

NGO Coordination Centre, Nagapattinam

Comments on the MOU on Public Private Partnership towards Tsunami Rehabilitation

(Based on a workshop organised by the NGO Coordination Centre for NGOs who have submitted documents for pre-qualification screening on 24 March, 2005 at the District Collectorate, Nagapattinam)

Overall Comments

1. ***The MOU reads like the Government is sub-contracting the construction of the houses to the NGOs. The spirit of partnership is nowhere reflected in the MoU.***
2. Government should have circulated a draft MoU for consultation with NGOs in the spirit of partnership instead of NGOs reacting to it. We presume the opportunity for consultation exists in the power vested to the District Collector under clause 20, hence this attempt.
3. ***The dividing line between who is responsible for infrastructure and for common provisions (such as sanitation) in the habitats and to what extent is not clear.***
4. There are no milestones clearly laid out for the rehabilitation process that would help the participating NGOs to synchronise their planning with that of the Government initiatives.
5. There needs to be greater transparency from the Government relating to the investment proposed by Government while insisting on the same from NGOs.
6. Comments on the Technical Guidelines are kept out of the purview of this note.

Clause	Comments
<p>Clause 2: It shall be the responsibility of the SECOND PART to engage only construction agencies with qualified Engineering Personnel with past experience in construction activities and to build the permanent houses in accordance with the rules / regulations / guidelines as laid down by the Special Commissioner and Commissioner of Revenue and Administration and the District Planning Authority and the SECOND PART will undertake the construction of the houses along with the infrastructure facilities in accordance with the layout or building plan approved by the above mentioned authorities.</p>	<p>This seems to imply the need for construction agencies and forecloses the option of having engineers who support the local community or beneficiaries to take up construction work. It may be better worded as "...engage only construction agencies/engineers with past experience in ..."</p>
<p>Clause 4: The FIRST PART shall provide the land required for the purpose of construction of the permanent houses and / or associated infrastructure free of cost to the SECOND PART to enable them to construct houses for the victims affected by the tsunami in the above mentioned location. The ownership of the land shall vest with the Government of Tamil Nadu and the FIRST PART shall reserve the right to transfer the ownership of the land to the victims in such manner and at such time as it deems fit.</p>	<p>Prefix the word "suitable" to the statement to read ... "shall provide suitable land required for the purpose of construction " Suitability of the land should be further specified</p> <p>That the Government reserves the right to transfer the ownership of land to the victims sounds ominous. It should categorically state that it intends to transfer the land and will work out the modalities and timelines to do so.</p>
<p>Clause 5: The FIRST PART shall identify the beneficiaries in the consultation with the SECOND PART and the decision of the FIRST PART with respect to the selection of the beneficiaries shall be final and the SECOND PART shall not withdraw from the commitment made on that ground or any other ground that militates against the noble purpose of associating the public spirited bodies with the relief and rehabilitation measures of tsunami victims. The FIRST PART shall take into account the views of the local Panchayat or any other local body or the committee for supervising relief and rehabilitation formed by the District collector at the Panchayat / Ward level in finalising the list of beneficiaries. The FIRST PART shall, as far as practicable, identify the prospective owners in advance and link them with</p>	<p>The linking of the prospective owners with specific sites is important to ensure that the ownership of the process is with the beneficiary and community.</p>

<p>specific sites so that the beneficiaries can also participate in the construction activities to the extent possible.</p>	
<p>Clause 8: The SECOND PART shall open a separate bank account and maintain separate statement of accounts for funding the above mentioned activities and be subject to audit by a qualified Chartered Accountant or by a firm of Chartered Accountants</p>	<p>This clause contravenes the FCRA Act which does not allow for opening of multiple bank accounts. (needs to be checked and reworded or a separate clause added in the event of use of Foreign Funds)</p>
<p>Clause 9: The SECOND PART shall give a “schedule of plan of activities” indicating the time of the commencement of the work, various time bound and preset milestones of achievement either in the form of ‘PERT’ chart or in any form of work plan with an undertaking to abide by the target date of completion of the work. The FIRST PART shall have the right to review the schedule of the activities or PERT chart so presented by the SECOND PART and modify or vary or alter the schedule of activities in the consultation with the SECOND PART and fix the time of commencement, course of progress and completion of work/project as may be warranted and the decision of the FIRST PART shall be binding on the SECOND PART.</p>	<p>While NGOs are equally keen to achieve the target and willing to give schedules, it is not to be forgotten that most NGOs see the reconstruction as a process of partnership with the community and many process milestones have to be achieved in addition to physical milestones. This introduces many uncertainties and it may be wrong to see the whole thing as a mere construction activity to be completed within specific time frames.</p>
<p>Clause 10: The rebuilding activities of the affected area shall be commenced and completed within the time, as may be stipulated by the FIRST PART and the FIRST PART shall have a right of inspection of the progress of the work and quality of the materials used in the construction either by himself or through any authorised person/persons with or without prior notice to the SECOND PART as the circumstances may demand and THE SECOND PART is bound to provide all facilities and access to such inspection</p>	<p>The wording “provide all facilities” in the last sentence, is vague and needs to specified.</p>
<p>Clause 12: The FIRST PART and SECOND PART shall jointly review the progress of work at such periodicity as may be found convenient and expedient in the interest of the progress of the work preferably once in a fortnight and in any case the interval between two successive reviews should not be more than a month. The SECOND PART shall provide all such information as may be sought for the first part in such a format as may be prescribed by the FIRST PART either at such interval of time or at any time as may be required by the First Part. The FIRST PART and SECOND PART shall agree to nominate an Independent Technical Consultant for the purpose of conducting third party auditing and appraisal of the progress of the works and fulfilment of the respective obligations on either part in the course of the progress of the work and during the currency of the MoU.</p>	<p>It is not clear who appoints the Independent Technical Consultant and who bears the expense of appointing and associated costs. Frequency of review should not impede the pace of construction unless warranted.</p>
<p>Clause 13: In the unlikely event of the SECOND PART not performing the committed obligations such as non-completion of work as per the agreed schedule under this Memorandum of Understanding within such time as may be prescribed by the FIRST PART and in such a manner as may be laid down, it shall be lawful for the FIRST PART to take over the incomplete work under “as is where is” condition sans any liability on the FIRST PART after issue of notice not exceeding seven days. The FIRST PART shall also take such action as may be deemed fit to debar and black list the SECOND PART from undertaking such work in future anywhere in the country and also from claiming any tax</p>	<p>While non completion of work as per schedule may give the first party reason to take over the task, it cannot be a cause for black listing. Black listing as being practiced by other Government agencies including CAPART is mainly related to misappropriation or misuse of Government or public funds. For such acts there are enough existing Acts and agencies that can take action. This MOU need not therefore mention such an action. If the District Administration finds a good reason for</p>

<p>exemptions, concessions etc. under the provisions of any act in force under the State and Central Acts.</p>	<p>black listing, it can take it up with the appropriate agency like Home Ministry in the case of NGOs registered under FCRA.</p>
<p>Clause 15: The SECOND PART or any one claiming to possess due authorisation of SECOND PART shall not indulge, either by himself/herself or through any agencies or organisation or bodies of individuals or in any mode or form of any organisation, in any kind of religious or political or communal activities, especially such activities that will incite or will have the potential to cause hatred or disharmony or both in the minds of the residents or beneficiaries of the area on ground that the SECOND PART has invested in the construction of the permanent houses with or without associated infrastructure for the benefit of the allottees of the houses.</p>	<p>This clause raises fear of situations where NGOs are wrongly blamed for religious/communal disharmony in a village. NGOs associated to certain faith/religion will be questioned and pressurised unwarrantedly. There is a need to explore how this should be addressed...</p>
<p>Clause 21: Should there arise any dispute or difference of opinion with respect to any issue connected with the above mentioned activities, it shall be referred to a committee headed by Special Commissioner and Commissioner of Land Administration, Chennai – 5 comprising a representative from NGOs and prominent public personality who has a record of social work to be nominated by the Government for adjudication the decision of which shall be final and be binding on the both the parts. None of the provisions of the Arbitration Act shall be applicable in case of any disputes.</p>	<p>As per the MoU, Government is the client and NGO the service provider, hence a neutral third party is required to arbitrate.</p>
<p>Clause 22: The SECOND PART shall undertake that he shall not resort to any civil suit or any legal action against the FIRST PART with respect to any issues connected with the performance and discharge of any obligation under this MoU.</p>	<p>This is a one sided clause and against natural justice. It may not stand the scrutiny of law.</p>

From,
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List of participants in the workshop on MoU held on 24th March 2005

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9	Baskaran R	Don Bosco – CESVI
10	V S Suresh Kumar	Holy Cross Service Society
11	P Rajkumar	VELCI
12	Siva Shanmuga Vadivel	DPG Chennai GPKC TTP
13	S D Rajendran	Community Health Cell
14	Joe Velu	People's Development Association
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16	Suchit Paul	PSSS
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