with the consent of the officer responsible, 25 January 2017.

722 Ibid.

723 Interview, 14 February 2016.

724 Interviews with residents Mr Hussain, 16 February 2016, and Mr Gunasekera, 7 January 2016.

725 Interview with Director General of Archaeology, 12 September 2017.

### 7.2.2 DELAYS IN THE PROCESS AND PARTIAL DECISIONS

Delays in the building development procedure are generally criticized by the community. In 2016, a major criticism of applicants was the absence of the Department of Archaeology's representative at the Planning Sub-Committee, who has to come to Galle from Colombo and whose consent is essential to the committee.<sup>726</sup> This usually delays the processing of the plans by one month, as the committee meets monthly. The other members of Planning Sub-Committee are based in Galle.<sup>727</sup> However, this has since improved (March 2019). In addition, the lack of participation of the heads of these institutions (which are also based in Colombo) in the Planning Sub-Committee also delays decisions on critical issues for which their presence is an essential, according to heritage officers.<sup>728</sup>

Although some members of the committee agree with this first criticism, they state that there are also reasons for delays on the part of the community. The absence of the architect/ applicant at committee meetings or the presence of a junior architect instead of the senior architect who planned the building, the land right disputes of the applicants and being late to submit the proposed amendments (as elaborated above) are common reasons.<sup>729</sup> Positively, the Planning Sub-Committee considered the community's criticisms of the delays in the process, and started showing a genuine interest in clearing the plans more quickly by early 2019.<sup>730</sup>

Among the 33 individuals interviewed (2016) were nine residents who have applied for building developments. Five of the nine said that the process took more than six months, while two succeeded in less than six months; the rest were unable to

succeed. Among them was one applicant whose plan was cleared within two months; he was, however, a "special and privileged" person.<sup>731</sup> Thus, a resident stated that the plans of ordinary people are not cleared,<sup>732</sup> while some claim that on unusual occasions, some plans clear very quickly.<sup>733</sup>

There is also the criticism that the UDA grants permission for certain developments without considering the decisions of the Planning Sub-Committee, and UDA's head office (Colombo) is said to be responsible for this.<sup>734</sup> This was also made known to the responsible ministry by the local community during a meeting in 2017.<sup>735</sup> Referring to the building approval for a foreign-invested venture, a heritage officer negatively stated that "it has bypassed the regular channel."<sup>736</sup>

### 7.2.3 REJECTION OF BUILDING APPLICATIONS

Although residents have managed to submit their building applications despite these difficulties, some could not succeed, which is another criticism of the system. The number of building permits granted by the municipality<sup>737</sup> is lower than the number that is preliminarily cleared by the UDA (upon the recommendation of the Planning Sub-Committee), despite there being a significant and positive increase in the community's following the proper channel over the last 15 years (Fig. 266). However, there are also a number of disappointed applicants.

726 Interviews with at least five residents who applied for building developments 2016; personal conversations with at least five residents in 2016; and personal conversations with three Galle-based heritage officers in 2016.

727 This includes the representatives of Galle District Office of UDA, DOA's Southern Regional Office, GMC and GHF.

728 Personal conversations with two Galle-based heritage officers in February and March 2016.

729 Interview with the responsible officer on 3 February 2016 and personal conversations in 2017.

730 My personal observations of the Planning Sub-Committee meeting in 30 November 2018 and personal conversations with a few Planning Sub-Committee members in January 2019.

731 Person will not be mentioned in order to respect their privacy.

732 Identified as the general impression of ordinary residents in day-to-day conversations; interview with resident and businessmen Mr Vidanage, 10 November 2015.

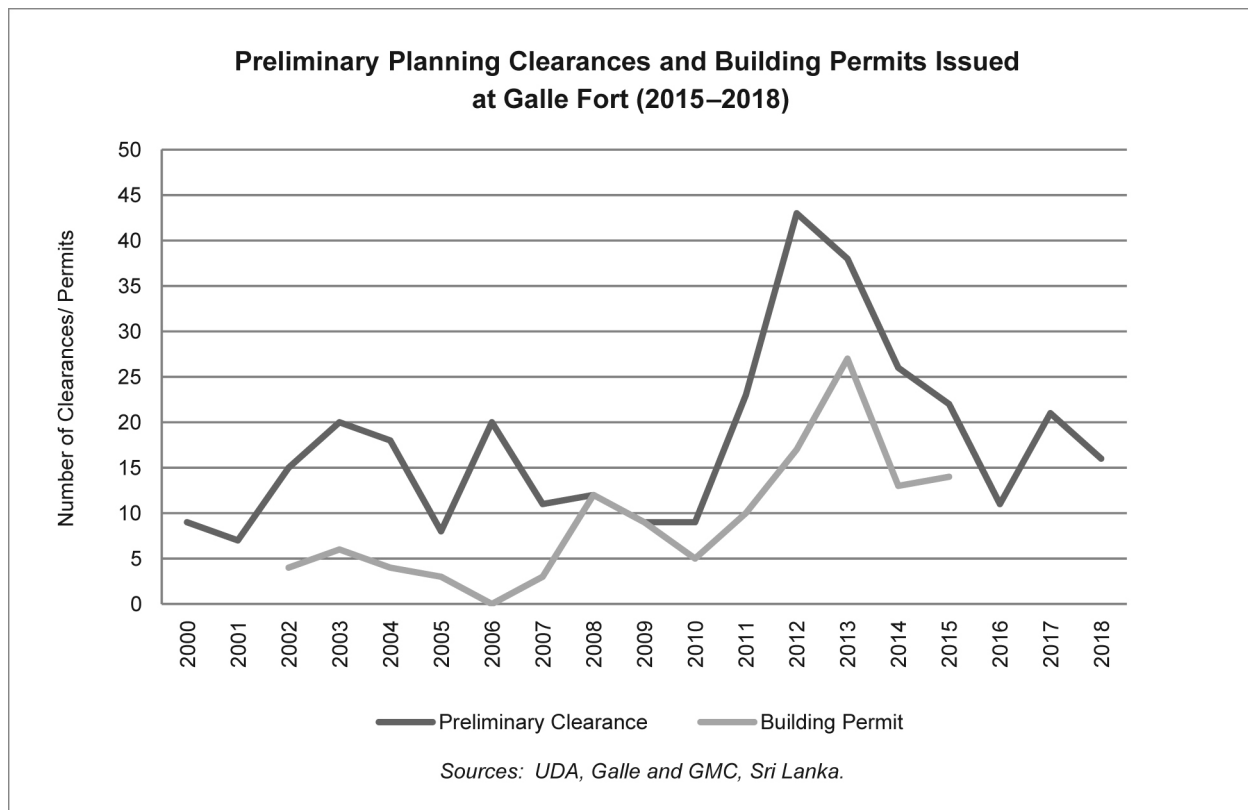
733 Day-to-day personal conversations with residents in 2015 and 2017; interview with businessman Mr Lafir, 18 December 2016.

734 Personal conversation with a Galle-based heritage officer, March 2016.

735 Letter from the Additional Secretary (Development and Planning), Ministry of Education to Director General of Archaeology and Director General of the Central Cultural Fund on "Facts Discussed at the Meeting to Obtain Community Ideas on the Proposed Action Plan Formulated According to the Management Plan of the World Heritage City of Galle Fort," March 2017.

736 Personal conversation with a Galle-based heritage officer, December 2016.

737 Since 2017, the UDA resumed issuing building permits.



**Fig. 266** Number of preliminary clearances and building permits granted at Galle Fort, 2000 to 2018.<sup>738</sup>

According to the DOA officer responsible for developments (2016), there are several reasons to reject an application, including it being incompatible with building regulations (especially violations of streetscape characteristics), not having a clear deed for the property and proposing a development for land of less than one perch.<sup>739</sup> The UDA's general Planning and Building Regulations (1986) stipulate that lands of less than 6 perch cannot be developed.<sup>740</sup> According to

architect Ashley De Vos, a heritage policy maker, the law has to be strictly followed, otherwise it might incentivize residents to subdivide properties into small blocks due to the high land value, which could result in the degradation of the original colonial architecture of the building.<sup>741</sup> However, the majority of the fort's properties are less than 3 perches (as discussed in sub-chapter 6.3.4), and thus the rule at the fort is regarded as one perch in practice. However, the more powerless and economically disadvantaged residents of the community are the most significantly affected by the law, as illustrated in the following example, pointed out by a Galle-based heritage officer.<sup>742</sup>

<sup>738</sup> Since 2017, the UDA resumed issuing building permits, which had previously been the responsibility of GMC. However, the applications already submitted to GMC were processed in 2017 and 2018, resulting in both the UDA and GMC issuing building permits. While GMC's data from 2016–2018 could not be retrieved, the UDA issued three and six building permits in 2017 and 2018, respectively.

<sup>739</sup> Interview, 3 February 2016.

<sup>740</sup> Amendment of regulation 61 of the Urban Development Authority Planning and Building Regulations, 1986 by Extraordinary Gazette No 1957/8, 17 April 2009: "61 A. The provisions of regulation 61 shall apply to all premises within any local authority area, declared as Urban Development area under the

Law. Provided that the above provisions shall not apply in respect of premises falling within any local authority area, where the size of the premises is less than 6 perches (150m<sup>2</sup>)."

<sup>741</sup> Letter from architect Ashley De Vos to the Director (Architectural Conservation), Department of Archaeology on "Houses on Land Extents of Less than Five Perches," 27 July 2015.

<sup>742</sup> Interview with the responsible officer on 3 February 2016.



### The Law over the Powerless

Ms Latheef is a Samurdhi<sup>743</sup> beneficiary of lower income who lived in a small house with modest living conditions. In late 2013, she wrote the DOA's Regional Assistant Director of Regional Archaeology Office (South) at the fort, requesting permission to renovate the house with a plan prepared by a draughtsman instead of a Chartered Architect, as they were unable to afford that service.<sup>744</sup> Furthermore, she mentioned that they are also unable to keep 6 feet of rear space, according to the UDA regulations, as the land is less than one perch, and thus it substantially reduces the space of the house.<sup>745</sup> Subsequently, there was a joint site observation by the partner heritage institutions.<sup>746</sup>

The next year, she again wrote the Regional Assistant Director of Regional Archaeology Office (South) at the fort, as no progress had been made in the matter:

"Nine members of our big family live in a small house at the above-mentioned address. We wrote to all the relevant institutions, including Galle Heritage Foundation, to obtain permission to build a new house. Although this matter was discussed occasionally, we have not yet been given a satisfactory solution ... We feel all privileges in Galle Fort are only for the rich ...

"We humbly request you to grant permission to approve our plan, which allows us to live in a modest way instead of living in this dilapidated timber house, which even destroys the beauty of Galle Fort.

"So, we humbly request you to simplify the heritage laws of Galle Fort for the poor like us."<sup>747</sup>

The family members often met with the relevant heritage officers regarding the matter,<sup>748</sup> while they participated in Planning Sub-Committee meetings for six years without reaching a satisfactory

solution.<sup>749</sup> The DOA and GHF officers urged that the matter should be looked in a sympathetic way; however, the UDA officer could not proceed, as the applicant did not have a deed to the particular property.<sup>750</sup> The house was built on land owned by a mosque, which later distributed it among a few lower-income families. The family had lived there for 60 years.<sup>751</sup> Although the mosque agreed to the development of the house and provided them with a letter of consent, the UDA required a clear deed to process the building development application according to the formal procedure.<sup>752</sup> Besides, the family could not afford a Chartered Architect. Consequently, the respective officers made a joint effort to provide a free plan by a Chartered Architect for the family. As a result, the matter, along with the requests of several other such cases, were discussed at the UDA head office, Colombo during a meeting on amending building regulations in late 2015.<sup>753</sup> It was suggested that they provide free "combined building plans" (two or three subdivided small houses sharing the same façade characteristics) to a few lower-income families; Ms Lateef's family was among them.<sup>754</sup> Somehow, the family did not receive the plan until January 2019, while others succeeded earlier.<sup>755</sup>

The family feels that some heritage officers are unable to understand the requirements of the poor, despite others being very helpful.<sup>756</sup> According to architect Mahesh Arunadeva, the officers have to find ways to fulfil the requirements of the residents within the restrictions, rather than simply saying no.<sup>757</sup>

743 Samurdhi is a major social assistance programme implemented by the Sri Lankan government in 1995 to alleviate poverty.

744 A letter from Ms Lateef to the Southern Provincial Assistant Director of Archaeology (no subject), 1 December 2013.

745 Ibid.

746 This was conducted as per the request of the Chairman of Galle Heritage Foundation (personal conversation with a Galle-based heritage officer, December 2016).

747 A letter from Ms Latheef to the Regional Deputy Director, Regional Archaeology Fort (no subject), 18 September 2014.

748 Personal conversation with a family member, November 2015.

749 Ibid.

750 Observations and personal conversations with the officers responsible at the UDA, GHF and the DOA in 2015 and 2016.

751 Personal conversation with a family member, November 2015.

752 Ibid.; personal conversations with the officer responsible at the UDA, December 2016.

753 Letter from the Regional Assistant Director (South), Regional Archaeology Office, Galle Fort to the Chairman, Galle Heritage Foundation on "Preparation of Building Plans through Institutional Intervention," 3 August 2016.

754 Ibid.; personal conversations with the officer responsible at the DOA, December 2018.

755 Personal conversation with family members in January 2019.

756 Personal conversations with family members on various occasions from 2015 to 2018.

757 Interview, 14 February 2016.

### 7.3 “ILLEGAL” BUILDING ACTIVITIES: “NOCTURNAL ARCHITECTURE”

Here I discuss what constitutes “illegal” building activities, the reasons for “illegal developments” and why they continue to take place in the historic centre. “illegal activities” have been identified as a continuing major threat affecting property by both the World Heritage Committee (2008–2018) and local authorities.<sup>758</sup> Although they are deemed “illegal,” some of them are simply requirements of the community, despite not being properly facilitated by the heritage laws. Thus, it is questionable to call them illegal; therefore, the term “illegal” with inverted commas is used in this study, depending on the context.

#### 7.3.1 WHAT IS AN ILLEGAL BUILDING ACTIVITY?

In a legal context, building activities that breach the heritage laws applicable to Galle Fort (discussed in chapter 4) are identified as illegal building activities. While breaching the UDA’s Special Regulations (Planning and Building), 2009, results in an “illegal development,” breaching DOA’s Antiquities Ordinance and related laws may lead to both “illegal development” as well as the “destruction of antiquities.” Some of the major illegal building activities are discussed here, according to the respective laws.

#### Breaches of the Special Regulations (Planning and Building) 2009

1. Any development without a development permit

It can be observed that although minor and partial developments still continue illegally the development of a whole building is usually undertaken with a building permit.

2. Any development outside the approved building plan

It is very common in Galle Fort to carry out developments beyond the scope of the

building permit. Some of these additions have been identified through the inspections of ongoing developments by the officials of the Planning Sub-Committee. In February 2016, the management of a foreign-invested high-end boutique hotel was recommended to remove the developments that had been undertaken outside the approved building plan.<sup>759</sup>

The residents state that only the rich can afford such expensive changes when they are not in accordance with the standards of the Planning Sub-Committee.<sup>760</sup> In contrast, the heritage officials allege that some deliberately do whatever they wish after obtaining the building permit.<sup>761</sup> Yet this becomes an issue when obtaining the final clearance or Certificate of Conformity (COC).<sup>762</sup> In 2016, a local family who developed a guesthouse had such an issue.<sup>763</sup> As a solution, some of these additions are done after obtaining the COC. The addition of a swimming pool in a villa in the historic centre is one such example.<sup>764</sup>

3. Unauthorized change of use (functional change)

This is common in the fort, including the “springing up” of the commercial places over the weekend. In 2014, part of a building in Light House Street was converted into a jewellery shop illegally, and the owner later agreed to legalize the building according to the building regulations.<sup>765</sup>

4. Buildings exceeding two floors and 10 metres

This can be identified as the most common

<sup>758</sup> Cited as a factor affecting property in the years 2008 (WHC 2008, 94), 2009, 2010, 2011, 2012, 2013, 2014, 2016 and 2018 (UNESCO). Available at <https://whc.unesco.org/en/soc/683> (accessed 25 July 2018); data from the year 2015 courtesy of the “Integrated Management System 2015” (Mandawala 2015, 44).

<sup>759</sup> Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

<sup>760</sup> Interviews and personal conversations with residents from 2016 to 2017.

<sup>761</sup> Interviews and personal conversations with Galle-based heritage officers from 2016 to 2017.

<sup>762</sup> Interview with architect Prof. Samitha Manawadu, 22 December 2015.

<sup>763</sup> Personal conversation with a Galle-based heritage officer, December 2016.

<sup>764</sup> Observation of a meeting with the new owner of the property and the DOA officer responsible with the consent of the officer, Regional Archaeology Office (South) Galle Fort, January 2017.

<sup>765</sup> Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

illegal development activity; examples are provided in sub-chapter 5.4 and 7.5.1. In addition, controversies over the law are elaborated in sub-chapter 7.5.1. However, two floors and a hidden attic are permitted within 10 metres in some cases.

5. Changing existing verandahs without permission

This mainly refers to the converting verandahs into shops; examples are provided in sub-chapter 5.3.1.

6. Addition of swimming pools, garages and boundary walls

While the first is discussed in sub-chapters 5.4.6 and 7.5.4 the latter is discussed in sub-chapter 7.1.5.

7. Using colours, roof materials or floor materials not permitted by the law

In general, colour code and roof materials are the most followed guidelines, as analyzed in sub-chapters 5.3.2 and 5.3.3.

### **Breaches of the Antiquities Ordinance and Ceylon Government Gazette (14959) 1971**

1. Any unauthorized development

This also comes under the first category of the above.

2. Destruction of antiquities

Demolition of parts of or complete colonial buildings leads to the “destruction of antiquities.” A foreign investor who leased a house on Pedlar Street submitted a building development application to change the façade as well as to change the use from residential to commercial.<sup>766</sup> In October 2015, the Planning Sub-Committee refused the application, stating that the building is one of the unique houses in the fort representing Dutch colonial architecture with a central courtyard.<sup>767</sup> The foreign lessee demolished part of the verandah in January 2017 and rebuilt the façade. Therefore, he was charged with both “destruction of antiquities” as well as “illegal development.”<sup>768</sup>

3. Unauthorized excavation

An example of unauthorized excavation is discussed in sub-chapter 7.5.3.

4. Minor building changes without permission  
Although minor unauthorized building changes are very common in Galle Fort, there are a large number of residents who seek the permission of the DOA regarding this.<sup>769</sup> In November 2015, I observed “unauthorized” changes in the floor of a foreign-owned property in the historic centre. According to the construction supervisor of the local company who handled the task, the existing cement floor easily became damp. Apparently, the owner preferred a tiled floor, which is not allowed (though permitted in certain places).

In general, “illegal developments” are the most common illegal building activity, according to the cases recorded by the Regional Archaeology Office (South) at the fort; this also illustrates the conflicting development interests of the community (Fig. 267). While the number of unrecorded “illegal” building activities is far higher than that, some are indeed recorded by the UDA. In addition, some cases are handled by the Special Police Unit for the Prevention of Destruction and Theft of Antiquities (Galle Division), an entity affiliated with the DOA in collaboration with the Police Department.

### **7.3.2 THE REASONS: IDEAS OF RESIDENTS AND HERITAGE OFFICERS**

In general, the residents were reluctant to speak about “illegal” developments during interviews, as a number of them had already carried out such activities. Twenty one out of the 33 (21%) residents interviewed cited some reasons for “illegal” development, namely “required development contradicts with the law” (7) followed by “expenses and the delay in the process” (5). The others included “weaknesses in heritage laws” (2), “need modern living standards” (2), “economic benefits” (2), “being unsuccessful in obtaining the approval” (1), “competition” (1) and “carelessness” (1).

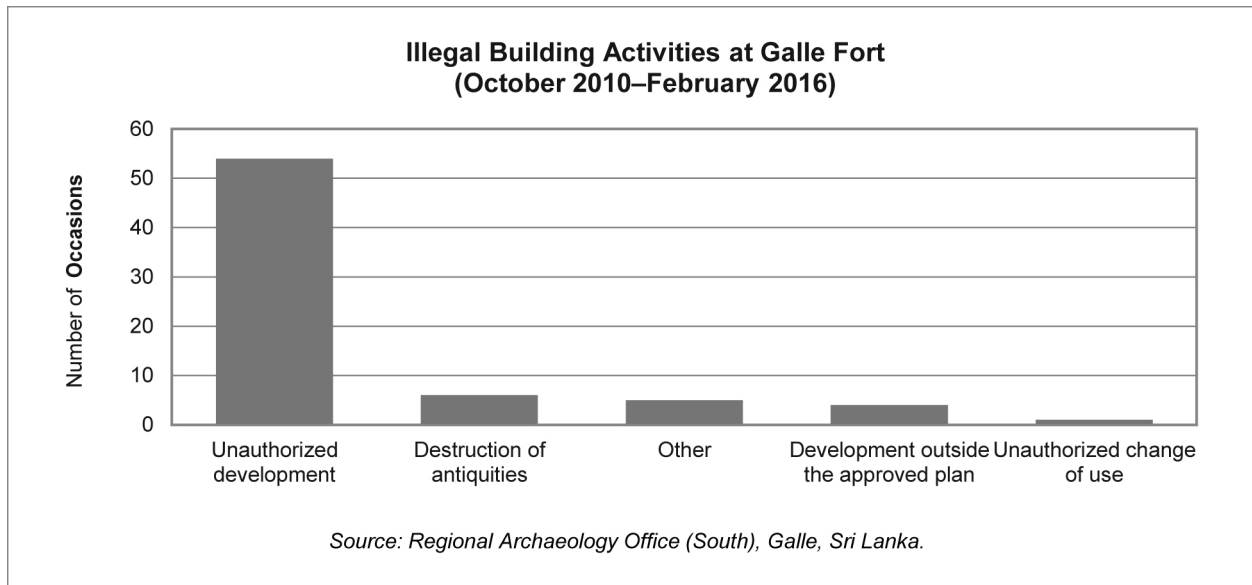
<sup>766</sup> Letter from an officer to the Regional Assistant Director, Regional Archeology Office, Galle Fort on “Illegal Development at [address will not be mentioned],” 10 February 2016.

<sup>767</sup> Ibid.

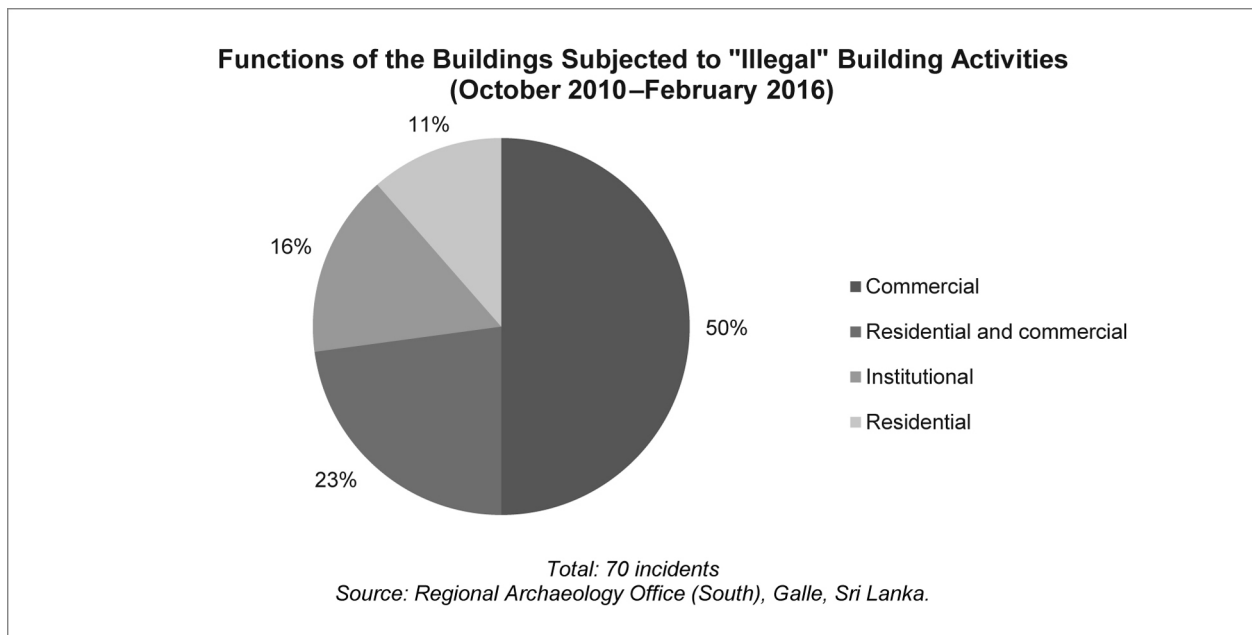
<sup>768</sup> Ibid.

<sup>769</sup> Personal conversations with residents and observations at the Regional Archaeology Office (South), Galle Fort from 2016 to 2017.





**Fig. 267** Types of illegal building activities recorded by the Regional Archaeology Office (South), Galle Fort.

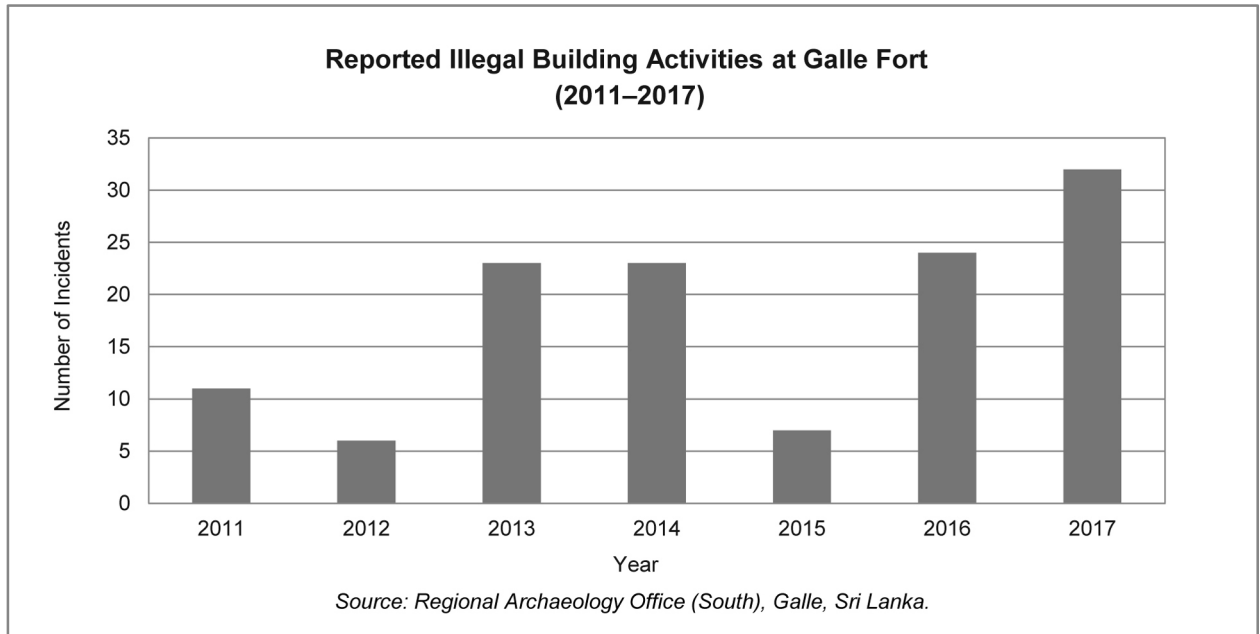


**Fig. 268** Purposes of "illegal" building activities.

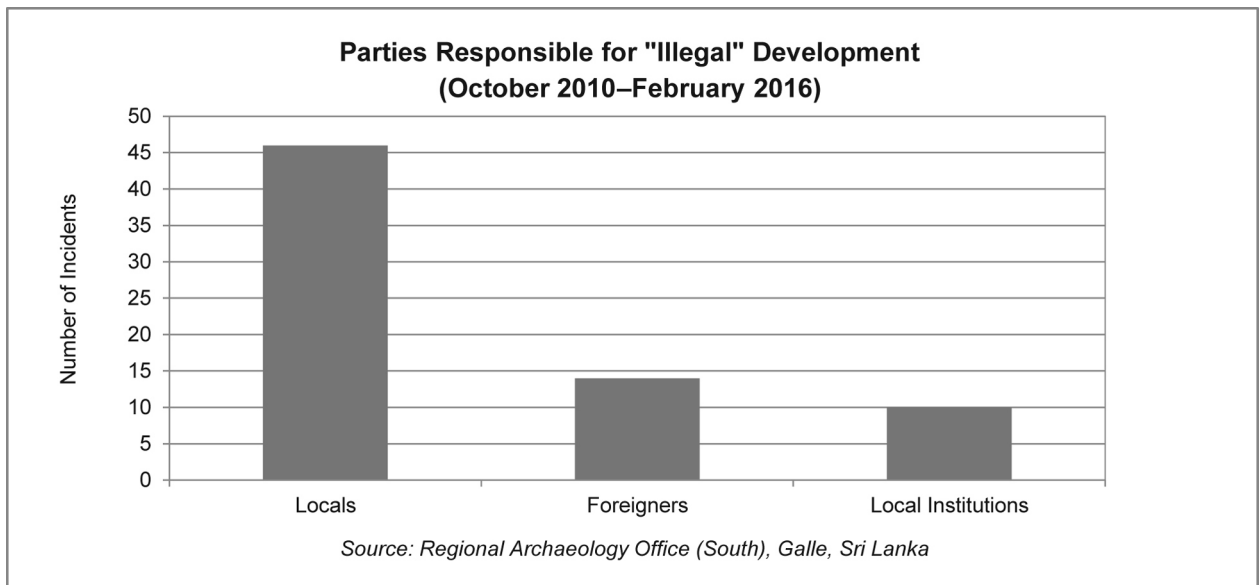
Some of the residents frankly mentioned their "illegal" developments; among them was a resident who had totally renovated his house, with the addition of a second floor, without permission.<sup>770</sup> However,

<sup>770</sup> In this case, none of his neighbours complained about

him to the heritage officers. While he is on good terms with all of his neighbours, the house owner also believes the major reason for not complaining was that the development was only carried out for residential purposes. As mentioned in the next sub-chapter, the residents usually tip off the heritage authorities when a development is carried out for commercial purposes (interview with a resident, 28 January 2016).



**Fig. 269** Major illegal building activities recorded (2011–2017).



**Fig. 270** Parties responsible for illegal developments.

he wanted to give an “antique” finish to the house to conceal its “unauthorized” development. Thus, he used arch-shaped doors and windows that were thrice as expensive as normal ones. None of his neighbours complained about him to the heritage authorities due to the community feeling in the neighbourhood. He

feels that ordinary residents should also be allowed to develop houses as they wish, just like the rich and the politically powerful are able to.<sup>771</sup>

However, the residents were more open in day-to-day conversation, where the majority asserted

<sup>771</sup>

Ibid.

that the heritage laws are too strict.<sup>772</sup> According to Mr Warnasuriya, “I don’t like when we are too much restricted in anything, especially in developing our houses; more restrictions lead to more illegal developments.”<sup>773</sup> Architect Mahesh Arunadeva also supports this idea: “when the law is not practical, people opt for illegal developments.”<sup>774</sup> A heritage officer sees another disadvantage: “when there are more restrictions, people sell houses and the investors buy.”<sup>775</sup> A number of disappointed residents have the same idea.<sup>776</sup> However, the DOA officer responsible for developments has a different view (2016). According to the officer, the main reasons for illegal development are a lack of vigilance by the heritage authorities, insufficient fines for illegal developments and the commercial interests of the community, which do not coincide with preservation goals.<sup>777</sup>

The (major) “illegal” building activities recorded by the Regional Archaeology Office (South) supports this idea, as they have been carried out primarily for commercial purposes (50%), while residential purposes are the least common reason (Fig. 268). Although the DOA’s Regional Assistant Director (South) claims businessmen “who moved to the fort with the aim of achieving business profit,” are mostly responsible for this, observations show that the residents, who have the same business interests, have contributed equally to the issue.<sup>778</sup>

Nearly 60% of the interviewed residents (19 out of 33) stated that they see “illegal” developments in their neighbourhoods, while 11 mentioned there are no such activities, as more residents follow the legal procedure. In fact, there is a higher likelihood of obtaining building permits now, and full-scale development is rarely carried out without a permit. Half of the interviewed residents think that “illegal” developments are increasing, while one-third think they are not. The (major) cases reported to the

Regional Archaeology Office, Fort demonstrate that “illegal” building activities are increasing (Fig. 269). However, these are either partial or minor developments or developments outside a permit.

Generally, “illegal” building activities are common to all groups: the residents (ordinary residents, professionals, elites), the business community (local and foreign investors, from small- to large-scale), expats and public and private institutions.<sup>779</sup> While 68% of the above activities were carried out by the locals, foreigners (with 16% total property ownership) are responsible for 20% (Fig. 270). The rest were undertaken mainly by institutions.

Ironically, Galle Heritage Foundation, the very institute established to preserve the fort’s heritage, has also carried out three unauthorized building activities so far.<sup>780</sup> However, these were either removed, stopped or changed to proceed according to the recommendations of the Planning Sub-Committee.<sup>781</sup>

### 7.3.3 ANOTHER DIMENSION OF “NOCTURNAL ARCHITECTURE”

The exponential commercial value of space in Galle Fort has adversely contributed to efforts to increase the space in “illegal” ways. Architect Mahesh Arunadeva expresses the situation as “the one who has more rooms is the winner.”<sup>782</sup> It was observed that this situation also creates jealousy as well as conflicts among neighbours, as violation of the rules negatively affects neighbouring properties that share common walls. Therefore, it is also common among neighbours (both locals and foreigners) to tip off heritage officials about “illegal” developments, especially when they are carried out for commercial purposes. However, residential purposes that are not profitable form an exception.

The Head of the Regional Archaeology Office received a letter from “neighbours” in February 2016 mentioning the addition of a floor to a particular house.<sup>783</sup> A resident who visited the DOA office

772 Personal conversations with residents, 2016.

773 Personal conversation, February 2016.

774 Interview, 14 February 2016.

775 Personal conversation with an official affiliated with the Regional Archaeology Office (South), Galle Fort, January 2017.

776 Personal conversations with residents, 2016–2018.

777 Interview, 3 February 2016 and personal conversations in 2015, 2016 and 2017.

778 Interview, 2 February 2016; observations made from 2015 to 2018. Documents on illegal developments from the Regional Archaeology Office (South), Galle Fort indicate that number of residents have carried out “illegal” developments.

779 Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

780 Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

781 Ibid.

782 Interview, 14 February 2016.

783 An undated letter from “neighbouring residents” to the Commissioner, Regional Archaeology Office, Southern Province, Galle (no subject), received 9 February 2016.

in December 2016 informed them that one of his neighbours had been engaging in illegal construction since the previous night.<sup>784</sup> A heritage officer responsible for developments personally received several telephone calls during the permitted (but controversial) construction of a third floor in one of the boutique hotels.<sup>785</sup> In contrast, almost all of the interviewed residents said they were “unlikely” to tip off heritage officers. This situation has also created distrust among neighbours and threatens the neighbourly atmosphere.<sup>786</sup>

Against this background, the sudden visits of heritage officers during “illegal” developments are also common. In addition, the Regional Archaeology Office has also employed a guard to monitor the fort daily. Therefore, the majority of these activities are carried out at night and on weekends and public holidays. Thus, Mr Fowzie identified these constructions as “nocturnal and weekend architecture.”<sup>787</sup> Generally, it is expected that the work will be finished before the heritage officers can interfere, as it is possible to pay the fine later on; this is relatively small and discussed in the next sub-chapter.

In January 2016, a resident stated that his foreign neighbour boarded up façade and illegally changed it within one day.<sup>788</sup> In September 2017, a resident wished to inform the Archaeology Office that his (local) neighbour had turned part of the house into a commercial site over the weekend without permission.<sup>789</sup> In February 2016, the DOA’s Regional Assistant Director (South) stated, “It is difficult for us to control these, as some are done within one night; besides, we don’t have enough staff to monitor the whole fort. Sometimes there is only the wet plaster the following morning to indicate that an illegal development has been carried out.”<sup>790</sup>

The sudden visits by DOA’s officials during such activities is highly criticized by the community, who state that “heritage officers play the role of the police.” In fact, sometimes the DOA accompanies police (Special Police Unit of Prevention of Destruction and Theft of Antiquities, Fort) when they are not allowed to enter the private properties that are developed “illegally.” Some residents complain that their privacy is violated by these visits.<sup>791</sup> According to Ms Musthapa, DOA officers suddenly came when they were repairing an almirah, which had mistakenly been reported as an “illegal” construction by a neighbour.

According to residents, carrying out an “illegal” development is also a difficult task. A resident who renovated her kitchen “illegally” during the night stated that she had to spend more for construction workers to work at night.<sup>792</sup> However, she had to do it, as processing a building permit is more expensive. A house owner who added two more floors “illegally” mentioned they could not build the house as they had expected, since the construction had to be finished as fast as it could.<sup>793</sup> “Illegal developers” also face difficulties in finding construction workers who are willing to carry out “illegal” construction, as most of them are reluctant to work without a building permit nowadays.<sup>794</sup>

#### 7.4 REDUCING “ILLEGAL” DEVELOPMENTS: IDEAS OF HERITAGE OFFICERS

This sub-chapter discusses how far the steps taken by heritage institutions to reduce “illegal” building activities have succeeded.

##### 7.4.1 THE CONVENTIONAL METHOD

The Department of Archaeology took action against 70 illegal building activities reported to the Regional Archaeological Office (South), Galle Fort from October 2010 to February 2016.<sup>795</sup> 51 police

784 Personal conversation with the resident, December 2016.

785 Personal conversations with the heritage officer, January 2016.

786 Personal conversations with residents from 2016 to 2017 and observations.

787 Interview, 16 February 2016.

788 Personal conversation with Mr Fonseka, 27 January 2016. Consequently, a police investigation was launched against the owner by the DOA in February 2016.

789 Personal conversations with a resident, 9 September 2017.

790 Interview, dated 2 February 2016.

791 Interview with Ms Musthapa, March 2016.

792 Interview with a resident, 17 February 2016.

793 Personal conversation with a resident, March 2016.

794 Personal conversations with at least five residents in 2016.

795 Documents related to illegal developments from the Regional Archaeology Office (South), Galle Fort.

investigations were launched during this period, followed by 28 court cases.<sup>796</sup> 21 cases had taken place by the beginning of 2016, with the defendants pleading guilty and subsequently paying the fine.<sup>797</sup> The majority were fined 50,000 LKR, the lowest amount according to the Antiquities Ordinance. In addition, 11 unauthorized constructions were removed before a case was filed, mostly following negotiations.<sup>798</sup>

By 2016, the DOA's officers were disappointed with the provisions of Antiquities Ordinance, as the "illegal" constructions remain even after the fine, due to the law's inability to issue demolition orders or require the owners to reverse the changes.

### An Anecdote

A resident owned a single-storey house that did not feature any colonial architecture at the time of heritage recognition.<sup>799</sup> Later on, the house owners started a B&B by "illegally" adding two floors to the house. The Head of the Regional Archaeology Office (South) at the fort notified the owner to cease construction several times in mid-2013, yet the owner continued. The Department of Archaeology filed a case against the owner for "illegal development" based on the following wrongdoings:<sup>800</sup>

- i. development without a building permit;
- ii. violation of height restrictions (having a third floor);
- iii. violation of streetscape characteristics by changing the façade; and
- iv. not having proper ventilation.

According to a family member, they carried out the development without permission as "it was difficult within the legal procedure," or rather not allowed when proceeding through the proper channels.<sup>801</sup> The family thinks that heritage laws should be formulated to support the residents' gaining the

benefit of the numerous tourism opportunities at the fort.<sup>802</sup> According to their neighbours, the business improved the family finances significantly.<sup>803</sup>

The case finished in October 2013, with the defendant pleading guilty and receiving a fine of 50,000 LKR. However, the development still remains. Therefore, the DOA officer who handled the case is totally disappointed with the law (2016): "The house owner showed us that they can do whatever they wish. It seemed he wanted us to file a case as soon as possible and then pay the fine. Only the poor who cannot pay 50,000 LKR listen to us."<sup>804</sup>

At the end of 2017, the Urban Development Authority also notified the owner to remove his "illegal" third floor; he was one of 36 building owners in the fort to have such an "illegal" floor. In fact, the UDA also filed court cases against "illegal" building activities, and thus some individuals have been charged with the same offence by both the UDA and DOA.

Mr Manamperi, a lawyer and a fort resident, has appeared in nearly ten cases on "unauthorized" developments at the fort, and pleaded guilty at the Galle Magistrate's Court, located within the fort.<sup>805</sup> His clients, who are mostly residents, were fined but their illegal developments still remain. The lawyer pointed out a three-storey house, belonging to another homestay provider, in close proximity to his office: "I appeared for that case too!"<sup>806</sup>

Thus, there is the impression among the community that "illegal" development has no serious legal impact, as it is possible to keep the new construction even after paying the fine. Further, the fine is relatively low compared to the profits of the lucrative tourism businesses at the fort. The DOA's Regional Assistant Director (South) states, "Some people blame us for encouraging illegal developments deliberately, but it happens due to the limitations of the law [and is not our fault]."<sup>807</sup>

796 Ibid.

797 Ibid.

798 Ibid.

799 According to the survey of Kuruppu and Wijesuriya (1992), who recorded the house, the façade did not have any colonial features in 1992. However, the page number will not be mentioned and no image will be provided to respect the owner's privacy.

800 Personal conversation with the heritage officer responsible at the DOA, Galle who handled the matter, November 2015.

801 Personal conversation with a family member, February 2016.

802 Personal conversation with a family member, February 2016.

803 Personal conversations with neighbours, February 2016 and observations in 2015–2018.

804 Personal conversation with the heritage officer responsible at the DOA, Galle, November 2015.

805 Interview, 31 December 2015.

806 Ibid.; Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort. This third floor is not visible from the façade (observations, 2015).

807 Interview, 2 February 2016.

Officers from both the DOA and GHF assume that the UDA and GMC's inability to grant demolition orders is one of the main reasons for the increase in "illegal" developments.<sup>808</sup>

However, heritage officers and professionals, including the Director General of Archaeology, and practising architects at the fort think that the condition is better now than previously, as many now follow the proper channels (Fig. 266).<sup>809</sup> It was observed that the number of buildings (especially tourism-oriented ones) developed according to heritage laws have increased over the past three years, and were beautifully planned by architects in a tropical-modernist style (discussed in sub-chapter 5.5.2). Even the local residents who were capable of investing developed their houses and invested in tourism businesses. This, together with the prompt legal action taken against illegal developments, has resulted in the gradual decline of "illegal" large-scale developments, despite the increasing partial and minor developments.

However, the DOA's officials, including its lawyers, have put more weight on increasing punishments as a solution for reducing illegal developments. Meanwhile, some of the DOA officials feel that the DOA lawyers who handle the cases at Galle Fort should try to convince the judges to give the maximum fine, which is a half-million LKR.<sup>810</sup> Up to now, the maximum fine given to an offender has been 0.4 million LKR (2018), followed by 0.2 million LKR (2012), one time each.<sup>811</sup>

Amending the Antiquities Ordinance to empower the DOA to rectify inappropriate changes made to the historic buildings was a main interest of the new "Integrated Management System 2015." In 2017,

the DOA proposed amendments to increase the fines to a maximum and minimum of 2.5 and 0.5 million LKR, respectively (the proposal was mainly due to the increase of treasure-hunting in the country).<sup>812</sup> Furthermore, requiring the owners to restore the monument to its former appearance is also included in these proposals.<sup>813</sup> However, the challenge in this regard is the lack of proper, detailed documentation of buildings; as pointed out by the Project Planning Officer of GHF, "It is not clear how the court can identify exactly which part was added illegally; besides, we have not even graded our monuments."<sup>814</sup>

#### 7.4.2 THE CURRENT TREND: NEGOTIATION AND FREQUENT MONITORING

Galle-based officers of the Department of Archaeology who have realized the limitations of the Antiquities Ordinance in addressing the matter have devised a clever way to deal with "illegal developers," based on negotiations since 2016.<sup>815</sup> Since the end of 2017, the Regional Archaeology Office (South), Fort started giving one-month grace periods to "illegal developers" in order to provide an opportunity for them to apply for a development plan, while the "illegal developer" was convinced of the benefits of proper development. The case was tried after one month, only if the "illegal developer" did not comply. According to the DOA officer responsible, this was successful, as a number of illegal developers decided to apply for building development permits, while some willingly removed the "unauthorized" additions.<sup>816</sup>

#### An Anecdote<sup>817</sup>

A professional who owned a property in the historic centre is one such person who decided to apply for a development permit after negotiating with DOA.

808 Ibid.; Interview with the Project Planning Officer (GHF), 9 March 2016.

809 Interviews with the Director General of Archaeology, 26 April 2016; Regional Assistant Director (South), DOA, 2 February 2016; and architect Mahesh Arunadeva, 14 February 2016.

810 Personal conversations with Galle-based heritage officers, January 2018. There have been occasions when 25,000 (2013) and 10,000 LKR (2004 and 2011) were fined, which are relatively very low amounts (documents related to the illegal developments, Regional Archaeology Office (South) Galle Fort). According to an officer, "Giving the minimum fine is almost like saying we support illegal developers." However, one of the lawyers responsible has a different view; as he points out, "Judges are reluctant to go for the maximum fine" (personal conversations in January 2018).

811 Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

812 The proposals originally appeared at the end of 2013 (personal conversation with two legal officers of the DOA, January 2018).

813 Ibid.

814 Interview, 9 March 2016.

815 Personal conversation with officer responsible, January 2018; observations from September 2015 to January 2018.

816 Personal conversation with the consent of the officer responsible at the DOA, Galle, January 25, 2018.

817 Observations at the Regional Archaeology Office (South), Galle Fort with the consent of the responsible officer, 25 January 2018.



Although the owner submitted a development plan with the removal of the “illegally” added portion, the Planning Sub-Committee proposed opening the closed verandah. The DOA officer also encouraged it; “this will increase the heritage value and thereby the commercial value of your house.” The owner was having financial issues with repaying the architect: “I’ve already spent a lot on the plan; fortunately the architect was a friend of mine. I am unable to spend more than that at this moment.” At this juncture, the officer suggested the possibility of approving the plan under the condition that the owner open the closed verandah later on, provided that the owner gives a letter of consent. The owner agreed, yet the high cost of Chartered Architect services is a main constraint, even in this matter.

### Regular Site Monitoring

In 2018, the DOA’s Regional Office at the fort initiated a programme to monitor the fort on the weekends—as most of the “illegal” developments were carried out over the weekend—along with the regular monitoring on weekdays. Thus, a guard made a site visit every Saturday while an officer was on duty.<sup>818</sup> According to one of the officers responsible, this initiative was highly successful, despite working weekends being a burden to the officers. However, the external pressure on officers had increased by January 2019, causing disappointment to the officers.<sup>819</sup>

## 7.5 IS THE LAW EQUAL TO ALL? THE NEGATIVE ASPECT

*“The fort is a place where long-time residents face the maximum injustice”* — Ms Musthapa, a resident and a retired educationalist<sup>820</sup>

The new property owners of the fort—international hotel chains, foreign companies, renowned local companies, the country’s renowned entrepreneurs, sports figures, members of political families, etc.—are powerful, both economically and “politically,” in the local sense. Between 2015 and 2018, ordinary residents expressed the criticism that these people are

treated better than them with respect to the building development procedure.<sup>821</sup> This is further discussed here, while providing examples that support this assumption.

### The Local Community’s Response

In 2016, the President of the Senior Citizen’s Committee of Galle Fort drafted a letter to the Director General of Archaeology, addressing this matter.<sup>822</sup> Since the law is implemented by the officers, the “officers” involved in the development procedure were criticized more than the “institutions” with which they were affiliated. A local resident stated, “I am not happy with the way that the officers treat people; one group is treated as VIPs, while the rest are ordinary.”<sup>823</sup> A key heritage officer who handled developments was heavily criticized by the local community for the same issue.<sup>824</sup> Interestingly, a heritage officer confirms, “Some of our officers try to show their bureaucratic power over the powerless, while the powerful are treated better.”<sup>825</sup> The differing treatment has also contributed to some residents appreciating certain heritage officers.<sup>826</sup>

#### 7.5.1 THE HEIGHT RESTRICTIONS: INVESTORS VS. RESIDENTS

According to Special Regulations (Planning and Building), 2009, the “height of any building within Galle Special Regulatory Area shall not exceed ten metres and only two floors are allowed” (Article 70.17a), which is strictly maintained by the Planning Sub-Committee. It was elaborated in sub-chapter 5.4 that there are also several occasions on which the Planning Sub-Committee has approved a third floor as a hidden attic within 10 metres. Both the DOA as

818 Personal conversations with an officer responsible, January 2019.

819 Personal conversations with an officer responsible, January 2019.

820 Interview, 2 March 2016.

821 In general, this was a common impression among ordinary residents, as discerned from day-to-day personal conversations and interviews from 2016 to 2018. As mentioned in subchapter 7.1.2, two-thirds (out of 33) of the local residents interviewed think “the law is not equal to all.”

822 The letter prepared by the president of the Senior Citizen’s Committee, who showed me the letter on 27 January 2016, reads: “The law should be equal to all to the ordinary people, as well as powerful local and foreign persons.”

823 Personal conversation with a resident businessman, January 2018.

824 Personal conversations with over ten residents, 2016–2017.

825 Personal conversation with a heritage officer, 24 January 2018.

826 Personal conversations with over six residents, 2016–2017.



well as the UDA have filed cases against a number of residents for “illegal” third floors, which are mostly over 10 metres and are clearly visible from the façade. At the end of 2017, the UDA notified 36 residents to remove their “illegally” developed third floors, followed by filing cases against the owners who did not comply.

Controversially, a local company was permitted to develop a boutique hotel with a third floor, clearly visible from the façade, in the historic centre. The construction was heavily criticized by the community.<sup>827</sup> According to then Director General of Archaeology (2016), the DOA was not solely responsible for this decision, as it was a collective decision made by the Planning Sub-Committee, including the UDA, GMC and GHF.<sup>828</sup> According to a Galle-based officer, the third floor was built within the 10-metre limit,<sup>829</sup> this, however, is uncertain. The officer further stated that it was permitted as compensation for respecting the “archaeologically sensitive land,” that the Planning Sub-Committee recommended keeping vacant.<sup>830</sup>

When the development was proposed, a GHF officer representing the Planning Sub-Committee recommended carry out an Archaeological Impact Assessment (AIA) prior to the developing the property, even according to procedure, indicating that the oldest Dutch cemetery was located on those grounds.<sup>831</sup> The cemetery was recorded on a map drawn by the Survey Department (Galle) in 1893, as pointed out by the AIA (2012).<sup>832</sup> In addition, a map by Johannes Vingboons (1665–1670; Fig. 8, chapter 1) showed a church on this land. An excavation conducted in line with the AIA in November 2012 revealed skeletal remains, and proved that the land was indeed the old Dutch cemetery (AIA 2012). Therefore, the AIA carried out by the DOA recommended identifying part of the land as a “highly

sensitive area” (AIA 2012). Although some heritage officers proposed to conserve the cemetery with the financial assistance of the developer, somehow this did not proceed.<sup>833</sup>

Architect Prof. Samitha Manawadu, who represented the Planning Sub-Committee as the President of ICOMOS Sri Lanka when the project was initially proposed, mentioned that “the project was halted temporarily until the AIA was conducted; however, the developer can’t go beyond two stories.”<sup>834</sup> The local residents felt the decision to approve the building plan with a third floor was made under the influence of a high-ranking political authority.<sup>835</sup> Yet an officer who represented the Planning Sub-Committee thinks approving the plan was the fault of the committee, as it was prepared by an influential professional who also represented the Planning Sub-Committee. In fact, some of the Galle-based heritage officers are disappointed with the committee’s decision.<sup>836</sup>

Against this background, some of the residents accused of “illegal third floors” by UDA allege that the UDA is partial to the powerful.<sup>837</sup> Adding to the controversy, some of the house owners with “illegal third floors” were not included in the UDA’s list of cases to file.<sup>838</sup> When the relevant authorities were asked about this at the end of 2017, they responded that this was only the first list, and another list would also be produced.<sup>839</sup> Subsequently, some of the accused residents organized themselves and approached the political authority responsible for the matter.<sup>840</sup> According to one of them, they received

827 Personal conversation with over twenty residents, a foreign businessman and a few local businessmen in 2016–2017.

828 Interview with the Director General of Archeology, 26 April 2016.

829 Personal conversation with a Galle-based officer, January 2017.

830 Personal conversation with a Galle-based officer, January 2017.

831 Interview with the Project Planning Officer (GHF), 9 March 2016.

832 This archival map is available at the Galle district office of the Survey Department, Sri Lanka.

833 Personal conversations with a Galle-based heritage officer, January 2017.

834 Interview, 22 December 2015.

835 Personal conversations with over fifteen residents in 2016–2017. Not only the residents, but also an official affiliated with GMC had the same idea in 2016.

836 Interviews and personal conversations with at least five Galle-based heritage officers in 2016–2017.

837 Personal conversations with some of the residents, December 2017–January 2018.

838 Personal conversations with the residents, including the ones accused by heritage authorities (December 2017–January 2018).

839 Personal conversations with officers responsible, December 2017.

840 Personal conversation with a community member who approached the political authority, 5 January 2018. However, this was an open secret at the fort at the end of 2017, and even known to the heritage officers.



**Fig. 271** Permitted building with a third floor, during the construction of its second floor in 2016.



**Fig. 272** The same building after the completion of the work in 2018.



a favourable answer.<sup>841</sup> Despite their positive expectations, the UDA proceeded, and nearly ten of them were charged by December 2017.<sup>842</sup>

In parallel to this effort, the chief monk of the fort's Buddhist temple wrote to the Director General of Archaeology in September 2017, indicating that taking legal action against the residents would motivate the few remaining residents to move out of the fort, thereby threatening the fort's "living heritage."<sup>843</sup> The letter was copied to a number of related institutions, including the Sri Lanka National Commission for UNESCO. Furthermore, the letter mentioned that some building owners are allowed to have third floors (Figs. 271&272), including the above-mentioned one and another boutique hotel, owned by a local, which I noticed also has a small fourth floor.<sup>844</sup> The building plan for the latter was permitted by the authorities in 2008, before the gazette notifying the Special Regulations in 2009.<sup>845</sup> However, the law went into effect in 2000, and third floors have been strictly banned since then.

#### 7.5.2 DEMOLITIONS: INVESTORS VS ORDINARY BUSINESSMEN AND RESIDENTS

The Special Regulations (2009) do not allow for the demolition of buildings that have an "archaeological value."<sup>846</sup> In practice, this includes "colonial buildings," and thus the Planning Sub-Committee has recommended that a number of residents keep the "old [Dutch] walls" in their developments while also preserving the interior plan, which has somehow

become a burden to the owners.<sup>847</sup> One resident has complained, "My sister has 20-inch thick walls in her house, which we were not allowed to demolish during the development"; this was observed during the development in 2017.<sup>848</sup> In contrast, a foreign company was allowed a total demolition of a British-period building to build a high-end boutique hotel, which, however, followed heritage regulations. According to a representative for the construction company, the interior plan remained the same despite the demolitions and new additions.<sup>849</sup> Although part of the old building was single-storeyed, two floors are allowed for the new one, depending on the streetscape.<sup>850</sup>

A resident of the historic centre was allowed to add a second floor to his house by the Planning Sub-Committee, although it was recommended that he keep the old walls on the ground floor and maintain a single-storey façade. In August 2017, the owner demolished the whole house except the façade with heavy machinery, by violating the recommendations.<sup>851</sup> The DOA filed a case against the owner, who received the highest fine ever given, which was 0.4 million LKR.<sup>852</sup> The owner requested the Planning Sub-Committee to process the building plan approved earlier, as he had already been fined. At this juncture, the committee, headed by the UDA, decided that the final decision should be made by the DOA, as the owner had violated the Antiquities Ordinance.<sup>853</sup> The matter was forwarded to an advisory committee including a leading conservation architect, an academic in architecture and DOA officers.<sup>854</sup> The advisory committee decided that the owner should not be granted permission for any development, as a monument

841 Personal conversation with a community member who approached the political authority, 5 January 2018.

842 Personal conversations with residents and heritage officers, January 2018.

843 "The majority of the residents have left the fort due to the high property value. Therefore, steps should at least be taken to keep the remaining few residents in the fort. The church, mosque and temple remain due to them. Therefore, residents should live in the fort to protect the fort's living heritage status." Letter from the Chief Incumbent of the Buddhist Temple, Galle Fort to the Director General of Archeology on "The Management Plan of the World Heritage Galle Fort," 22 September 2017. In general, Buddhist monks still have a strong voice in Sri Lanka. It was mentioned in the first chapter that Buddhism was given special recognition in the constitution.

844 Ibid.

845 Observations, 2018.

846 "Approval shall not be granted to demolish any buildings which have archeological value" (Article 70.8 (d), Special Regulations (Building and Planning), 2009).

847 Personal conversations with three residents in 2016. However, there was also a resident who was proud to have a huge wall inside his developed house that showed the age of the house.

848 Personal conversations, March 2016.

849 Interview, 15 December 2015.

850 Ibid. and observations. "Following the streetscape" means that two storeys are allowed if the neighbouring building/buildings are also double-storeyed. In this case, one of the neighbouring building was two-storeyed, and the new building also followed the façade characteristics of that particular building.

851 Personal conversation with the heritage officer responsible, March 21, 2018. Photos of the house will not be provided here in order to respect the privacy of the owner.

852 Ibid.

853 Ibid.

854 Ibid.

cannot be reconstructed, leaving the owner only one option, which was to sell the property; this was also uncertain, as the land could not be developed.<sup>855</sup> The committee wanted this to be a lesson to future “illegal developers.”<sup>856</sup>

Ms Bellucci is a European businesswoman who started a restaurant on a small residential street in 2017. As the space was not sufficient, she affixed a wooden plank to the wall without the permission of the heritage institutions.<sup>857</sup> Heritage officers who had been tipped off by one of their neighbours came and requested that she remove the wooden plank within three days; she was further informed that legal action would be taken against her unless she complied.<sup>858</sup> The official said she had damaged the old wall by nailing it in two places.<sup>859</sup> The owner removed the wooden plank; however, she is disappointed with the law, which is “not the same for all.” Ms Bellucci pointed out a development by a local investor at the building across the street: “huge old walls were broken in that building.” Similarly, the head of an institution who was charged with “illegally” removing the old tiles in an institution-owned British-period building also expressed her disappointment; referring to a high-end boutique hotel, she said, “they worry about our floor, but they are allowed to demolish a whole building [to build a new one].”

Against this background, some nevertheless find ways to fulfil their building requirements.

### An Anecdote

When a foreign business owner wanted to renovate a toilet in a restaurant, it was carried out on a weekend, without permission, as the proper channel seemed a “difficult and long procedure.”<sup>860</sup> Although “a heritage person” who had been tipped off by a neighbour came to inspect, the local staff “bribed the heritage person” without the owner’s involvement.<sup>861</sup> The construction was completed smoothly.<sup>862</sup>

855 Ibid.

856 Ibid.

857 Interview with Ms Bellucci, 24 January 2018.

858 Ibid.

859 Ibid.

860 Conversation with a foreign businessman, January 2018.

861 Conversation with a foreign businessman, January 2018.

862 Ibid.

## 7.5.3 POWERFUL INDIVIDUALS AND PARTNER INSTITUTIONS

### Powerful Individuals

At the Galle Magistrate Courts in 2014, the DOA filed a case under the Antiquities Ordinance against a fort native who is a highly reputed professional in the country for “illegally” developing a third floor.<sup>863</sup> Subsequently, the defendant filed an appeal at the Court of Appeal, directed against a number of respondents, including all heads of heritage authorities.<sup>864</sup> The Attorney General’s Department appeared for the case on behalf of the public institutions. The case is still pending at the Court of Appeal, and thus I avoid discussing it here. According to heritage officers, discussions with the professional took place at a heritage institution in 2017 in order to reach a settlement, with the involvement of a higher-level political office.<sup>865</sup>

### Partner Institutions

A museum within the historic centre needed to double their inadequate office space by building a two-storey wooden cell in the single-storey office space. The construction was started in November 2015, resulting in numerous anonymous calls to the Regional Archaeology Office (South), Fort about an (“unauthorized”) excavation inside the building.<sup>866</sup> This was proved by a pile of earth on the front verandah that had been removed to plant the iron beams (Fig. 273).<sup>867</sup>

When the Regional Archaeology Office asked the museum officer responsible whether the museum had been granted permission to carry out the development, the officer submitted a “letter of approval” provided by the relevant authority in 2011.<sup>868</sup> However, a “building permit” is necessary for such development for general public; this is only valid for one year and needs to be renewed each year.

863 Personal conversation with a legal officer at the DOA, 2017–2018; personal conversations with Galle-based heritage officers in 2017–2018.

864 Ibid.

865 Personal conversation with heritage officers, both Galle-based and Colombo-based, November 2018.

866 Personal conversations with Galle-based heritage officers, November 2015.

867 My observations in November 2015.

868 Personal conversation with the DOA officer responsible, 7 November 2015.



**Fig. 273** Excavated pile of earth on the verandah (November 2015).

During the interview, the officer responsible stated that they were late to commence the work due to the delay in obtaining funds, which he assumed to be a failure of the public institutions.<sup>869</sup> According to his knowledge, a development permit is required to carry out a new development, but not for a change in an existing building.<sup>870</sup> The officer did not consider it is important to inform the Regional Archaeology Office before commencing the development, nor before commencing the excavation, which is the norm. However, an excavation cannot be carried out in the historic centre without the clearance of the DOA, according to Special Regulations (Planning and Building), 2009.<sup>871</sup>

869 Interview with the officer responsible, 11 November 2015.

870 Ibid.

871 “No excavation within this site can be carried out

In this case, the letter of permission issued three years before was accepted by the authorities. According to an officer responsible for development, this decision was made as the museum was one of their “partner [public] institutions.”<sup>872</sup>

without a clearance from the Archeological Department” (Article 70.8 (a) of Special Regulations (Building and Planning), 2009).

“Under Section 6 of the Antiquities Ordinance (Chapter 188), the developer shall inform his intention on site preparation for development to the Archeological Office at Galle. All excavation shall be carried out under the supervision of Archeological Department and be completed within 30 days of granting the approval. If not, the sub-committee may extend the validity of the permit considering the appeal for further period of not exceeding 14 days. Thereafter, the Department of Archeology should complete the supervision and submit a report to the sub-committee” (Article 70.8 (b) of Special Regulations (Building and Planning), 2009).

872 Personal conversation a Galle-based heritage officer, November 2015.





**Fig. 274** Swimming pools, permitted (left) and not permitted (right).

#### 7.5.4 SWIMMING POOLS: WHY ARE SOME ALLOWED?

As discussed in sub-chapter 5.4.6, swimming pools are not allowed in Galle Fort, despite their growing number (Fig. 274). Architect Ashley De Vos identifies “political patronage” as a reason for this (Vos 2016). A pioneering foreign investor who started an award-winning high-end boutique hotel was allowed a swimming pool in the early 2000s. Referring to this, a heritage officer stated, “The investor showed any investor can do whatever they wish in Galle Fort [despite the law].”<sup>873</sup> Although this incident happened in the early 2000s, the Planning Sub-Committee recently managed to close a swimming pool in another foreign-invested high-end boutique hotel. The five-star franchise hotel Amangalle,

currently owned by Aman Resorts International, is allowed to have the largest swimming pool, which is located separately and thus does not violate the authenticity of the British-period building. The owners of a foreign-owned villa in the historic centre were also allowed a swimming pool, agreeing with the Planning Sub-Committee to remove it whenever they are requested to.<sup>874</sup> In November 2017, another foreign investor, who was charged by the DOA with developing an “illegal” swimming pool, went to the higher courts, and the defendant was exonerated at the advice of the Attorney General, after the case was tried in higher courts.<sup>875</sup>

<sup>873</sup> Personal conversation with a Galle-based heritage officer, June 2018.

<sup>874</sup> Personal conversation with a Galle-based heritage officer, February 2016.

<sup>875</sup> “The defendant was released upon the advice provided by the Hon. Attorney General’s letter, 11 July 2017” (the documents related to illegal developments from the Regional Archaeological Office (South), Galle Fort). The Attorney General serves as the chief legal advisor to the government.

## 7.6 IS THE LAW EQUAL TO ALL? : THE POSITIVE ASPECTS

In order to provide a balanced view, here I shall discuss a few cases in which the law was implemented equally for both powerful and ordinary residents. In addition, there are also cases in which ordinary residents, both local and foreign, have been supported by heritage “officers” (here I use the word “officers” instead of “institutions”) in their much-needed developments, despite their being “illegal,” in the eyes of the law.

### 7.6.1 FOREIGN INVESTORS: THE POWERFUL AND THE ORDINARY

Although local residents claim foreigners and powerful locals are treated better, 11 cases were filed against foreigners between 2010 and 2016 for “illegal” building activities.<sup>876</sup> Among them was a pioneering foreign investor (2012) and the owner of a high-end boutique hotel (2014).<sup>877</sup> In addition, two renowned local entrepreneurs were similarly subject to legal action for their “illegal” building activities in 2013 and 2015, respectively.<sup>878</sup>

#### The Ordinary Foreign Investors

In contrast to the case of Ms Bellucci, here I elaborate the case of Mr Mikhailov, an ordinary foreign businessman who was supported by heritage officers (the term “ordinary” is used here to differentiate from the large-scale investors). Mr Mikhailov leased a house in the historic centre to open a restaurant in 2016. He wanted to make a few structural changes in the house in order to make it more compatible with his business. He did not seek the permission of the heritage institutions, as the building owner—a fort resident and a professional—assured him that the

house had no heritage value, though he advised him to “carry out the repairs silently.”<sup>879</sup> Yet Mr Mikhailov was polite enough to apprise his neighbours of possible noise from the planned construction.<sup>880</sup> As soon as the first window was removed, officers from the DOA appeared, having been tipped off by neighbours.<sup>881</sup> Mr Mikhailov was told that a police investigation would be launched against him for the “illegal” development, and he could also be taken into custody, causing him fear.<sup>882</sup> Therefore, he submitted a letter to the DOA indicating his consent to follow the proper channels in developing properties.<sup>883</sup>

Back in 2016, the officers of the UDA, DOA and GHF supported each other in critical cases, and in fact, made collaborative decisions as a result of their mutually positive relationships. Officers of the DOA and GHF held a meeting with Mr Mikhailov, in which he was able to convince the officials that he was cheated by the building owner.<sup>884</sup> The officers, who had also had previous issues with the owner, knew the house had three floors, and thus was already an “illegal” development.<sup>885</sup> When they scrutinized the building plan, they found, to their surprise, that the building plan with three floors had been permitted by the planning authorities.<sup>886</sup>

Mr Mikhailov told the officers that he had sold his apartment at St. Petersburg to start this business, and needed to start the business as soon as possible as he had to pay a huge monthly rental fee.<sup>887</sup> The officers were sympathetic towards him. They explained to Mr Mikhailov that applying for a building permit would not help him in this context, as the Planning Sub-Committee would recommend to legalizing the whole building, which would be very expensive.<sup>888</sup>

876 Documents related to illegal developments, Regional Archaeology Office (South), Galle Fort.

877 Their names will not be revealed in order to respect their privacy (documents related to illegal developments, Regional Archaeology Office (South), Galle Fort).

878 One of them was requested to remove the developments outside of the approved plan, which he agreed to, and thus no case was filed. In August 2015, another was requested to change the prohibited colours used at a new showroom; this entrepreneur also agreed and complied; thus no case was filed. Their names will not be revealed in order to respect their privacy (documents related to illegal developments, Regional Archaeology Office (South), Galle Fort).

879 Personal conversation with Mr Mikhailov, 2 March 2016.

880 Ibid., personal conversation with a neighbor, 3 March 2016.

881

Personal conversation with Mr. Mikhailov, 2 March 2016.

882

Ibid.

883

Ibid.

884

Observations of the meeting, 3 March 2016.

885

Ibid.

886

This was permitted prior to the implementation of the Special Regulations (Building and Planning) in 2009. However, the draft building regulations had been in effect since the end of 2000s, and regular Planning Sub-Committee meetings were held after 2002 (Wijeratne 2002); thus, third floors could not have been permitted.

887

Ibid.

888

Ibid.



Besides, Mr Mikhailov had a ten-year lease. The officers advised him to restore the house to how it was earlier and start his business.<sup>889</sup> He proceeded as told and no action was taken against him. I have observed that his restaurant became popular among tourists over the next two years. However, the UDA included the house in its list of cases to file against “illegally” constructed third floors in 2017.

#### 7.6.2 THE LOCALS: THE ORDINARY AND THE “FRIENDS”

Here I elaborate one of the few occasions on which heritage officers have supported the local community’s development requirements. Ms Kodikara, a fort resident, badly needed to renovate her old kitchen, which was not up to modern living standards.<sup>890</sup> She knew it would be expensive following the proper channels, and therefore did it at night, without permission.<sup>891</sup> Unexpectedly, a DOA officer, apparently tipped off by a neighbour, appeared in the daytime.<sup>892</sup> At this juncture, she was able to convince the officer that they were unable to afford a proper development.<sup>893</sup> The officer advised her to finish the work as soon as possible, and no action was taken against her.<sup>894</sup> In general, minor renewals like this could be carried out with the permission of the Regional Archaeology Office (South), Fort, without applying for a building permit. However, some avoid it, as they have to carry out the renewal according to the regulations, which mostly conflict with their expectations. It was observed that larger parts of the house had been developed from time to time (without permission), however, with the addition of a modest verandah. Ms Kodikara stated, “I was bullied by our schoolmates for living in an old house, but in contrast, living in the fort has become prestigious today. However, everybody likes to live in a beautiful house. I don’t want my children to have the same experience I had.”

#### The Anecdote of *Machañ* (“the Buddy”)

In November 2018, an architect proposed a plan on behalf of his client in the Planning Sub-Committee, namely to keep a third floor that he had been requested to remove by the UDA.<sup>895</sup> The head of the Planning Sub-Committee, who personally knew the architect well, called the architect “*Machañ*,”<sup>896</sup> commonly used by men to address friends in an informal way, and said, “Ask anything, but not this third floor, which is impossible.”<sup>897</sup> At this juncture, the officer who represented GHF in the committee further stated, “We regret when a professional like you forwards a proposal like this; instead, people like you have to support us to preserve the fort’s heritage.”<sup>898</sup>

889 Ibid.  
890 Interview, 2 March 2016.  
891 Ibid.  
892 Ibid.  
893 Ibid.  
894 Ibid.

895 Observations of the Planning Sub Committee meeting, 30 November 2018.

896 *Machchan* in Tamil means “brother-in-law.” This is the most common term used by men to address each other informally in Sri Lanka.

897 Observations of the Planning Sub Committee meeting, 30 November 2018.

898 Ibid.

## Part II

### 7.7 POLITICAL AND BUREAUCRATIC WILL

*“Both the private parties and the state entities have carried out these illegal developments [at Galle Fort]. Apparently, the removal of almost all illegal developments carried out by the private parties is now complete [while the illegal constructions undertaken by state entities are still existing].”* — Dr Wijeyadasa Rajapakshe, Minister of Higher Education and Cultural Affairs during Parliamentary Debates on 20 July 2018 (*Hansard* 2018, 611).

The second part of this chapter critically discusses whether the law is equally applied to government institutions in the same way that it is applied to the community. The discussion is based on three initiatives led by public institutions in the fort and its buffer zone, including two development projects. I try to provide a balanced view here by not avoiding positive cases, and thus I include the Galle Harbour Development Project. In addition, these cases also demonstrate the challenges of managing a World Heritage historic city, while also achieving the overall economic development goals of Sri Lanka, a developing nation in the lower-middle-income category.<sup>899</sup>

#### 7.7.1 MOVING GOVERNMENT BUILDINGS OUT OF GALLE FORT

On 19 November 2017, the *Sunday Times*, a leading local newspaper, reported, “The order to give up 15 buildings in the fort was issued by Law and Order and Southern Development Ministry Secretary early last month. But it was done without consulting the Department of Archaeology, the Sri Lanka National Commission for UNESCO and the Ministry of Education under whose purview these listed sites fall.”<sup>900</sup>

<sup>899</sup> Source: the World Bank, available at <https://www.worldbank.org/en/country/srilanka/overview#1> (accessed 19 February 2019).

<sup>900</sup> “Controversy in Galle Fort: Several Govt. Institutions Told to Move Out,” the *Sunday Times*, 19 November 2017. Available at <http://www.sundaytimes.lk/171119/news/controversy-in-galle-fort-several-govt-institutions-told-to-move-out-269442.html> (accessed 24 July 2018).

These buildings, owned by various public institutions, are an integral part of the fort’s living heritage. Among these were Galle Fort Post Office, All Saints’ College, Galle Magistrate’s Court and (the Dutch-government-funded) Maritime Archaeology Unit;<sup>901</sup> the first two were gazette-notified as ancient monuments by the Department of Archaeology in 2017.<sup>902</sup>

#### The Cabinet Paper and the Response of the Sri Lanka National Commission of UNESCO

This initiative was undertaken in accordance with the decision made by the cabinet (Cabinet Paper No. 17/1759/702/002-XIX on 8 August 2017).<sup>903</sup> The *Sunday Times* referred to the letter of Secretary of the Ministry of Law and Order and Southern Development, which implied that these buildings would be removed according to the UNESCO guidelines.<sup>904</sup> The owners of the buildings were requested to vacate them by 31 December 2017,<sup>905</sup> further creating chaos among inhabitants.<sup>906</sup>

The Secretary General of the Sri Lanka National Commission of UNESCO (hereafter also referred as “SLNCU”), who regretted the decision, addressed the Director General of Archaeology regarding the above-mentioned letter, and asked to take the necessary steps to preserve the World Heritage status of the property.<sup>907</sup> As the Secretary General confirmed, “UNESCO has never recommended

<sup>901</sup> Ibid.

<sup>902</sup> *Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka*, No. 2011/7, 20 March 2017.

<sup>903</sup> “Controversy in Galle Fort: Several Govt. Institutions Told to Move Out,” the *Sunday Times*, 19 November 2017. Available at <http://www.sundaytimes.lk/171119/news/controversy-in-galle-fort-several-govt-institutions-told-to-move-out-269442.html> (accessed 24 July 2018); letter from the Additional Secretary (National Heritage) of the Ministry of Education to the Secretary General of Sri Lanka National Commission for UNESCO on “Vacating of Properties in Galle Fort,” 8 November 2017.

<sup>904</sup> “... is currently in the process of being carefully developed under the guidance of UNESCO to protect its living heritage, with added measures to improve its conservation and protection” (“Controversy in Galle Fort: Several Govt. Institutions Told to Move Out,” the *Sunday Times*, 19 November 2017. Available at <http://www.sundaytimes.lk/171119/news/controversy-in-galle-fort-several-govt-institutions-told-to-move-out-269442.html>; accessed 24 July 2018).

<sup>905</sup> Ibid.

<sup>906</sup> Observations, January 2018.

<sup>907</sup> Letter from Secretary General of the Sri Lanka National Commission for UNESCO to the Director General of Archaeology on “Vacating of Properties in Galle Fort,” 8 November 2017.



**Fig. 275** All Saints' College (to the right, with Southlands College to the left) at a busy hour.

the removal of the institutions mentioned from the fort and some of these properties are part and parcel of the living heritage of this important World Heritage site" (Fig. 275). In parallel to this attempt, the Additional Secretary (National Heritage) of the Ministry of Higher Education and Cultural Affairs, the responsible ministry of the DOA, also addressed the Secretary General of SLNCU, indicating, "the banks,<sup>908</sup> post office and magistrate courts are the symbols of living heritage. To my knowledge, UNESCO has not recommended moving these buildings."<sup>909</sup>

908 Southern Provincial Office of the Bank of Ceylon, one of the leading state-owned commercial banks, was proposed to be vacated, while its Super Grade Branch, located on another street, would not be moved.

909 Letter from the Additional Secretary (National Heritage) of the Ministry of Education to the Secretary General of Sri Lanka

### Protests

The parents of All Saints' College staged a protest against the government's decision to move the school,<sup>910</sup> which was founded by the British in

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National Commission for UNESCO on "Vacating of Properties in Galle Fort," 8 November 2017. This letter was written in response to a letter from the Secretary of Ministry of Law and Order Southern Development dated 3 October 2017) to the Secretary of the Ministry of Education and the Director General of the Central Cultural Fund, which requested that All Saints' College (under the Ministry of Education) and the Maritime Archeology Unit (under the Central Cultural Fund) be moved "according to UNESCO's guidelines."

910 "Parents Protest Over School Relocation Plans," *Daily News*, 2 November 2017. Available at <http://dailynews.lk/2017/11/02/local/133271/parents-protest-over-school-relocation-plans>; "Controversy in Galle Fort: Several Govt. Institutions Told to Move Out," the *Sunday Times*, 19 November 2017. Available at <http://www.sundaytimes.lk/171119/news/controversy-in-galle-fort-several-govt-institutions-told-to-move-out-269442.html> (accessed 24 July 2018).



1867 and is “majestically located in the uniquely glorious ancient Dutch fortress, presently hailed as a World Heritage site by the UNESCO” (the official website of the school).<sup>911</sup> The protest was conducted in response to the media briefing by the Chairman of Galle Heritage Foundation on vacating the buildings.<sup>912</sup> GHF was then under the Ministry of Law and Order and Southern Development, and thus was more responsible for the decision.

### Why Vacate Buildings?

The GHF planned to introduce “adaptive reuse” under a “careful conservation plan” for each building, as some of the current users have destroyed the heritage value of these buildings.<sup>913</sup> According to an officer who handled the project, these government institutions, which have more staff than their carrying capacity allows, could render better service to the public if they were located outside the fort with proper infrastructure.<sup>914</sup> However, some government institutions would be kept in the fort to represent the fort’s administrative function (which emerged under British occupation, and is discussed in sub-chapters 1.1.4 and 1.1.5).<sup>915</sup>

Subsequently, a survey was carried out by the DOA’s Regional Office at the fort to identify which buildings from the initially proposed list should be vacated. As a result, five buildings were recommended to be kept in the fort, including All Saints’ College and Galle Fort Post Office. However, GHF continued negotiating with the authorities of All Saints’ College to move the school, based on the argument that school could relocate to a more spacious venue where expansions were possible, which would be difficult at the fort given the prevailing heritage laws.<sup>916</sup> A number of the fort’s residents who were unhappy with the

decision indicated that the fort would be only a “tourist place,” while one stated that “the courts add value to the fort.”<sup>917</sup>

However, the planning authority had a somewhat different view initially, according to some heritage officers.<sup>918</sup> Non-profitable (government) institutions are not capable of maintaining their monumental buildings, and thus these buildings should be given (leased) to the “commercial sector” in order to maintain them to the required standard.<sup>919</sup> This initiative also created a public opinion towards “selling heritage.”<sup>920</sup> The project is currently in progress (March 2019).

### 7.7.2 INTRUSIVE DEVELOPMENTS AT GALLE INTERNATIONAL CRICKET STADIUM

Galle International Cricket Stadium is located right across the British-built northern entrance of the fort (between the Sun and Moon Bastions), and thus falls inside the 400-yard (365.76-metre) control zone of the Dutch ramparts implemented by the DOA in 1971. It was the ICOMOS Reactive Monitoring Mission Report, 2002 that first underscored the importance of controlling building activities at the stadium.<sup>921</sup> According to the Operational Guidelines (2017, Article 104), the buffer zone “is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property.”<sup>922</sup>

911 Available at <http://allsaintscollegegalle.com/en/history.php> (accessed 24 July 2018).

912 “Parents Protest Over School Relocation Plans,” *Daily News*, 2 November 2017 Available at <http://dailynews.lk/2017/11/02/local/133271/parents-protest-over-school-relocation-plan> (accessed 24 July 2018).

913 Personal conversation with a heritage officer responsible for handling the project, 1 March 2018. For instance, the Dutch-period use of the current Magistrate’s Court as a Malay soldiers’ barrack will be highlighted in its conservation plan.

914 Personal conversation with a heritage officer responsible for handling the project, 1 March 2018.

915 Ibid.

916 Ibid.

917 Personal conversations with over fifteen residents in 2017 and 2018; personal conversation with a resident in September 2018. However, the relocation of the courts had been proposed a few years earlier due to inadequate space, and the new court complex is under construction.

918 Personal conversation, in March 2018, with three heritage officers, who assume these buildings will be leased to the commercial sector.

919 Ibid. This is the idea of the political authorities, according to heritage officers.

920 The general public opinion of fort residents regarding the matter in 2017 and 2018.

921 “The control and careful guidance of planning and building activities need to extend also outside the Fort’s ramparts, such as the former Esplanade in front of the Fort” (Oers 2002). The area was known as “the Esplanade,” as mentioned below.

922 Operational Guidelines for the Implementation of the World Heritage Convention, 2017. Available at <https://whc.unesco.org/en/guidelines/> (accessed 19 February 2019).



**Fig. 276** The stadium (2016), flanked by the Indian Ocean and the Dutch ramparts (left), turning it into one of the most picturesque cricket grounds.

### An “Iconic Stadium” in a Colonial Landscape

Cricket, the country’s most popular sport, was introduced to Ceylon by the British. Galle International Cricket Stadium, originally built as a racecourse in 1876, was known as “the Esplanade” and officially declared a cricket stadium in 1927, prior to the country’s independence in 1948.<sup>923</sup> The grounds, which also housed Galle’s public playground, was temporarily leased to Sri Lanka Cricket—the highest national body for the administration of cricket under the mandate of the Ministry of Sports—by Galle Municipal Council in December 1998 (*Hansard* 2007, 3265).<sup>924</sup> As per the lease agreement, any construction on the grounds should be preliminarily cleared through the municipality (*Hansard* 2007, 3265). According to Sri Lanka Cricket, the ground was later upgraded to international cricket standards, and the first Test

Match was played on the ground in 1998.<sup>925</sup> In 2016, the ICOMOS Advisory Mission Report identified the stadium as a popular venue for club matches and Test Matches, attracting as many as 10,000 local cricket fans and a substantial international audience at significant matches,<sup>926</sup> a fact well known to locals. In 2018, *BBC News* reported that Galle is an “iconic stadium” famed for its “stunning views of the Indian Ocean and the nearby 17th-century Dutch fort,” while the *Telegraph* (2016) rated it as one of the ten best cricket stadiums (Fig. 276).<sup>927</sup>

925 Available at <http://www.srilankacricket.lk/grounds> (accessed 24 July 2018).

926 “Report on the ICOMOS Advisory Mission to Old Town of Galle and its Fortifications (Sri Lanka),” 11 to 15 July 2016. Available at <https://whc.unesco.org/en/list/451/documents/> (accessed 20 February 2019).

927 “Sri Lanka v England: Galle’s Last International Cricket Match?,” *BBC News*, 5 November 2018, available at <https://www.bbc.com/news/av/world-asia-46071069/sri-lanka-v-england-galle-s-last-international-cricket-match> (accessed 20 February 2019); “The 10 Best Stadiums in Cricket,” the *Telegraph*, 1 April 2016, available at <https://www.telegraph.co.uk/cricket/2016/03/31/the-10-best-stadiums-in-cricket/galle-cricket-stadium/> (accessed 20 February 2019).

923 Official website of Sri Lanka Cricket, available at <http://www.srilankacricket.lk/grounds> (accessed 24 July 2018).

924 The ten-year (lease) agreement constituted only three pages, according to Galle District Parliamentarian Vajira Abeywardena, as recorded in the *Hansard* (*Hansard* 2007, 3260-1).



### Renovations: Opposition by Heritage Institutions, Politicians and UNESCO

The development of the cricket stadium, an initiative of Sri Lanka Cricket, was rejected by the Urban Development Authority in April 2004 due to a number of issues, including the restrictions of the Antiquities Ordinance and the Coast Conservation Act (*Hansard* 2007).<sup>928</sup> The UDA planned to move the international cricket stadium, while continuing keeping the space as a public playground (*Hansard* 2007). The stadium was devastated by the tsunami in December 2004, and renovations commenced in May 2006; these included a new pavilion and media centre as well as increasing the seating capacity.<sup>929</sup> The President of ICOMOS Sri Lanka and the Chairman of Galle Heritage Foundation addressed the violations of regulations in writing to the President of Sri Lanka in September and October 2007 (*Hansard* 2007, 3265).<sup>930</sup> According to the GHF Chairman's "highly urgent" letter, which requested the President to intervene in the matter, the Antiquities Ordinance was been violated by the construction.<sup>931</sup> Furthermore, the new pavilion was too high, and thus it blocked the view of Galle Fort from the Colombo-Galle main road (a major threat to its visual integrity); this was a violation of the agreement entered into with the GHF and authorities

during initial discussions about the project.<sup>932</sup> In September 2007, the President of ICOMOS Sri Lanka, informed the Director of the World Heritage Centre about the violation of regulations.<sup>933</sup> In November 2007, UNESCO Italian-Funds-in-Trust, the first mission, was carried out, and as a result, it was agreed that the newly built pavilions would be demolished after the Test Match between Sri Lanka and England had concluded (*Hansard* 2007, 3270; WHC 2008, 94).<sup>934</sup>

According to the *Sunday Leader* (2008), a leading local newspaper, the undertaking was ordered by the Urban Development Minister, as the "country feared a possible de-listing of the site, an indignity that no state would wish to suffer."<sup>935</sup> The matter was discussed during the Parliamentary Debates on 11 December 2007, where the majority of parliamentarians opposed the intrusive developments due to the potential delisting of Galle Fort (*Hansard* 2007).<sup>936</sup> The Urban Development Minister stressed:

"I have clearly informed the Mayor of Galle that, if the law is violated, the powers [over building activities] delegated [to the municipality] by the UDA will be revoked. I have never made a decision that would adversely affect the development of Galle. ... We can play cricket after saving the World Heritage [city of] Galle" (*Hansard* 2007, 3269).

According to the *Sunday Leader* (2008), the minister "submitted a cabinet paper seeking UDA approval to suspend the building permit issued by Galle Municipal Council (GMC). As the plot thickened, an inquiry got underway against GMC for using a permit in stark violation of the law. Initially, the UDA suggested makeshift buildings, which was the norm followed in other countries without putting

928 Sri Lanka as an island nation has a powerful Coast Conservation Act (No. 57 of 1981 and the Amendment Act of No. 49 of 2011), which provide legal provisions for the Director General of the Coast Conservation Department to demolish any unauthorized structures in the Coastal Zone that are not taken down within the prescribed time (Article 31 of the Coast Conservation Act, No. 57 of 1981). According to the *Hansard*, the development of the stadium was never permitted by the Director General of the Coast Conservation Department (*Hansard* 2007).

929 Official website of Sri Lanka Cricket, available at <http://www.srilankacricket.lk/grounds> (accessed 24 July 2018). According to the *Daily News*, this pavilion provided seating for up to 500 VIP guests and contained a media centre that could hold 150 media personnel. "Uncertain Future for Galle International Cricket Stadium", 19 July 2018; available at: <http://www.dailynews.lk/2018/07/19/sports/157345/uncertain-future-galle-international-cricket-stadium> (accessed 13 August 2018).

930 Personal conversation with Prof P.B. Mandawala, then President of ICOMOS Sri Lanka, 25 February 2018; the letter to the Hon. President from the Chairman of the Galle Heritage Foundation on "Developments of the Galle International Cricket Stadium," 3 October 2007, as recorded by the *Hansard* (*Hansard* 2007, 3265).

931 The development should be preliminarily cleared through the Director General of Archaeology, as it lies within the 400-yard (365.76-metre) control zone of the Dutch ramparts implemented by the DOA in 1971, according to the provisions of the Antiquities Ordinance (the law elaborated in sub-chapter 4.2.2).

932 The letter to the Hon. President from the Chairman of Galle Heritage Foundation on "Developments of the Galle International Cricket Stadium," 3 October 2007, as recorded by the *Hansard* (*Hansard* 2007, 3265).

933 "Uncertain future for Galle International Cricket Stadium", the *Daily News*, 19 July 2018. Available at <http://www.dailynews.lk/2018/07/19/sports/157345/uncertain-future-galle-international-cricket-stadium> (accessed 13 August 2018).

934 "World Heritage Tampered at Will," the *Sunday Leader*, 21 September 2008, available at <http://www.thesundayleader.lk/archive/20080921/issues.htm>, <http://www.thesundayleader.lk/archive/20080921/issues.htm> (accessed 13 August 2018).

935 Ibid.

936 Parliamentary debate on "Suspension of Construction in Galle Public Playground" in the *Hansard* of 11 December 2007 (*Hansard* 2007, 3260-76).



**Fig. 277** The stadium (2016) with the new pavilion to the north.

up permanent structures during the English cricket series. Nevertheless, Sri Lanka Cricket has put up permanent structures costing Rs. 40 million with the blessings of the Galle MC.<sup>937</sup>

The decisions of the World Heritage Committee in 2008 established that the constructions were illegal, as they had “never been given final approval by the planning authorities” (WHC 2008, 95).

### **Cricket, Heritage and the Political Will: The Stadium Reopens**

Despite these controversies, the cricket stadium was declared open by President Mahinda Rajapaksa on 17 December 2007, and the venue hosted a Test Match between Sri Lanka and England on the same day.<sup>938</sup> This did not become known to the World Heritage Committee until 2010: “... but there is no intention to demolish the dominant Mahinda Rajapaksa Pavilion or other buildings. The pavilion was built after the 2004 tsunami and opened in December 2007 by the President of Sri Lanka, whose name the

pavilion bears” (WHC 2010, 127; Fig. 277-278).<sup>939</sup> The Department of Archaeology sought the advice of the Attorney General’s Department (in taking legal actions) regarding the matter, which was the norm; somehow, the matter was later settled out of court.<sup>940</sup>

A letter addressed to the Ambassador Extraordinary and the Plenipotentiary of Sri Lanka to France (also the Permanent Delegate of Sri Lanka to UNESCO) by the Director of the World Heritage Centre on 14 December 2007, just few days prior to the re-opening of the stadium, encouraged the local authorities to submit a revised boundary and buffer zone for the World Heritage Property including the

<sup>939</sup> It is not uncommon to name the International Cricket Stadiums after presidents in the local context, as three out of five such stadiums bear the names of presidents. Khetarama Stadium (until June 1994) in Colombo, the country’s largest cricket stadium, was named after former President R. Premadasa; the stadium was identified by Sri Lanka Cricket as the “brainchild of the late Sri Lanka President Ranasinghe Premadasa.” There is also a stadium named after former President Mahinda Rajapaksa at Hambantota (2011), his home town, erected as “part of the government’s programme to develop sports in the Southern Province.” Available at <http://www.srilankacricket.lk/grounds> (accessed 24 July 2018).

<sup>940</sup> Personal conversation with a legal officer affiliated with the DOA, 25 February 2018.

<sup>937</sup> Ibid.

<sup>938</sup> Official website of Sri Lanka Cricket, available at <http://www.srilankacricket.lk/grounds> (accessed 24 July 2018).





**Fig. 278** Mahinda Rajapaksa Pavilion (January 2019).

“area presently threatened by the cricket stadium” (coupled with the ancient port).<sup>941</sup> This was not agreed upon by the state party, based on well-founded arguments provided years later.<sup>942</sup>

941 “I encourage your authorities to submit a revised boundary and buffer zone for the site (possibly through a re-nomination) to include the ancient port and the area presently threatened by cricket stadium, as suggested by the world heritage committee.” Letter from the Director, World Heritage Center to the Ambassador Extraordinary and Plenipotentiary of Sri Lanka to France (Permanent Delegate of Sri Lanka to UNESCO) on “Old Town of Galle and Its Fortifications (Sri Lanka),” 14 December 2007.

942 Initially, the extension of the buffer/boundary was not properly addressed by the state party. The annual decisions of the World Heritage Committee from 2008 to 2014 continuously pointed out and revisited the issue of the buffer/boundary (WHC 2008, 96; 2009, 200; 2010, 128; 2011, 127; 2012, 140; 2013, 128; 2014, 22). The “Integrated Management System 2015” of the state party explained the reasons for not considering an extension of the

The decisions of the World Heritage Committee in 2008 expressed serious concern about the matter, followed by the decisions of the mission in 2007 (WHC 2008, 95). It was recommended to move the stadium from the buffer zone to an alternative location, offered by the Urban Development Authority together with Galle Municipal Council, in two stages, short-term and long-term (WHC

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boundary of the property: “at this moment the state party is of the opinion that the boundary of the World Heritage Property at the time of declaration should not be modified to include the maritime archeology remains in the bay as they are already being protected under the Antiquities Ordinance as a separate entity” (Mandawala 2015, 22). Further, it elaborates that 400-yard (365.76-metre) control zone that was applied to the “Dutch ramparts” of the fortress in 1971 acts as the buffer zone of the property, while according to this law the boundary of the fortress is legally considered to be the ramparts (Mandawala 2015).

2008, 95).<sup>943</sup> Although the state party reported the demolition of a building owned by the Galle Municipal Council (not the main one) in the following year, it was not clear to the committee which plan was followed, either the short-term or the long-term one (WHC 2009, 198). The government agreed to make the required changes by December 2019<sup>944</sup> and not to carry out any further developments.<sup>945</sup>

In 2009, the Minister of Urban Development took steps to gazette-notify the Special Regulations (Planning and Building) as per the recommendation of UNESCO's Reactive Monitoring Mission, 2008,<sup>946</sup> which contained an article that read, "The physical features of the buildings in the International Cricket Complex should be maintained in conformity with the environmental features and the appearance of the fort area" (Article 70.36).

### Chaos over the Decision to Relocate the Stadium

The matter remained unsolved until the beginning of 2017, despite the continuous recommendations of the World Heritage Centre from 2009 to 2016 and, ironically, the provisions of the Special Regulations (2009), as mentioned above (WHC 2009, 198; 2010, 127; 2011, 127; 2012, 140; 2013, 128; 2014, 22-3; 2016, 80). Meanwhile, the change of regime in early 2015 resulted in strong criticism towards the large-scale public-sector investments of the previous regime.

In early 2017, the DOA sought the possibility of taking legal action against the "illegal"

developments in the cricket stadium, since "UNESCO has drawn attention on the matter."<sup>947</sup>

The influential Galle-based heritage officers who took advantage of the country's changing political environment, negotiated with the political authorities and "played their trump card" in mid-2018, emphasizing the previous government's agreement with UNESCO to make changes to the stadium by 2019.<sup>948</sup> In July 2018, local (and international) media variously reported that the government would demolish or relocate the cricket stadium. The news sparked huge chaos in the country, including a protest against the decision organized by Galle Municipal Council; this was also supported by some of the parliamentarians.<sup>949</sup> A slogan at the protest read "Dear UNESCO!!!, this cricket ground enhances the beauty of the fort, not the other way around."<sup>950</sup> The GHF planned to convert the cricket stadium into Galle Public Playground (its immediate former use) by demolishing the illegal developments, also allowing the public to play cricket there.<sup>951</sup>

As a public playground, it contributed to producing some of the best cricketers in the country; among them is Champaka Ramanayake, a fort native (*Hansard* 2007, 3262). According to a native, it was "the Heart of Galle—a lifeless entity, but gave breath to all of Galle," where people from different strata of society played together, and it contributed to creating a greater sense of community in Galle.<sup>952</sup> A Galle District parliamentarian who

943 The short-term plan was to remove "illegal" buildings, followed by the long-term plan of removing all the buildings and restoring the Esplanade to an earlier stage for future archaeological investigations (WHC 2008, 95).

944 "We have to report this in 2019," stated the Minister of Sports at the Parliamentary Debates, July 20, 2018 (*Hansard* 2018, 614); "UNESCO has given December 2019 deadline to make those necessary changes," reported the Secretary General of the Sri Lanka National Commission of UNESCO (reported by the *Sunday Times*, 22 July 2018, in "Galle Stadium Conundrum: The Inside Story", available at <http://www.sundaytimes.lk/180722/sports/galle-stadium-conundrum-the-inside-story-303413.html> (accessed 25 July 2018). According to a Galle-based heritage officer, this agreement was based on "Galle Fort World Heritage, Reactive Monitoring Mission" (2008), by Nicole Bolomey, Programme Specialist, UNESCO Delhi office (personal conversation, June 2018). The mission report is not available on the UNESCO website.

945 Minister Gamini Lokuge, then Minister of Sports, during the Parliamentary Debates, 20 June 2018 (*Hansard* 2018).

946 Personal conversation with a Galle-based heritage officer, 23 July 2018.

947 "The Director General of Archaeology has requested to take legal action against the illegal constructions in the cricket stadium," reads the letter from Regional Assistant Director (South) of the Regional Archaeology Office (South) to the Legal Officer, Department of Archaeology on "Illegal Developments on Galle Public Ground," 26 April 2017.

948 Personal conversations with a Galle-based heritage officer, June–July 2018.

949 "Uncertain Future for Galle International Cricket Stadium," the *Daily News*, 19 July 2018, available at <http://www.dailynews.lk/2018/07/19/sports/157345/uncertain-future-galle-international-cricket-stadium>; "Future of Galle Intl. Cricket Stadium Uncertain", *Hiru News*, 18 July 2018, available at <http://www.hirunews.lk/sports/195444/future-of-galle-intl-cricket-stadium-uncertain>; "Sri Lanka's Galle Cricket Stadium Risks Being Demolished," *BBC News*, 21 July 2018, available at <https://www.bbc.com/news/world-asia-44911225> (accessed 25 July 2018).

950 Available at <http://www.adaderana.lk/news.php?nid=3300&mode=head> (accessed 25 July 2018).

951 Personal conversation with an officer attached to GHF, 23 July 2018.

952 Extracted from a poem on *gālu mahajana krīdāṅganaya*

also played there stated that it was also the place where many came to rest after a busy workday (*Hansard* 2007, 3261-2). Thus, in 2007, Galle District parliamentarians wanted the grounds to be a public playground from which residents and the school pupils of Galle could benefit (*Hansard* 2007).<sup>953</sup> However, a healthy link between cricket and heritage could have been formed, according to a Galle-based heritage officer,<sup>954</sup> while some of the fort's residents viewed having an international cricket stadium as a sign of prestige.<sup>955</sup> One homestay provider stated that he had twice hosted an Australian cricket fan, who preferred staying with them during cricket matches.<sup>956</sup>

### Parliamentary Debates

While the issue drew much attention in the country, it was discussed at the Parliamentary debates on 20 July 2018.<sup>957</sup> At the discussion, Dr Wijeyadasa Rajapaksa, Minister of Higher Education and Cultural Affairs, underscored the importance of maintaining the county's World Heritage sites according to UNESCO's guidelines, which is economically beneficial to the country; he further expressed:

"We have to consider whether to demolish that illegal pavilion—the Mahinda Rajapaksa Pavilion—to stay on the World Heritage list, or keep Mahinda Rajapaksa Pavilion and face the delisting [of Galle Fort] from the World Heritage list" (*Hansard* 2018, 612).

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("Galle Public Playground") posted on Facebook by A. Samarasekera, a native who currently lives abroad, 19 January 2017. The poem, which recounts the author's memories of the playground as a place where all strataums of society played together and thereby contributed to creating a greater sense of community, was admired in a large number of positive comments from the people of Galle.

953 Allowing the schools of Galle to continue their annual sports meets and matches on the grounds was one of the clauses of the initial agreement between the SLC and GMC (*Hansard* 2007), which has not yet been violated. As international cricket matches are not played often, the grounds are free most days.

954 Personal conversations with a Galle-based heritage officer, July 2018.

955 Personal conversations with at least five residents, 2017.

956 Personal conversation with a resident, January 2017.

957 "Unauthorized Construction in Galle International Cricket Stadium: Statement by Minister of Higher Education and Cultural Affairs" in the *Hansard* in 20 July 2018 (*Hansard* 2018, 609-17). Available at <https://www.parliament.lk/business-of-parliament/hansards> (accessed 20 February 2019).

At this point, the former Minister of Urban Development explained that the pavilion was not built by the former President, and urged them to "handle what is heritage with care" (*Hansard* 2018, 612).<sup>958</sup> The *Island*, a popular newspaper, stated that the former President's name was strategically used to save the pavilion, which a Galle-based heritage officer agreed with.<sup>959</sup> Minister Arjuna Ranatunga, under whose captaincy Sri Lanka won the Cricket World Cup in 1996, agreed with the former Minister of Urban Development, and emphasized that both the World Heritage status of Galle Fort and the cricket stadium—"a lucky venue for Sri Lanka"—are equally beneficial to the country (*Hansard* 2018, 616).<sup>960</sup> The Minister of Sports emphasized that a decision should be made in the best interest of the country, instead of using the issue as a political stage, implying that the stadium would not be relocated (*Hansard* 2018, 614).<sup>961</sup> Opposition from the public, leading figures in cricket and the media contributed substantially to this decision. The discussion regarding the demolition is ongoing; however, nothing has changed as of March 2019.

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958 "I was the Urban Development Minister then. When UNESCO initially raised this issue, we discussed the matter. This was not done by Hon. Mahinda Rajapaksa. This was the initiative of another group" (*Hansard* 2018, 612).

959 "Galle's strongman Warnaweera may have his faults, but he is a practical man. Sensing trouble, Warnaweera overnight gave a name to the pavilion. All dissidents turned a blind eye from thereon. What was the name that Warnaweera gave? He named the facility Maninda Rajapaksa Pavilion and the critics disappeared" "Hands off Galle International Stadium," the *Island*, 21 July 2018; available at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=188294](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=188294) (accessed 22 February 2019); personal conversation with a Galle-based heritage officer, July 2018.

960 Minister Arjuna Ranatunga reported, "It was requested that the pavilion be demolished after its unacceptable construction. It was then named after Mahinda Rajapaksa. Then it was not demolished" (*Hansard* 2018, 616).

961 The Minister of Provincial Councils, Local Government and Sports stated, "Hon. Deputy Chairman of Committees, we have to protect the World Heritage site. We also have to be conscious of the fact that the Sri Lankan cricket team has done well at Galle Cricket Stadium. Taking all these interests into consideration, a Ministerial Committee was appointed. Unfortunately, certain Members of Parliament are using this as a political stage" (*Hansard* 2018, 614).



### 7.7.3 GALLE HARBOUR DEVELOPMENT PROJECT

The development of Galle Port as a multipurpose port for regional needs is an important, 150-million-USD project, financed with a loan from the Japan Bank for International Cooperation and jointly proposed by the Sri Lanka Ports Authority (hereafter also referred to as “SLPA”) and Japan International Cooperation Agency (“JICA”) in 1991 (Franco 2007; WHC 2008; SLPA 2013). The first feasibility study and the first Environmental Impact Assessment of the project were completed in November 2000 (Franco 2007; WHC 2008).<sup>962</sup>

At the end of 26 years of armed conflict in 2009, Sri Lanka showed high growth, driven by strong private-sector demand in both consumption and investment, while the public sector contributed to large infrastructure projects (the World Bank).<sup>963</sup> The policy decisions of the government as per the election manifesto of former Sri Lankan President Mahinda Rajapaksa (2005–2015) prioritized port and aviation development in order to position the country as the “leading navigational, trading and commercial centre in South Asia” (Ministry of Finance and Planning 2006). The manifesto proposed to decongest Colombo Port—primarily a container port and the country’s main port—by developing the Southern Ports of Galle and Hambantota (Ministry of Finance and Planning 2006).

#### Concerns of Local Heritage Authorities and UNESCO

The eastern part of Galle Fort directly faces Galle Harbour, where the development was proposed. The Department of Archaeology expressed its concern over the project, while UNESCO was mainly concerned with possible changes in the underwater currents, which could have an adverse effect on the stability of the fortress rampart.<sup>964</sup> This was

mainly due to the proposed dredging of the harbour. Although the proposed development lay outside of the 400-yard (365.76-metre) buffer zone, nearly 20 important shipwrecks lay in the harbour, and some were threatened by the development.<sup>965</sup> The World Heritage Centre organized an expert mission to Galle in November 2007, undertaken by an expert in port development projects and underwater currents.

#### Negative Visual Impact

The Evaluation Report of the 2007 mission revealed that the proposed harbour development would create a strong negative visual impact on the existing landscape of Galle Fort (Franco 2007, 3): “The beautiful views from the fort ramparts and from Rumassala hill on the opposite side will be strongly affected by the new artificial infrastructure, which is jutting out into the middle of the bay with its sharp intrusive shape and its modern industrial appearance” (Fig. 279).

In addition, a number of Archaeological, Environmental, Cultural and Maritime Archaeology Impact Assessment Projects were carried out by both local and foreign experts on this project, commissioned by the SLPA and DOA. The Galle Harbour Maritime Impact Assessment (2007), commissioned by the DOA and conducted by the Department of Maritime Archaeology at the Western Australian Maritime Museum, identified that the proposed project would create threats to the VOC shipwrecks, including *Hercules* (Anderson, Green, and Souter 2007). Based on these findings, the above-mentioned Evaluation Report (2007) recommended relocating the constructions away from the shipwrecks (Franco 2007). It was also recommended to provide toe protection against wave action at the eastern ramparts by means of permanent rock breakwaters (Franco 2007).

Although the Evaluation Report of 2007 recommended reconsidering the feasibility of the

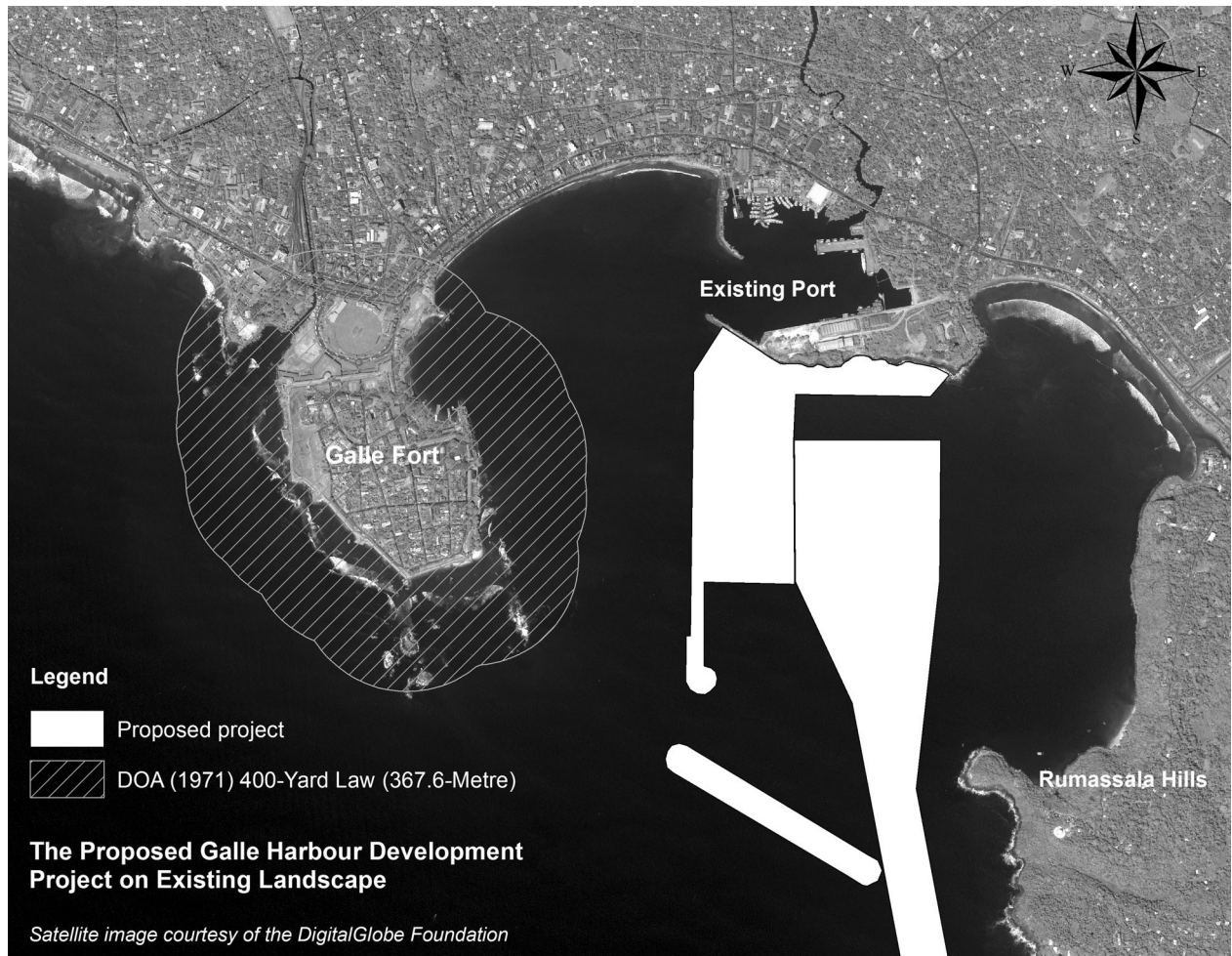
962 Conducted by the SLPA in conjunction with Japanese consultants and Sri Lankan Engineering Consultants Limited (WHC 2008, 95).

963 Available at <http://www.worldbank.org/en/country/srilanka/projects> (accessed 25 July 2018).

964 “At the time the main concerns regarding the project were the possible changes of the underwater currents, which could have an adverse effect on the stability of the Galle fort ramparts,” reads the letter from the Director, World Heritage Center to the

Ambassador Extraordinary and Plenipotentiary of Sri Lanka to France (Permanent Delegate of Sri Lanka to UNESCO) on “Old Town of Galle and its Fortifications (Sri Lanka),” 14 December 2007.

965 Ibid.: “... historic harbor area in which there are more than 20 important shipwrecks ...” The Department of Archaeology recorded 18 shipwrecks in the harbour, together with seven sites including other archaeological material (iron anchors, ceramics, etc.), in its report, which appeared as part of the “Integrated Management System 2015” authored by Mandawala (2015).



**Fig. 279** The proposed project on the existing landscape (the proposed project area as shown by SLPA's Report (2013)).

whole project, considering the general national and regional economic interests of the development plan, an alternative was also provided, which proposed modifying the port layout and introducing some design changes to reduce negative impacts (Franco 2007). Based on this advice, in 2008, the World Heritage Committee recommended either abandoning the current port development project or scaling it down and modifying the port layout and design with respect to the sensitive environment and its integrity (WHC 2008, 96).

#### **A Revised Plan: SLPA Agrees with the DOA**

In September 2009, the Department of Archaeology granted conditional approval for the proposed

project based on nine recommendations, including “modifying the port layout and introducing some design changes to reduce negative impacts” according to the recommendations of the World Heritage Committee in 2008.<sup>966</sup> The annual decisions of the World Heritage Committee in 2009 reported the project had been “downscaled through several actions including the reduction of roads and reclamation area” (WHC 2009, 199) (Fig. 280 and 281). In 2013, the SLPA introduced a revised plan, which mainly aimed to develop the port as a “commercial leisure port” and provide optimum transportation in

966 Letter from the Archaeological Director-General to the Chairman, Sri Lanka Ports Authority on “Galle Port Development Project-Archaeological Impact Assessment” 9 September 2008.



**Fig. 280** The initial plan of the Galle Harbour Development Project (SLPA 2013).

Southern area as per the port policy documents and *Mahinda chintana idiri dekma* (“Mahinda’s Vision for the Future”), the election manifesto of former President Mahinda Rajapaksa, 2010 (SLPA 2013).<sup>967</sup> Thus, the project’s initial aim of regional economic development shifted towards “preserving the heritage value of the Old Galle city by attracting more tourists and providing necessary infrastructure facilities” (SLPA 2013, 3). The plan rerouted the initially proposed road and sea wall, avoiding the Hercules shipwreck and providing a 50-metre buffer zone as requested by the Director General of Archaeology’s (above-mentioned) conditional approval (Figs. 281).<sup>968</sup> The Preliminary Report of the Heritage

Impact Assessment 2015, commissioned by the SLPA, identified the above plan as a revised and more modest version of the original proposal, and would also have positive impacts, including reduced marine erosion, reduced tidal movement around shipwrecks and possible socio-economic development in the region (Thompson 2015).

<sup>967</sup> Former President Mahinda Rajapaksa’s election manifestos (2005 and 2010) included three large port development projects: Southern Port Hambantota, Colombo and Galle; the first phase of the Hambantota port was completed in 2010 (Ministry of Finance and Planning 2006).

<sup>968</sup> “A realignment of the road and sea wall that would leave the Hercules site outside the development zone” (Galle

Harbour Maritime Archaeological Impact Assessment Report for Sri Lankan Department of Archaeology by Anderson, Green, and Souter 2007, 28–30 pages). “That the Hercules site is left untouched by port development and a 50-m buffer zone is established around the site (as per option 1)” (letter from Archaeological Director-General to the Chairman, Sri Lanka Ports Authority on “Galle Port Development Project-Archaeological Impact Assessment,” 9 September 2008). The Galle Port Development Project Revised Plan states, “As per the recommendations made by the Archaeology Department, a realignment of the road and sea wall that would leave the Hercules site outside the development zone (i.e. option 1) has been selected as possible alternative, and it would leave the Hercules site untouched by the port development and establish a 50-metre buffer zone around the site” (SLPA 2013, 6).





**Fig. 281** The revised plan with the proposed new road (in orange), which replaced the initial one (in green) to avoid the wreckage of the East Indiaman Hercules (SLPA 2013).

### SLPA Waits for UNESCO's Clearance

The SLPA states that it is awaiting UNESCO's clearance to commence the second phase of the project after the completion of the basic design.<sup>969</sup> The state party's State of Conservation Report, 2017 confirms this by mentioning that the SLPA has made a policy decision to temporarily defer the commencement of the project.<sup>970</sup> According to the SLPA, the second phase includes a breakwater of 900m long, a multipurpose berth of 300m long and recreation facilities, such as whale/coral watching, a boat service, restaurants and hotels, etc.<sup>971</sup> According to SLPA, the 125-million-

LKR first phase of the project was completed in 2015,<sup>972</sup> however, it was not clear whether it was cleared by UNESCO. The first phase included the development of basic facilities for the yacht marina, with berthing facility for 22 yachts as well as service facilities and a repair workshop.<sup>973</sup>

### Conclusion

This chapter provides strong examples to prove that the law is not equally applied in Galle Fort, a major criticism of the system by the community. It argues that the currently practised building regulations have become a burden on the community. The second part of the chapter shows that although the critical heritage decisions affecting the fort's landscape have been politicized, the country fears losing the heritage status, which is strategically used by heritage officers to achieve their goals.

969 Official website of the Sri Lanka Ports Authority, available at [http://portcom.slpa.lk/galle\\_regional\\_port.asp?chk=4](http://portcom.slpa.lk/galle_regional_port.asp?chk=4) (accessed 25 July 2018).

970 Available at <http://whc.unesco.org/en/list/451/documents/> (accessed July 25, 2018).

971 Official website of the Sri Lanka Ports Authority available at [http://portcom.slpa.lk/galle\\_regional\\_port.asp?chk=4](http://portcom.slpa.lk/galle_regional_port.asp?chk=4) (accessed July 25, 2018).

972 Ibid.

973 Ibid.