
MEMORANDUM OF UNDERSTANDING (“MOU”) FOR THE ESTABLISHMENT OF A POST-TSUNAMI OPERATIONAL MANAGEMENT STRUCTURE (“P-TOMS”)

Preamble

WHEREAS the tsunami that struck Sri Lanka on December 26, 2004 (the “tsunami”) destroyed human lives and property on an unprecedented scale;

WHEREAS there is an urgent need for all communities, Sinhala, Tamil, Muslim and others, to cooperate on humanitarian grounds in the face of this common adversity; WHEREAS the equitable allocation of post-tsunami funds to all parts of Sri Lanka struck by the tsunami will be based on accepted needs assessments;

WHEREAS in recognition of this urgent humanitarian need and in a spirit of partnership, the Government of Sri Lanka (the “GOSL”) and the Liberation Tigers of Tamil Eelam (the “LTTE”) (the “Parties”) have resolved to work together, in good faith and using their best efforts, to deliver expeditious relief, rehabilitation, reconstruction and development to the coastal communities in the six districts of Ampara, Batticaloa, Jaffna, Kilinochchi, Mullaitivu and Trincomalee (“the Six Districts”) and to facilitate and expedite the process of rebuilding the affected areas;

WHEREAS there is a need for establishing P-TOMS to facilitate such cooperation among communities, and between the Parties; NOW, THEREFORE, in consideration of the foregoing the Parties have entered into this MOU and agreed as follows:

1. Structure

a. An integrated operational management structure shall be established for the purpose of planning, implementing and coordinating post-tsunami work. Such structure shall consist of:

- i. The Post-Tsunami Coastal Reconstruction Committee (the “High-Level Committee”);
- ii. The Post-Tsunami Coastal Reconstruction Committee for the Six Districts (the “Regional Committee”); and
- iii. Post-Tsunami Coastal Reconstruction Committees for each of the Ampara, Batticaloa, Jaffna, Kilinochchi, Mullaitivu, and Trincomalee districts (the “District Committees”).

b. The High-Level Committee, the Regional Committee and the District Committees shall discharge of their functions in such a manner as to address the concerns of all persons in the Tsunami Disaster Zone (the “TDZ”, as defined below) and shall do so without discrimination against any person on grounds such as ethnic origin, sex, language, religion, political or other opinion, social origin, birth or other status.

2. Scope

a. The scope of the High-Level Committee, the Regional Committee, and the District Committees shall be limited to performing the functions defined in Sections 5(b), 6(b), and 8(b), respectively, and having effect exclusively within the TDZ (as defined below), as further specified by Section 6(a) in the case of the Regional Committee and by Section 8(a) in the case of the District Committees.

b. The Tsunami Disaster Zone (the “TDZ”) shall be defined as the area affected by the tsunami.

c. The TDZ shall include all that tsunami-affected land area of Sri Lanka, which is adjacent to the sea, lying within a limit of 2 kilometres landwards from the mean low water line.

d. The High-Level Committee may decide to bring additional land areas within the TDZ; provided, however, that all such land areas must have been directly impacted by the tsunami or directly affected by the displacement and resettlement of persons as a result of the tsunami.

e. New proposals for measures to be adopted in, or affecting the coastal areas covered by seawater, shall be undertaken under the aegis of an international agency. Such proposals might include measures to recover material lost to the sea during the tsunami, the cleaning up of shores and beaches affected, even when covered by seawater, and the repairing and construction of jetties or commercial fisheries harbours affected by the tsunami.

f. The Ceasefire Agreement, dated as of 23 February 2002, between the GOSL and the LTTE, shall continue in full force and effect, and nothing in this MOU shall be construed to prejudice such agreement or alter its terms in any way.

3. Period of Operation

- a. This MOU shall enter into force from the date it is executed by both Parties (the "Commencement Date"), and continue in operation for a period of one year from the Commencement Date.
- b. The Parties shall by consensus have the option to extend this MOU for an additional period or periods.

4. Cost and Expenses

The donors shall be requested to cover all costs and expenses incurred relating to the establishment and functioning of the P-TOMS.

5. High-Level Committee

- a. Geographic Scope. The High-Level Committee shall act exclusively in relation to the TDZ.
- b. Functions. The High-Level Committee shall perform the following functions:
 - i. Formulation of policies for the equitable allocation and disbursement of donor funds in the TDZ based on needs assessments submitted to the High-Level Committee, guided by the principle that funds should be allocated in proportion to the number of affected persons and the extent of damage;
 - ii. Provision of advisory services; and
 - iii. Monitoring of the functioning of P-TOMS.
- c. Composition. The High-Level Committee shall consist of the following members:
 - i. 1 nominee by GOSL;
 - ii. 1 nominee by LTTE; and
 - iii. 1 nominee by Muslim parties.
- d. Alternates. Each nominating party shall designate one alternate, who will be authorized to attend meetings and act on behalf of the member only in the event he or she is unable to attend due to illness, necessary travel or other exigent circumstances.
- e. Chairperson. The High-Level Committee shall select one of the members of the High-Level Committee to serve as the chairperson to conduct and coordinate its meetings. The role of the chair shall rotate among the members, with each chairperson serving for two months.
- f. Observers. The High-Level Committee shall have one observer representing multilateral donors and one observer representing bilateral donors attend its meetings. The observers shall be nominated by the multilateral donor community and the bilateral donor community, respectively.
- g. Decision Making.
 - i. The High-Level Committee shall strive to make decisions based on consensus. All members shall work together in good faith and use their best efforts to reach a common agreement before the High-Level Committee makes any decisions.
 - ii. In the event that consensus cannot be reached, the members shall immediately enter into an extensive consultation procedure

with their nominating parties and the donor community with the aim to reach an agreement and to ensure continued cooperation in the High-Level Committee.

- iii. In the event that consensus can still not be reached the nominating parties may, after having followed the consultation procedure laid down in Section 5(g, i and ii) and after having given 14 days notice, suspend the cooperation in the High-Level Committee.
- h. Location. The High-Level Committee shall be located in Colombo.
- i. Procedures. The High-Level Committee shall determine its own procedures for the discharge of its functions.
- j. Servicing Secretariat. The High-Level Committee shall establish a small, independent secretariat with adequate staff.

6. Regional Committee

- a. Geographic Scope. The Regional Committee shall act exclusively within those areas of the TDZ in the Six Districts.
- b. Functions. The Regional Committee shall perform the following functions:
 - i. Development of strategies for implementation and prioritization of post-tsunami emergency relief, rehabilitation, reconstruction and development measures;
 - ii. Project approval and management, with respect to projects for post-tsunami relief, rehabilitation, reconstruction and development;
 - iii. Overall monitoring of projects; and
 - iv. Fund management, with respect to the fund specifically defined in Section 7.
- c. Composition. The Regional Committee shall consist of the following members:
 - i. 2 members nominated by GOSL, out of which one will serve as Deputy Chairperson;
 - ii. 5 members nominated by LTTE, out of which one will serve as Chairperson;
 - iii. 3 members nominated by the Muslim parties, out of which one will serve as Deputy Chairperson;
 - iv. The Regional Committee shall have a proper gender balance.
- d. Observers. The Regional Committee shall have one observer representing multilateral donors and one observer representing bilateral donors attend its meetings. The observers shall be nominated by the multilateral donor community and the bilateral donor community, respectively. Other observers may be invited to attend the meetings of the Regional Committee.
- e. Decision Making.
 - i. The Regional Committee shall strive to make decisions based on consensus. All members shall work together in good faith and use their best efforts to reach a common agreement before the Regional Committee makes any decisions.
 - ii. In the event that consensus cannot be reached, decisions shall be made by a simple majority of the Regional Committee. In

the event of equality of votes, the Chairperson can exercise a casting vote.

iii. Notwithstanding paragraph iv below, in the event that a decision is taken on an issue having an adverse effect on a minority group, acknowledged by at least two members of the Regional Committee, approval will require two thirds majority (seven members) of the Regional Committee.

iv. In the event that a proposal from a District Committee does not get a simple majority in the Regional Committee and at least two members of the Regional Committee request redressing of the decision relating to the proposal, the rejection will require two thirds majority (seven members) of the Regional Committee.

f. Location. The Regional Committee shall be located in Kilinochchi.

g. Procedures. The Regional Committee, in consultation with the High-Level Committee, shall determine the procedures for the discharge of its functions.

h. Servicing Secretariat. A small Secretariat for the Six Districts shall be set up and may draw staff from the Secretariat for Immediate Humanitarian and Rehabilitation Needs (SIHRN). The Secretariat shall be named as the Regional Secretariat for Post-tsunami Coastal Reconstruction and Development (RSPCRD), and shall provide secretarial and administrative services to the Regional Committee.

i. Project Management Unit. A Project Management Unit (the "PMU") shall be established to manage the projects approved by the Regional Committee.

j. Accounting. The Regional Committee shall appoint a suitably qualified, independent accountant.

7. Regional Fund

a. There shall be a Post-Tsunami Coastal Fund for the Six Districts (the "Regional Fund"), consisting of unspecified (program) and secretariat funds. The unspecified (program) funds shall consist exclusively of foreign funds while the secretariat funds shall consist of both foreign and local funds.

b. The Parties shall appoint a suitable multi-lateral agency to be the Custodian of the Regional Fund.

c. The purpose of the Regional Fund shall be to expeditiously make available funds, following proper approved procedures, to facilitate and accelerate the relief, rehabilitation, reconstruction and development program in the tsunami-affected areas of the Six Districts.

d. The Parties and the Custodian shall agree on a mechanism for the establishment and operation of the Regional Fund.

8. District Committees

a. Geographic Scope. Each District Committee shall act exclusively in relation to those areas of the TDZ within its district.

b. Functions. Each District Committee shall perform the following functions within its district:

i. Identification of needs;

ii. Prioritization of needs;

iii. To generate, receive, appraise and prioritize project proposals from various stakeholders and submit recommendations to the Regional Committee; and

iv. To monitor and report on project progress to the Regional Committee.

c. Composition and Decision Making. The Districts Committees, already established and well-functioning, shall continue their work. The District Committees may further discuss and decide on issues relating to their composition and decision-making. Adequate Muslim representation shall be ensured. The District Committee shall also have a proper gender balance.

d. Location. Each District Committee shall be located within its district.

e. Servicing Secretariat. A small Servicing Secretariat shall provide secretarial and administrative services to the District Committees.

9. Execution

This MOU may be executed in duplicate, both texts being equally authentic. ■