REPORT ON THE WORKSHOP ON POST-TSUNAMI RECONSTRUCTION OF SRI LANKA

Centre for Policy Alternatives

Introduction

The Centre for Policy Alternatives (CPA) organised a workshop entitled "Post-Tsunami Reconstruction of Sri Lanka: Structures and Processes" on 20th January 2005. The workshop was organised with the objective of engaging members of government, civil society, and the international multilateral community in a discussion of issues related to the reconstruction of Sri Lanka after the tsunami of 26th December 2004. CPA's Memorandum to the Task Force to Rebuild the Nation (TAFREN) on the formulation of a Comprehensive Development and Infrastructure Rebuilding Action Plan (CDIRAP) and the preparation of draft legislation to set up an Authority for Rebuilding the Nation (ARN) served as the basis for the discussion. The Memorandum seeks to bring to the attention of TAFREN certain policy considerations, international best practices and good governance principles that should inform the deliberations of TAFREN in the formulation of both the CDIRAP and the enabling legislation for the ARN.

This report identifies the themes around which the discussions were based and provides a brief summary of the presentations and the discussions that followed.

In his welcome address, Dr. Paikiasothy Saravanamuttu, Executive Director of CPA, stressed the importance of the principles of power-sharing in the peaceful resolution of Sri Lanka's ethnic conflict and in promoting transparency, responsiveness, democratic participation and accountability in the post-tsunami recovery process. He also noted that the tsunami disaster and the reconstruction efforts it has necessitated present an opportunity for revisiting some governance reform issues.

Proposed Reconstruction Structures: TAFREN, CDIRAP and the ARN

In his presentation on the structures the Government has proposed for implementing the reconstruction effort, Asanga Welikala, Researcher, Legal and Constitutional Unit, summarised the recommendations contained in CPA's Memorandum which centre around several cross-cutting themes and issues, including:

- accountability and transparency in general, and financial accountability in particular; public consultation and participation as animating principles permeating all policy frameworks and mechanisms established as part of the reconstruction process; and
- respect for the existing structures of devolution and recognition of the importance of provincial and local institutions in encouraging diversity and greater responsiveness, and in providing opportunities for broader citizen participation in government reconstruction efforts.

CPA's recommended accountability framework for the ARN would involve the enactment of an accounting, auditing and reporting framework to ensure financial accountability and transparency, accompanied by freedom of information provisions. CPA's proposals to enhance accountability, include:

- the establishment of a special reconstruction fund separate from the President's fund;
- strengthening the Auditor General's department;
- the establishment of a new parliamentary committee on reconstruction oversight which would monitor the ARN's implementation of CDIRAP and conduct comprehensive reviews of the ARN and the CDIRAP; and
- limiting the ARN's term of operation by including a sunset clause in any legislation establishing the ARN.

With respect to CDIRAP, CPA advocates a forward-looking national policy that will achieve not only reconstruction of physical infrastructure, but also sustainable human development. CPA urges the Government to engage in extensive consultation with Provincial Councils, local authorities and the public to ensure the responsiveness of the reconstruction efforts. CPA also recommends that a statement of purpose and principles for CDIRAP be enacted in order to (i) guide the ARN in the development of projects and (ii) guide the ARN and Parliament in the monitoring and evaluation of the CDIRAP. CPA also proposes that a disaster management strategy be adopted as part of CDIRAP.

Panellist J.C. Weliammuna of Transparency International suggested that existing mechanisms were not in a position to be effective in combating corruption. The problems with existing mechanisms include:

- the Committee on Public Enterprise (COPE) and the Public Services Commission (PSC) are over-burdened;
- the Auditor General's office lacks capacity and powers;
- the key anti-corruption body is no longer active and is a non-entity;
- the political will to fight corruption is lacking; and
- a parliamentary budget committee does not exist.

In suggesting recommendations, Mr. Weliammuna stated the need for

- full time officers in the new body created by the Government (the ARN);
- a public information officer to make information available to the public and the media;
- a parliamentary committee that would have powers going beyond those of COPE and PSC (potentially a standing order for a parliamentary committee), would issue reports at least once every six months, and would have supervisory powers to visit affected areas;
- strengthening the capacity of the Auditor General's office;
- moving to a value-for-money auditing system as opposed to the current compliance auditing practices;
- increased physical verification of projects;
- integirty pacts, and the involvement of neutral and qualified persons in the monitoring of major contracting processes; and
- public disclosure by all actors, including political parties, religious bodies and NGOs, in accordance with best practices.

Panellist Bradman Weerakoon, former Secretary to the Prime Minister and former Commissioner General of Relief, Rehabilitation and Reconciliation, recognised the difficulties faced by the Government in formulating an action plan and coordinating the relief efforts, but stressed that inclusive public consultation needed to be part of the Government's strategy. He focussed particularly on the need for public consultation in terms of reconstruction of homes and resettlement, and emphasised that where possible, people be permitted to return to the sites of their original homes. With respect to the need to respect the principle of subsidiarity, Mr. Weerakoon emphasised the need for capacity-building and strengthening of provincial and local authorities. Mr. Weerakoon also endorsed CPA's proposal for a Special Reconstruction Fund subject to Parliamentary oversight. He noted that greater accountability and transparency would be necessary in dealing with the funds flowing into Sri Lanka for reconstruction. The members of TAFREN were invited to participate in the workshop, and Mr. Lalith Weeratunge had agreed to act as a panellist, but all were unable to attend on the date of the workshop.

Special Concerns and Arrangements for the Reconstruction Process in the North-East

Mr. Welikala summarised CPA's recommendations with respect to the reconstruction process in the North-East which include special arrangements relating to:

- shared rule between the Government of Sri Lanka, the LTTE, and the other stakeholders in the North-East including the Muslim and Sinhalese communities, and
- self-rule proposals that would institutionalise the LTTE's role in the reconstruction efforts in the North-East while providing for pluralism and the participation of other stakeholders.

Mr. Kethesh Loganathan, Director, CPA and Head, Peace and Conflict Unit elaborated upon some of the proposals contained in the Memorandum. In particular, he focused on the fact that any proposed arrangements to coordinate the reconstruction efforts were "interim interim", and should not be confused with the "interim-final equation", which will involve a fundamental restructuring of the State and the Constitution, including processes relating to the restoration of democracy in the North-East.

CPA's proposed interim reconstruction arrangements focus on cooperation between the Government and the LTTE as imperative for the effective delivery of reconstruction programs because significant sections of the affected people live in LTTE controlled areas. Any interim arrangement should be founded on the principles of inclusivity and popular participation.

CPA proposes that an LTTE-led mechanism for reconstruction be effected through an agreement between the Government and LTTE, the modalities of which may be similar to those used to conclude the Ceasefire Agreement (CFA). However, any attempts to use the CFA as a model would need to be mindful of some of the problems or "creative ambiguities" inherent in the CFA, including:

- the failure of the CFA to mention the districts of Kilinochchi and Mullaitivu; and
- the CFA allowed the LTTE to expand its politico-military and intelligence networks, while turning a blind eye to child recruitment, political killings and other gross human rights violations.

Mr. Loganathan emphasised that any agreement relating to humanitarian efforts should not have clauses of creative ambiguity that would permit either the LTTE or the Government to exploit the vulnerability of the affected people of the North-East in pursuance of their respective politico-military strategies. CPA proposes a stringent monitoring mechanism supervised by a Multinational Force comprising the donor co-chairs and India as a potential solution, but in view of Norway being already overburdened by its dual role as a facilitator and monitor of the CFA, it was felt that Norway, although a constituent member of the donor co-chairs, should not be further burdened in monitoring humanitarian efforts.

Unlike the rest of the country, the North-East is both a war-affected and a Tsunami-ravaged area. As such, the post-tsunami reconstruction of the North-East cannot be sustained if peace talks on the establishment of an interim authority for the North-East, with pride of place to the LTTE, and parallel talks on a final political and constitutional settlement to the ethnic question are not advanced. CPA recommends that the opportunities presented by post-tsunami reconstruction be seized and utilised for the transition from conflict to peace.

Panellist Chandru Pararajasingham, Program Coordinator, Tamil Rehabilitation Organisation (TRO) noted that the TRO's relief efforts were being hindered by the lack of a legitimate and settled structure in terms of Government logistics and coordination, particularly with respect to customs clearance for goods coming into the country. He suggested that there was a need for a new procedure that would accelerate the clearance of relief items. With respect to the previous presentation, Mr. Pararajasingham noted that in an effort to be transparent and accountable, the TRO had already submitted its audited accounts to the Central Bank and voluntarily disclosed the funds it had received from abroad. Mr. Pararajasingham also expressed the hope that all parties could work together and avoid inflammatory comments.

Dr. K. Vikneswaran, Advisor to the Minister of Agricultural Marketing Development, Hindu Affairs and Tamil Language Schools and Vocation Training (North) agreed that it was acceptable for the LTTE to have a role in the reconstruction of the North-East, but emphasised that the LTTE is not the sole representative of people of the North-East. He suggested that in its recommendations regarding the institutionalisation of the role of the LTTE, the CPA Memorandum may have overemphasised the role of the LTTE at the expense of other groups. Dr. Vikneswaran suggested that a first priority in any attempts to institutionalise a role for the LTTE was to encourage it to democratise.

Mr. Rajith Lakshman, Deputy Director, Economic Affairs, Secretariat for the Coordination of the Peace Process (SCOPP) began by reading a quote from Mr. Jayantha Dhanapala, Secretary General, SCOPP expressing the hope that the tsunami might present an opportunity for national solidarity and conflict resolution. Mr. Lakshman indicated that the LTTE needed to be incorporated into any proposed disaster relief mechanism as a partner, but that there was a need for building trust and goodwill between all parties to the conflict.

Plenary Sessions

The CPA presentations were followed by plenary and discussion sessions where respondents raised general issues and specific points with regards to the Memorandum and the presentations particularly around the themes of accountability, centralization, participation and inclusivity. A number of participants and panellists recognized that that tsunami and its aftermath presented an enormous challenge to Sri Lanka and the government. Nevertheless, participants and panellists felt it was necessary to question the manner in which decisions were being made and the content of proposals put forward by the Government and the task forces concerned. The tsunami crisis and the unfolding process of relief and reconstruction as an opportunity to revive the peace process, to push forward development and to engage in a process of reform was voiced by a number participants.

The lack of clarity and transparency was a key theme of the discussion sessions. With regards to the ARN, a participant pointed to the issues of territorial scope, its ability to work with existing structures and service delivery arrangements. Ignoring such issues would result not only in problems of inefficiency and ineffectiveness, but also have a serious impact on governance and the potential for a duality of governance with some areas experiencing an improvement in material conditions and governance while neighbouring areas would see few changes.

Accountability issues were raised by a number of participants both in financial and policy terms. Supporting the proposal in the Memorandum for a parliamentary oversight committee, participants put forward ideas as to how it could be strengthened. In managing the record-level of funds pledged by the international community, a number of participants supported the proposal for a parliamentary role in managing funds rather than a fund controlled solely by the President.

Fears of corruption in the massive relief and reconstruction projects were voiced by many participants at the workshop. Particular emphasis was placed on the amount of funds coming into the country, and the need to account for the manner in which such funds will have been spent.

The trend towards centralisation of the decision-making process and the suggested mechanisms was a key concern raised by participants. Speaking to the link between proposed structures and the Constitution, a participant emphasised that the former should not negatively impact existing constitutional provisions as per the Thirteenth Amendment. He noted the overlap between the nine areas listed in TAFREN's terms of reference and the Concurrent and Provincial Council Lists and urged that this be taken into account in designing the powers and mandate of the ARN.

Devolution and decentralisation were key focus points of the discussion. The need for the involvement of local authorities in the design and implementation of the relief and reconstruction processes at the provincial, district and divisional levels was emphasised by both participants and participants. Participants endorsed the need for a bottom-up approach as suggested in the CPA Memorandum, whereby Provincial Councils, Pradeshiya Sabhas and Municipal Councils would be directly involved in the reconstruction efforts. Participants stated that promoting a decentralized approach would ensure greater accountability, by enabling local communities to know what they were receiving and verify Government statements. This would also increase understanding and inform local authorities as to how the overall relief and reconstruction process would impact their specific area. Given that the ARN would be involved in physical spatial planning, a participant noted that it was important for the central government structure responsible for planning to link up with local government and local authorities.

A participant voiced concern that devolution should not be restricted merely to delivery issues. They warned that this could lead to another form of centralisation, as authority would be wielded by

district level bureaucracies, and stressed the need for the involvement of elected authorities that would encourage greater public participation. The participant reminded the audience of the rehabilitation commission established in 1989 that functioned under the GA and was answerable to the Provincial Councils and Provincial Chief Secretary. While the CPA Memorandum recommended that the tenure of the ARN be limited by a short-term of operation and a sunset clause, a participant noted that if the ARN were a short-term authority, it was unlikely that it would have regional offices, thereby restricting its potential to be decentralised. On the point of devolution, a participant raised the issue that it should not be seen just in terms of state institutions and the North-East, but also with regards to the South itself so as to allow for greater decentralisation and participation in the South.

The need for a participatory and inclusive process was voiced by most of the participants in the discussion sessions. A participant stated that with greater participation and inclusiveness, a reform process could be initiated that would lead to an improvement in the state structure. They stressed that the need to engage in discussions concerning the reform process was urgent because the proposed structures are still being debated. The participant proposed a "supreme council" that would involve all political parties for the management of the entire reconstruction and rehabilitation process.

The vital need for local communities to have a say in the reconstruction process was raised by a number of participants. They stressed that as it was the future of local communities at stake, dealing with issues such as the relocation of people without consultation was highly problematic. A more people-based approach was called for, particularly in light of the feeling of marginalisation expressed by communities in the affected areas. A participant pointed out that with regard to relocating townships, important factors such as the demographics, history and culture of the old townships had not been given suitable emphasis. The principle that relocation should be the last option was also discussed, with a participant noting that relocation in other parts of the world is rarely successful. Rather than policy being designed as a knee-jerk response to the tsunami, a participant suggested that it be done through a multiple risk analysis method. Another participant raised environmental issues related to the sites chosen for relocation and the suitability of modern housing as per the Government's support for modern housing.

The need for the inclusion of community based organisations (CBOs) and the private sector at the local level was emphasised, as their role in the implementation stage would be crucial to increasing local capacity and public trust. A corollary point was made by a participant, who stated that local capacity building was essential in order to ensure that CBOs and local authorities had a meaningful role in decision-making and policy formulation rather than becoming mere sub-contractors. A participant suggested that this "sub-contracting" of local NGOs, CBOs and local authorities was likely to increase due to the fact that the number of INGOs had greatly increased post-tsunami (i.e. prior to the 26th of December there were approximately 50 INGOs, whereas there were now approximately 150). They also stated that it was important to develop standards and policies relating to which INGOs are in Sri Lanka and how they work here. This point was reflected in the comments of other participants as well, and some participants raised the point of aid dependency that could have a long-term impact on Sri Lanka.

The need for civil society to be given a voice in the process was also expressed by several participants. Some of the participants also noted that civil society needed to maintain an active role in monitoring the relief and rehabilitation process. A participant spoke of the need for increased advocacy, claiming that Sri Lankan civil society was weak and lacked a rights-based approach.

With regard to issues related to the North-East, the participants in both sessions raised a variety of issues. A principal issue was how the post-tsunami relief and reconstruction process could facilitate the revival of the peace process. A number of participants and participants referred to the opportunity that the recovery process posed. There was concern among some that relief and reconstruction would be pushed forward without any linkage to the peace process or the post-conflict reconstruction process. A number of respondents therefore welcomed the CPA Memorandum's call for the post-tsunami and civil war recovery processes to be linked.

A key point raised by many participants was the inclusion of the LTTE in the relief and recovery process. One participant noted that because two thirds of the North-East is under LTTE control, the LTTE cannot be ignored or sidelined by the Government in the recovery processes. Rather than exacerbate existing tensions and disagreements, the participant said it was important to move towards genuine reconciliation, particularly with regards to structures of governance. A participant suggested that CPA's proposal regarding the creation of an LTTE-inclusive structure sought to bring in the LTTE's Interim Self Governing Authority (ISGA) through the backdoor. The participant noted that while genuine representation for the LTTE in a structure for relief and reconstruction is necessary, one should not be seen to recognise the LTTE as the sole representative of the Tamil people.

In responding to the presentation made by Mr. Loganathan with regards to the conditions for the LTTE's inclusion in a relief and reconstruction mechanism, one participant felt that it was important to avoid a situation similar to the Tokyo Conference, where there were a number of preconditions for the LTTE's participation, and which led to the LTTE's refusal to participate. The participant felt that the main question was how to create an inclusive arrangement for relief and recovery. Mr. Loganathan responded that a distinction needed to be made between appeasement and engagement when dealing with the LTTE.

There was also a call by participants for all stakeholders in the conflict to be included in the recovery process. This principle of

inclusion should involve the inclusion of both the macro-political structures for aid distribution and the district level committees. In responding to the CPA Memorandum, a participant called for the inclusion of the LTTE, but also voiced concern over the term used in the Memorandum with regard to Muslim rights. The participant felt that the term "safeguards" for Muslims and Sinhalese was inadequate, and that there was a need for an autonomous role for Muslims. Given the feeling of marginalisation among Muslims, the participant urged that an autonomous role for Muslims be reflected in a revived peace process.

Other issues were also raised by participants. One participant noted that it was important to address accountability not just in accounting terms but more importantly, as a value. He called for a preamble to the CPA Memorandum that would put it in context with regards to the international norms as laid out in the UN Charter and other UN Conventions. Another participant suggested that the CPA Memorandum and a report of the workshop proceedings be made available to participants in the G7 Summit to be held in early February.

LIST OF ACRONYMS

ARN	Authority for Rebuilding the Nation
CBOs	Community-based organisations
CDIRAP	Comprehensive Development and Infrastructure Rebuilding Action Plan
CFA	Ceasefire Agreement
COPE	Committee on Public Enterprise
CPA	Centre for Policy Alternatives
INGOs	International non-governmental organisations
ISGA	Interim Self Governing Authority
LTTE	Liberation Tigers of Tamil Eelam
NGOs	Non-governmental organisations
PSC	Public Services Commission
SCOPP	Secretariat for the Coordination of the Peace Process
TAFREN	Task Force to Rebuild the Nation
TRO	Tamil Rehabilitation Organisation