

# Report on the Consultation on the draft RADA legislation

Held on the 16<sup>th</sup> June 2006

## **Introduction**

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The Centre for Policy Alternatives (CPA) organized a consultation on the draft Reconstruction and Development Agency (RADA) Bill on the 16<sup>th</sup> of June 2006. The objective of the consultation was to provide an opportunity for representatives of civil society in particular to bring up issues of concern regarding the draft RADA legislation. Apart from the Bill itself, a discussion paper on the major areas of concern on the Bill prepared by the Legal and Constitutional Affairs Unit of CPA formed the basis for discussion. The discussion paper identifies good governance principles and other policy considerations that should inform the law making process and future work on reconstruction and development.

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, said that it was fortunate that civil society had the rare opportunity of discussing a Bill before it had been passed. He noted that CPA had sought to obtain a copy of such legislation as early as January 2005 and had submitted a memorandum to Government along the lines identified in the discussion paper. He further noted that the draft RADA legislation had been obtained after much persistence and drew attention to this as an example of the law making process in Sri Lanka. He framed the discussion in terms of CPA's mandate of ensuring transparent and democratic governance and greater civil society participation in the law making process. With reference to the RADA legislation he drew attention to the importance of the principles of conflict sensitivity and subsidiarity and called for continued persistence and exertion of pressure on the Government in order to ensure a transparent and consultative law-making process in areas of key national concern.

## **Issues of Concern in the Draft RADA legislation**

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Ms. Bhavani Fonseka, Senior Researcher of CPA highlighted major issues of concern in the Bill. The focus was largely on the legal and constitutional issues related to the Bill, the impact on future reconstruction and development initiatives and the modalities of setting up a legal body with overarching powers.

The major questions raised include-

- The **immense powers to be vested to the President** by the Bill include the power to designate areas as either 'natural' or 'manmade' disasters, acquire land, appoint the Board of Directors and issuing directions to RADA as necessary. As the President would be protected by his immunity under Article 35 of the Constitution, this raises issues of accountability and the need to have a

system of checks and balances. In addition, there was ambiguity as to the nature of accountability of RADA, with questions being raised whether RADA would be accountable to the President or to Parliament. Further confusion was created by the use of terms such as Minister and President interchangeably throughout the Bill.

- With reference to the President's powers, the powers vested in relation to **land acquisition** are of grave concern. While RADA has powers to advise and request the President to acquire land, the President can by Gazette notification acquire any land. Such powers bypass existing legal provisions set out within the Land Acquisition Act, and with the President being protected by immunity, such actions can result in the abuse of powers. Moreover, although land is sought to be acquired in the 'national interest', there is no definition given in the Bill of what would fall within 'national interest'.
- The **role of RADA** as envisaged by the Bill, may result in duplication of functions of already existing authorities. It is ambiguous as to whether it involves complementing existing structures or envisages a new structure altogether.
- The Bill further vests RADA with extensive **powers to work with foreign and local organizations and private sector organizations**. Words such as 'monitoring' and 'controlling' and 'issuing of licenses' provides RADA with extensive powers, with no checks and balances to ensure that powers are utilized for the intended purposes.
- The **top-down approach** to the Action Plan creates no space for consultations with relevant actors such as those working on the ground or within existing structures. Further, the role of existing Ministries or Government departments in the formulation of the Action Plan was unclear.
- The appointment of the **Board of Directors** by the President does not envisage any involvement of other actors including ministries involved in related activities. Since the Board of Directors would have vast powers within RADA, there needs to be accountability and transparency in making such appointments.
- The Bill also ensures the **validation of actions taken by TAFREN and RADA**. Questions on the rational of such a provision needs to be raised, as it will be canceling any possibility of holding such bodies accountable for action done during their tenure.
- The Bill is weak in relation to the appeal process with special reference to acquiring of land, with concerns being raised on the rational in **taking away powers of the Court of Appeal and vesting them with the Supreme Court**.

Panelist Mr. Bradman Weerakon, former Secretary to the Prime Minister and former Commissioner General of Relief, Rehabilitation and Reconciliation, focused on the issues from the perspective of one who had been in Government and charged with the responsibility of ensuring relief and rehabilitation exceptional circumstances. Using the examples of the post-1983 ethnic clash and 2001 ceasefire agreement among others, he stressed that although extraordinary powers were required in extraordinary times, there must always be a willingness to listen to people and ascertain their needs. Highlighting that what governments sought to do in such situations was speedy action at least cost, such wide-ranging powers were necessary. Excessive compartmentalization would be slow and ineffective. In spite of corruption and inefficient

division of labour between the different levels of government, such authorities could use the powers granted to them to their best advantage, and would depend on the people who worked the system. However, the option of resorting to courts in the event of unwarranted actions should be open to the people and any action of an authority such as RADA, he opined, must be monitored by donors, civil society organizations and the media. Two issues of concern that he highlighted involved the devolution of powers to local bodies and the pressing need for RADA to delineate how it would deal with tsunami-hit areas in the North East, in areas of LTTE control.

Panelist Sunila Abeyssekara, Director INFORM, stressed the importance of looking at an authority such as RADA in the context of the tsunami and the conflict. The manner in which RADA is to be set up, she argued, pointed at the undermining of democratic institutions to suit political expediencies. Since reconciliation and rehabilitation in Sri Lanka tended to be political issues, the centralisation of authority, and authority defined in such an ambiguous manner, boded ill. She opined that decentralisation should be at the forefront of plans to set up RADA, with due attention paid to the fundamentals of good governance. In such a situation, she wondered as to the political signals sent out by the Bill. Specifically, she stated the structure proposed did not allow for any consultation or participation of affected people or communities. While acknowledging that rehabilitation would have to move beyond reconstruction and rehousing, the powers given to RADA to control and regulate agencies seemed unwarranted. Instead of placing faith in competent officials, she argued, there needs to be a structure in place where powers are not abused by officials.

Panelist Mr. Harim Peiris, Senior Researcher with the Council for Public Policy and former Director General for Relief, Rehabilitation and Reconciliation also speaking on the basis of experience gained from responsibility within the executive in this area, emphasized the need to see RADA in context; it would be desirable, he argued, to have an authority established by Parliamentary consensus rather than by a Presidential order (as the RADA existed now). He opined that an authority was perhaps the most effective manner of dealing with large scale infrastructural work and that precedent in the form of the Mahaweli Authority and the Urban Development Authority testified to the same. In light of both the tsunami and the ethnic conflict, the sufficiency of the government's existing machinery and processes was to be doubted. Moreover, public sector reform in Sri Lanka was long overdue and setting up of such authorities would, in all probability, enhance effectiveness. He conceded that the legal weakness in the Bill, such as the 'control' of local/foreign organisation, the greater degree of centralisation etc. were apparent. However, in light of the fact that the Provincial Councils, local government bodies etc. had accepted a greater degree of centralisation, RADA would only be codifying what was already being done in practice. In particular, he stressed the importance of having a Treasury representative in RADA. An overarching authority that would have the authority to move across checkpoints would be of greater usefulness in the context of an unresolved ethnic crisis. He also urged participants to look at RADA in the light of practicalities of a minority government in Parliament, wherein the consensus of smaller political parties as well as civil society organizations would be of greater value. He opined that the Bill would in all likelihood not be passed by Parliament, the TNA opposing it on the grounds of it being a unilateral move on the part of Government, with no engagement with the LTTE. In this regard, it would be also be productive to engage the LTTE on 'soft' issues such as humanitarian issues.

Panelist Mr. Sarath Fernando, Director MONLAR, put forward the concerns of the People's Planning Commission, about the reconstruction efforts carried out by the Government after the tsunami. He argued that the actions of Government betrayed an intention to capitalise on the huge amount of sympathy generated by the tsunami disaster and reconstruct to benefit the private sector. Aid, he argued, was being diverted from providing basic facilities to those affected by the tsunami to various other development schemes of the Government. This would be contrary to established moral principles. He opined that the structure and manner in which TAFREN and RADA had been set up would be primarily to serve the interests of the private business sectors and that the lack of transparency would facilitate the continuation of such efforts. In the allocation of the funds acquired in the name of tsunami relief, he stated, the victims were not consulted. He also raised the question of whether the Government's patronising attitude towards victims of disaster i.e. that of them not being able to think of themselves, should be condemned as being immoral.

## **Discussion**

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After the presentations by the panelists, the discussion was opened to the participants. It centred around the need for RADA in the existing scenario and secondly, on the modalities of such an authority, if set up and its relationship to existing structures.

Many participants raised questions on transparency and accountability. It seems that RADA is not bound to give any account of the way in which it would be dealing with large sums of money and this could result in corruption. Another key point raised by the participants was with regard to the unlimited powers granted to the President, with no checks or balances in place. In the view of one participant, the President would soon control RADA and political appointments would continue to be made. The beneficiaries of the Act would ultimately be party supporters. The only check would be through a body like the Constitutional Council, constituted by people of integrity. The Ministers too, in his opinion, were not accountable. The joint powers adopted by the President and the Chief Justice would ruin the devolution of authority that was in place in the country. The participant also questioned the ability of the President to create bodies unless it was a situation of emergency.

A participant highlighted that at a previous forum Mr. Saliya Wickramasuriya, CEO RADA has stated that the new authority will have power in relation to the tsunami, the Internally Displaced Persons (IDPs) from the conflict and poverty stricken areas which meant that RADA would be vested with powers covering broad issues. Additionally, RADA funds would be used for the above three areas, raising with it issues of accountability and transparency. He further questioned how work of District Secretaries in the affected areas would be affected with the establishment of RADA. A further concern raised was the regulation of private sector institutions, as this would raise problems for private banks lending money in designated areas.

One participant raised the question of control of international non-governmental organisations. The non-governmental organisations strove to do things differently and the powers given to the RADA would

seriously affect the same. Another participant, in the same vein argued that non-governmental organisations working on the ground were already facing difficulties with respect to ‘regulation’ by the Government and that the powers given to the RADA would only aggravate this.

Another participant brought up the issue of the sunset clause that should have ideally been incorporated in TAFREN and RADA. The validation clause was also the cause for concern for many participants, as also the lack of information regarding the action plans.

The very need for incorporating RADA was questioned by many participants, arguing that ministries and government departments would be able to deal with it effectively. A participant explained the various steps taken by the Urban Development Authority after the tsunami whereby they had help desks, a one-stop shop for all agencies to aid in the process of redevelopment. The Roadmap for disaster management prepared by the Urban Development Authority was also already in place. He opined that since the policy was already in place, there would be no need for an authority such as RADA with unaccountable powers. With respect to the significant duplication of powers, another participant also brought up the issue of the Sri Lankan Disaster Management Council, and the possibility that RADA would be duplicating initiatives by the Council. Another participant, with specific reference to the tsunami relief operations, opined that RADA could work in conjunction with the Coast Council Department in order to specify buffer zones so as to alleviate the problems of the fisherfolk, after taking their views also into account.

Presenter Bhavani Fonsenka, expressed her concurrence with the views expressed by many of the participants. She reiterated that RADA would be taking over the functions of already existing authorities. She also said that the scope of the Disaster Management Act, as explained by one of the participants was much greater, and that questions need to be raised as to why RADA should take over powers of the existing actors. The crucial question was with respect to the procedure that would be employed. She also agreed with most of the participants that under RADA, the powers of the executive could be used in any manner whatsoever, specifically with reference to the ‘designated areas’ and land acquisition. She also mentioned that CPA’s memorandum to TAFREN in 2005 recommended a sunset clause which should be used for RADA. She also stressed upon the practical difficulties surrounding issues such as monitoring/controlling of non-governmental organisation.

Panellist Mr. Harim Peiris argued that the need for the creation of RADA was for the purpose of implementation and for reconstruction after disasters. He spoke of the need to have significant public sector reform. He further opined that authorities were the most empowered entities and that the reform that would be needed would be in terms of consultation and greater engagement. It would also not do, in his opinion, to look into the operational aspects of RADA. He said that normal measures would be adequate only in normal times and that in the current situation, RADA must be allowed to be empowered with powers but with measures of transparency. He also said that the arguments against the establishment of RADA were general problems of decaying governance in Sri Lanka i.e. the point about the suitability of appointments, the system of checks and balances etc.