
P-TOMS: AFTER THE JUDGMENT

The Supreme Court determination on the P-TOMS (Post Tsunami operational management Structure) agreement delivered on July 15 is a significant judgment in a variety of ways. It is also remarkable that the JVP which sought the judicial intervention to invalidate the agreement, the government which was the respondent, and the UNP which has been watching the controversy outside the ring are all quite happy with the judgment for reasons of their own. Only the LTTE, the co-respondent who did not represent itself at the hearing, has expressed dismay over the judgment and its possible political consequences. If the officials at Colombo the Peace Secretariat can convince their counterparts in Killinochchi that all is not lost, the P-TOMS process can hopefully move forward even with the interim stay order in force.

Validation

The most important aspect of the Supreme Court judgment is that it has legally validated and legitimized the MOU on P-TOMS. It has also in passing endorsed the CFA which the UNF government signed with the LTTE in February 2002. The campaign opposing both these agreements was based on the assumption that they were legally wrong and politically illegitimate. Lawyers of the petitioners canvassed this point in the courts making the assertion that it was wrong for the President even in exercising her executive powers to enter into an agreement with a terrorist group that had functioned outside the law. The Supreme Court has found this argument untenable. According to the Justices, there was 'no illegality' in the President entering into an MOU with the LTTE for the humanitarian objectives as set out in the MOU's Preamble.

One of the key political arguments put forward by the JVP, JHU and many critics in their campaign against the MOU was that it was an agreement signed by the President in secrecy (*hora givisuma*), without informing parliament or even the Cabinet of Ministers. A 'secret pact', as they claimed, had no legal or moral validity. The Supreme Court has totally rejected this reasoning. President does not require, according to the judgment, to consult or seek prior concurrence of either the Parliament or the Cabinet of Ministers for the exercise of government power. Besides, when the Presidential action results in an outcome like the Operational Management Structure in the P-TOMS, its authority does not need to be derived from an existing statute. In making this point, the Supreme Court has also proposed to depart from the narrow, positivist legal position that authority should flow down from clearly defined sovereign body of the state, such as the legislature.

These are important conceptual points. They have the effect of making invalid the political arguments against the P-TOMS. This clearly is a setback to the oppositionist campaign. Yet, the Supreme Court's adverse findings relating to the Regional Fund and the location of the Regional Committee need to be addressed by the government and the LTTE in a continuing framework of cooperation. The LTTE's initial reaction to the Supreme Court determination was a negative one, on the assessment that the verdict has made the MOU totally unworkable. But, on sober reflection both the government and the LTTE should realize that there is still room for further consultation and modification of the disputed clauses and then return to the Supreme Court and explain the new position. The greatest challenge that the government and the LTTE will have to deal with is to stay on the course of compromise and convince the Court that what has been envisaged is a win-win outcome to an extremely difficult and complex political problem.

Violence in the East

Meanwhile, there are two other immediate issues that have a great potential to further de-stabilize the political situation—the escalating violence in the Eastern Province and increasing anger building up among Muslim political forces concerning the government-LTTE MOU on post-tsunami re-building.

The increasing violence and killings in the Eastern province involves the LTTE cadres, members of state security forces and the para-militaries linked to the so-called Karuna faction. In recent months, this violence has reached a qualitatively new phase. Earlier, there have been killings and secret violence involving the intelligence wings of the state and the LTTE. These incidents occurred and continued despite the cease-fire agreement. Now the violence involves, both as actors and targets, members of the state security forces other than the state intelligence wings and the combatants as well as political cadres of the LTTE. Continuing escalation of this violence will be the main threat to the CFA. Earlier many of these incidents occurred in Batticaloa and Colombo, and now they have reached the Trincomalee district as well. This is quite ominous. Both sides may continue to claim that they honour the cease-fire agreement. At the same time secret military operations by both sides are likely to escalate in the Eastern province making the CFA a mockery. Meanwhile, public confidence on the CFA and the peace process is plummeting. There is increasing fear in the Eastern province that the war might break out anytime there. The government should not treat the emerging situation in its characteristically passive manner. It is time now that the government immediately explores the possibilities for high-level political talks with the LTTE.

Muslim Issue

On the Muslim issue, the best option is for the LTTE and Muslim political leaders to initiate direct dialogue in order to address and resolve issues that have so far kept the two sides apart. This requires both sides to adopt a framework of mutual accommodation and flexibility. There are two fundamental changes that the LTTE and the Muslim leaders should consider as necessary in their approaches to each other. The Muslim political leaders need to re-think their strategy of dealing with the LTTE through the political leadership of the ruling party in Colombo. Similarly, the LTTE should be flexible towards the Muslim political leadership in order to respond to the concerns and aspirations of the Muslim community. The LTTE's strategy of by-passing the Muslim political leadership and dealing directly with Muslim community leaders on the ground in the Eastern province has not contributed much to Tamil-Muslim reconciliation. The Muslim political leaders' strategy of not directly dealing with the LTTE leadership in Killinochchi has led to similar negative consequences. Building the trust between

two sides at the leadership level is crucial for Tamil as well as Muslim communities affected by the Tsunami to receive any benefit. Perhaps, the LTTE and Muslim Peace Secretariat should take the initial first steps towards a new dialogue for accommodation.

While Sri Lanka's overall political situation remains of somewhat chaotic, there is an urgent need to protect the peace process in a context of escalating violence in the Eastern province, setbacks to the post-tsunami recovery process and increasing erosion of public confidence in the ability of the government and the LTTE work together for peace. A regime change in Colombo may not necessarily alter this condition of deadlock and uncertainty. A new process of high-level political dialogue between the government and the LTTE might succeed in reversing this situation. But there are no objective ground conditions that can facilitate such a dialogue. Sri Lanka's politics seems to have entered a peculiar phase in which everyone knows that things are moving from bad to worse, but no one really wants to do anything to arrest the process.

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P-TOMS, ETHNIC POLITICS AND CONFLICT TRANSFORMATION

Nearly a month after the P-TOMS agreement was signed, the opposition to the government-LTTE joint arrangements for post-tsunami rebuilding goes on unabated. While such opposition is not inherently bad in a democratic society, it nevertheless demonstrates the continuing incapacity of many Sinhalese nationalist forces to constructively grapple with the most fundamental political challenge of Sri Lanka today, namely, facilitating a transition from civil war to peace.

The basic argument put forward by this opposition is that a democratically elected government should not politically or administratively work with a terrorist entity. If it does, as the argument goes, it will only result in providing legitimacy to the 'terrorist' LTTE, strengthening its separatist agenda. It also suggests that if the LTTE wants to work with the government, it should renounce violence, terrorism, separatism and arms, accept the sovereignty of Sri Lankan state, and be prepared to agree to administrative decentralisation as the solution to Tamil political grievances.

This particular set of arguments against the P-TOMS appeared to receive considerable public attention for several weeks. However, after the JVP left the UPFA coalition government and the fasting Buddhist monks ended their protest without much drama, people in general have become weary of what ordinary citizens see as unreasonable opposition to any political engagement with the LTTE. The fact that the opposition UNP did not join hands with

the Sinhalese nationalist forces to oppose the P-TOMS agreement was quite significant. The JVP's opposition to Indo-Lanka agreement of 1987 and the Cease-fire Agreement of 2002 derived much of its strength from the alliance with the opposition SLFP. Now the UNP, with its mass mobilization for the presidential election, has to some measure altered the political agenda of the country. It has also diverted much public attention from the opposition to P-TOMS to presidential elections. It is quite noticeable that most of the media does not give front page coverage to the JVP-JHU campaign.

Not Feasible

The key difficulty with Sinhalese nationalist arguments against P-TOMS is that they are not at all feasible, viable, or even reasonable as public policy in the present stage of Sri Lanka's ethnic conflict. There was a time when the Sinhalese nationalist analysis of the conflict found its way to shaping the state policy and that was in the 1980s, in the early phase of the ethnic war. Those who ran the Sri Lankan state at that time thought that the conflict was primarily one of terrorism and it should be dealt with by military means. They also thought that Tamils should give up terrorism, separation and arms before being considered worthy by the Sinhalese polity of any concession. This is pretty old politics that Jayewardene, Athulathmudali and later Ratwatte and Wickramanayake practiced with no success whatsoever. Key leaders of the Sinhalese ruling class have in recent years developed