



Tamil Information Centre

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Note on Good Practice for Tsunami Reconstruction Joint Mechanism

Joint mechanism

A joint mechanism between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) for relief and reconstruction operations in the north-east has not been agreed upon although four months have elapsed since the tsunami struck the island. Discussions have taken place between the two parties but the contents of the talks have not been made public. Both parties seem to agree on the mandate and composition of the joint mechanism, but differences are said to remain on the monetary structure of the mechanism. The joint mechanism may include five Tamil, three Muslim and two Sinhalese officers. The government appears to oppose LTTE's demand that the World Bank should be the custodian of the special fund of the mechanism. The World Bank is the custodian of the North-East Reconstruction Fund (NERF), according to a decision taken at the Oslo peace talks in December 2002.

The People's Liberation Front (JVP), which is a member of the ruling United People's Freedom Alliance (UPFA), has not only continued its opposition to the peace process but also threatened to leave the government if a joint mechanism is established. The government has a thin majority in Parliament and may collapse without the support of the JVP.

The head of the Task Force for Rebuilding the Nation (TAFREN) Mano Tittawella said on 28 April 2005 that a joint mechanism was necessary to equitably distribute the tsunami relief and reconstruction aid. The LTTE's political leader S P Thamilselvan has said that in view of the urgency demanded by the situation in the north-east, the government should extend co-operation to finalize the joint mechanism without delay.

Donor governments also insist on a joint mechanism. But there seems reluctance providing aid directly to the LTTE because of legal and political implications. The LTTE is banned in countries such as the US, India and Britain. EU Commissioner for External Relations, Benita Ferrero-Waldner, who visited Sri Lanka in March 2005, stressed that a joint mechanism would be an important element in ensuring aid money reaches the people in greatest need, and warned that without such mechanism, it would be difficult to ensure that international aid flows fairly.

State responsibility

The Sri Lankan State has a responsibility to protect all people and attend to the welfare of all citizens as demanded by humanitarian law. The presence of hostile groups in the population in the country cannot be an excuse for a government to evade its legal duty to provide for the fundamental and basic needs of the people. If the government cannot provide for the people in certain areas, then, an option open to the government would be to morally and legally give up the territory and surrender its responsibility and legal authority to those in control of the territory. Three options are currently open to the government:

- 2) The government and the LTTE must initiate a campaign to explain the joint mechanism to the people. The government must ensure that the people in the south become aware of the options that it faces. Currently, there is no organized public awareness campaign, leading to confusion, mistrust and misunderstanding, which are exploited by some political and other parties.
- 3) The mechanism must be inclusive and sensitive to the situation in other geographical regions, the people affected by war and the disadvantaged and marginalized people.
- 4) The mechanism must provide maximum permissible latitude for the LTTE administration to act in carrying out tsunami relief and reconstruction work. It must include the principles of equality, transparency and accountability.
- 5) The principle of equality must be observed where communities live contiguously in adjoining provinces.
- 6) The mechanism must also provide for respect for human rights and humanitarian principles, gender issues and issues relating to vulnerable groups such as women, children and the elderly. International agencies must be able to monitor any violation of these principles.
- 7) The LTTE would wish to have all reconstruction efforts under its control to enhance contact with the people and to benefit from political advantages that would accrue by directly involving with the people. The government on the other hand may not agree to any concession that would appear to strengthen the LTTE and consolidate their position. The LTTE would also seek to gain political legitimacy in the agreement for the joint mechanism and sections in the government have already indicated that they would oppose any pact that grants such legitimacy. The joint mechanism will be successful only if it recognizes these positions and ensures that **both parties** gain by any agreement.
- 8) The threat to physical security is becoming more and more acute as days pass. There have been many killings, particularly in the Eastern Province, of persons opposed to the LTTE. Members and offices of the LTTE have also come under attack. These killings are increasingly affecting the attitudes of the parties with regard to the peace process. Local organizations say continuing human rights violations threaten communities and interfere in relief operations.
- 9) According to the Sri Lanka Monitoring Mission (SLMM), both parties also continue to violate the ceasefire agreement of February 2002. It has been recognized that the original mandate of the SLMM is inadequate. Since the ceasefire agreement in February 2002, the SLMM has, on many occasions, refused to intervene or act in respect of ceasefire violations, saying that its mandate does not allow such intervention or action. There is a need for reviewing and strengthening the mandate of the SLMM and providing for active intervention.
- 10) There is currently no effective independent mechanism for the people to make complaints regarding human rights violations in the north-east. The ceasefire agreement excludes Mullaitivu and Kilinochchi districts. The SLMM and the Human Rights Commission of Sri Lanka have no access to all areas in the north-east. An effective mechanism that allows for human rights monitoring, human rights complaints, remedy for human rights violations and reasonable access to areas of the north-east is urgently needed.
- 11) If killings, abductions, threats and intimidation continue, it would not only eventually affect the ceasefire and the peace process but also make it difficult, if not impossible, for the joint mechanism to function. This will also make it difficult for international and local agencies to

- 1) The military option. This cannot be exercised in the current circumstances because of desertions in the armed forces, the inability to recruit and the lack of funds to conduct the war. The government would have to contend with international opposition to war.
- 2) The second option for the government would be to say that it is unable to attend to the needs of the people of the north-east and transfer the funds to the LTTE who will function as an agent. This position may not be acceptable to some sections of the population in these areas. Furthermore, if the LTTE continues to function without responsibility, transparency and accountability, the question also arises about accountability. As the funds would be channeled through the government, who will be answerable in respect of such funds? It may be argued that such a situation will undermine the principles of democracy.
- 3) The establishment of the joint mechanism is the third option. This will promote peace, and both the government and the LTTE will play a role. It will help the government to say that its writ in the north-east has not been completely disregarded. In fact this will help to unite the country, contrary to the claim of the People's Liberation Front (JVP) that a joint mechanism will divide the country. In this case, all democratic principles can be safeguarded. A joint mechanism will engender goodwill, dispel mistrust, provide an opportunity to work together and will have beneficial effect on the peace process.

Furthermore, under the 13th Amendment to the Sri Lankan Constitution, Social Services and Rehabilitation fall under the Provincial Council List and under the Concurrent List, but these subjects are not included in the Reserved List for the Central government [The Provincial List includes the subjects in respect of which the Provincial Council may make laws and the Concurrent List includes the subjects in respect of which the national Parliament may make laws after consultation with the Provincial Councils]. Administrative structures of the Provincial Council and the central government already exist in the north-east, and over the years, these structures and the LTTE have been working together to attend to needs. In such circumstances, it would not be difficult to establish the joint mechanism and for it to function in these areas successfully without undermining current positions, and the protest of the JVP is not based on reasonableness.

The type of joint mechanism

It may be difficult to justify the need for the joint mechanism to be a constitutionally recognized body, because it relates only to a particular disaster. Furthermore, any attempt at a constitutional amendment for this purpose would be a non-starter as there would be opposition. The joint mechanism could only be recognized as an administrative or implementation issue.

The government has signed Memoranda of Understanding (MOU) with international agencies for tsunami disaster relief work, for example, construction of houses. The MOUs provide the details of the work to be carried out and incorporate the principles of responsibility, accountability and transparency. The government and the LTTE could sign an MOU, which will allow the LTTE to carry out the tsunami relief work, while ensuring that these principles are observed.

Good Practice

- 1) The delay in establishing a joint mechanism has adversely affected the people in the tsunami-hit regions of the north-east. Increased pressure on both parties from the international community is needed for the setting-up of the mechanism without further delay.

continue their work. There is an urgent need to stop the killings and the international community should focus all its efforts on this problem. The agreement on the joint mechanism should also incorporate provisions that would penalize the parties for human rights violations, particularly killings.

- 12) A large number of expatriates are currently visiting Sri Lanka and assisting relief and reconstruction. They are experts in various fields and have experience in supporting relief and reconstruction work. The agreement on a joint mechanism should recognize this and ensure that their work has an appropriate place in the joint mechanism and continues without interference.
- 13) The hope that the civil society in the north-east would be able to function freely after the ceasefire agreement of February 2002 has not become a reality. Civil society organizations have continued to be under pressure. It is vital that they have the freedom to participate in planning and carrying out reconstruction without interference. The agreement should also contain provisions to ensure that there is no interference in the functioning of civil society organizations.
- 14) Ethnic harmony is essential for the successful implementation of the programmes and for promoting and sustaining peace. Ethnic harmony should be a prime feature in all programmes and projects of the joint mechanism. Programmes should be fairly implemented without any regard for racial, ethnic, religious, political or other differences.
- 15) The absence of financial accountability and transparency will continue to contribute to misappropriation and misuse of funds on both sides. The joint mechanism should be properly constituted and the control of funds properly managed. There must be relevant international participation in the management of funds.
- 16) The joint mechanism must be responsive and receptive to the needs of people at grassroots level. In every phase of the programmes of the mechanism, there must be people's participation, including planning and implementation.
- 17) Transparency and accountability are vital to the success of the programmes, particularly in decision-making and implementation and monitoring and evaluation. Beneficiaries should not only take part in needs assessment and planning but also have an important role in monitoring and evaluation. In order to effectively carry out their role, beneficiaries should be given all the information about the programmes and projects. Plans and proposals of the joint mechanism must be published in all three languages.
- 18) The joint mechanism should also publish periodic progress reports in all three languages and these should be available to anyone who requires them.
- 19) Freedom of expression must be respected. Journalists should be ensured the freedom in all areas to report on the progress of the programmes of the joint mechanism.

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