

Sri Lankan court ruling over aid deal: a sign of sharp political tensions

Wije Dias
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The assassination of Sri Lanka's Foreign Minister Lakshman Kadirgamar last Friday has heightened the danger of a return to civil war on the island. His death, however, is just one element of a highly-charged political situation that was already sliding toward renewed conflict.

Last month the Supreme Court issued an interim ruling that effectively froze the implementation of a key agreement between the government and the Liberation Tigers of Tamil Eelam (LTTE) for the joint administration of tsunami aid in the North and East of the country. The deal, which has been vehemently denounced by Sinhala chauvinist parties, including the Janatha Vimukthi Peramuna (JVP) and Jathika Hela Urumaya (JHU), was viewed by many in establishment circles as the means for restarting stalled peace talks.

The JVP quit President Chandrika Kumaratunga's coalition government in June and went to court to have the Post-Tsunami Operations Management Structure (P-TOMS) agreement declared unconstitutional. On July 15, three Supreme Court judges headed by Chief Justice Sarath N. Silva issued an interim injunction, putting on hold key aspects of the agreement pending a final determination, which is not due until September 12.

P-TOMS is a deal between the country's ruling elites that does not in any way address the basic needs of the tens of thousands of people whose lives were devastated by the December 26 tsunami. Yet, for sections of the Colombo elite based on Sinhala supremacism, the deal was an impermissible concession not only to the LTTE but to the country's Tamil minority.

The JVP condemned the agreement as a betrayal of the nation and urged the military and police to defy orders that were contrary to the national interest. In their petition to the Supreme Court, the 39 JVP parliamentarians claimed that P-TOMS violated their fundamental rights as "there is no legal basis to enter into the MoU (memorandum of understanding) with the LTTE, which is not an entity recognised by law and which is identified with terror, violence, death and destruction".

The court decision reflected the sharp divisions that exist in ruling circles. While they acknowledged aspects of the JVP's petition by imposing an injunction on parts of the agreement, the judges upheld key presidential powers. If the full basis of the JVP's petition were to be granted then the existing ceasefire agreement signed in February 2002, between the previous United National Front (UNF) government and the LTTE, would also be unconstitutional.

Mindful of the political implications of the case, the court endorsed the powers of Kumaratunga, as the executive president, to sign or authorise any agreement "to carry out the essential government functions". Its ruling declared: "It cannot be disputed (according to the constitution) that as Head of the State, Head of the Executive and of the Government... in appropriate circumstances the President may lawfully act on behalf of the Republic and enter into agreements that may be necessary to carry out essential Government functions."

Furthermore, the court rejected the JVP's argument that it had been "kept in the dark on the signing of the P-TOMS", despite being part of the ruling coalition. Upholding the autocratic powers of the executive presidency, the court declared that the "exercise, performance and discharge of executive power and functions is primarily vested with the President". In making this ruling, the court has rubberstamped the anti-democratic actions of Kumaratunga, who failed to consult parliament or even her own cabinet before signing the P-TOMS agreement.

At the same time, however, the court's interim injunction froze key elements of the tsunami aid deal. P-TOMS was to be administered through a high-level committee, a regional committee and already existing district committees. The top-level committee, with broad oversight powers, consisted of three nominees—one each from the government, the LTTE and the Muslim parties.

Many of the key administrative decisions were to be made by the regional committee, which not surprisingly was a target of JVP objections. The committee was to be chaired by an LTTE member and comprised of five LTTE members, another two from the government and three from the Muslim parties. Significantly, it was to be based in Kilinochchi, one of the main towns in LTTE-controlled territory.

The JVP does not disagree with the anti-democratic manner in which these committees were to be imposed on the population of the North and East or on the communal basis of their composition. Rather, the JVP wants to ensure that any committees remain firmly and unambiguously under government control, that no formal recognition is accorded to the LTTE and that it is relegated to a minor role, if any.

On these issues, the court came down on the side of the JVP. It suspended the operations of the regional committee, concluding they were government functions and must stay so. The interim injunction blocked the main powers of the regional committee,

including managing funds and to approve and manage projects for post-tsunami relief, rehabilitation, reconstruction and development.

The court also prohibited locating the regional committee in Kilinochchi, claiming that the body had to be able to make decisions without fear, and called for it to be established in a suitable location—that is, in a government-controlled area. LTTE cadres have every reason to fear the holding of meetings in such areas. For the past year, there have been a series of killings and clashes involving the LTTE and a breakaway LTTE faction that has been covertly backed by the military.

The JVP immediately claimed the court ruling as a victory. JVP secretary Tilwin Silva told a press conference that the court “believed this P-TOMS agreement was politically and legally invalid... We attempted to prevent this proposal politically but did not succeed. Therefore we tried to defeat this attempt legally and we won a victory.”

The ruling clearly had the backing of significant elements in the political establishment and the state apparatus. An editorial in the *Sunday Island* declared: “There has to be trade-offs in any agreement but national sovereignty and the country’s unitary integrity cannot be part of the price.” It noted that the JVP had been able to secure “counsel of the calibre of Mr. H. L. de Silva to whom the president herself, as her mother before her, turned for legal advice and support on matters of the highest importance, to argue the case against P-TOMS”.

Kumaratunga made clear, however, that she intended to press ahead with the P-TOMS agreement. Presidential spokesman Harim Peiris announced that the government would submit fresh affidavits to the courts, adding that “90 percent of the agreement is intact and we are ready to go ahead with it.” When asked whether the 10 percent ruled out by the court was not the crux of the agreement, the spokesman put on a brave face and said: “We are extremely happy with the court order.”

M.S. Jayasinghe, secretary to the ministry of relief, reconstruction and rehabilitation, one of the respondents in the case, filed objections against the petition on July 29 on behalf of the government.

The LTTE, which has been pressing for the P-TOMS agreement and its implementation for months, reacted angrily to the court decision. LTTE political wing leader S.P. Thamilchelvan declared that his organisation was “not concerned any more about the P-TOMS... The Sri Lankan court has blocked the P-TOMS, which was set up to help the people affected by a huge disaster. This is neither surprising nor is this the first time the Sri Lankan courts have denied justice to Tamils.”

Tamilchelvan said the LTTE would “be putting greater effort into informing the international community about the ground reality and request them to make the decision to deliver aid directly to the LTTE”. This amounts to another empty appeal to the US, Britain, Japan and other major powers, which have tied tsunami aid to their own political objectives—a power-sharing deal to end the long-running civil war that threatens their economic and strategic interests in the region.

The court decision highlights the intractable political impasse that has been reached. Sections of the corporate elite in Colombo,

backed by the major powers, have been insisting on an end to the war as a means for transforming the island into a cheap labour platform and an investment gateway into South Asia. But the 20-year war has created powerful vested interests, not least of all in the state apparatus—the military, the courts, and the state bureaucracy—all of which are deeply imbued with Sinhala chauvinism.

Any effort to restart the peace process and negotiate with the LTTE provokes a sharp reaction not just from openly communal parties such as the JVP and JHU, but within the major parties, the media and the state. Kumaratunga procrastinated for months before being pushed by major donor countries into reaching a deal with the LTTE over tsunami aid. Her decision provoked the JVP walkout, leaving her government in a parliamentary minority, and opened up deep rifts in the political establishment.

None of the political parties believe that the crisis will be resolved through a new election. Large sections of the population are hostile to the entire political order, which has implemented economic restructuring measures that have led to a steady deterioration of living standards. The competing elite factions are engaged in a bitter struggle to gain control of the state apparatus and will stop at nothing to achieve their ends. The fact that the Supreme Court upheld the autocratic powers of the executive presidency is a recognition that they may be crucial for the survival of bourgeois rule.

The media and political establishment immediately blamed the LTTE for last week’s assassination of the foreign minister. While it denied any involvement, the LTTE is quite capable of carrying out such a murder. However, given the intense conflict in Colombo over P-TOMS, it is just as likely that dissident elements of the military, possibly in collaboration with Sinhala chauvinist organisations, set up the killing to undermine the aid agreement and to whip up communal tensions. If that proves to be the case, it is a sharp warning of the ruthless methods that will be used not only to settle differences in the ruling elite, but to crush any opposition from working people.



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