

# Legal and Political Environment for Civil Society Organizations in Sri Lanka

## CSO Assessment Study

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Commissioned by  
Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)



# Introduction

## Rationale and objectives of the study

The study is aimed at comprehending and assessing the CSO landscape from an evolutionary perspective and ascertaining the trends and patterns of the circumstances that have influenced the dynamics of the CSO landscape. Approaching the study from a historical perspective, the study intends to bring out the level of intensity and complexity of the legal and political factors that have shaped the legal and political landscape positively and negatively at different phases of the evolution of CSOs in Sri Lanka. Based on the analysis of the historical and contemporary developments in the CSOs, the study proposes recommendations to safeguard and expand the CSO landscape without allowing it to be constricted.

## Methodology, scope and limitations

The historical evolution highlights only the key milestones of the journey that CSOs have traversed and should not be considered as an exhaustive description. This study is not presented as an academic piece of writing but more as a practical resource guide for people working with and for CSOs to learn from the evolution of the CSOs. It aims to present the scope and limitations of the legal and political environment in which CSOs have to operate and the threats and challenges of preserving the space. The study has relied on primary sources such as legislative enactments, regulations, circulars, as well as secondary sources such as books and articles. The study also contains the information and documents shared by the CSO leaders and workers who were interviewed for the Focus Group Discussions (FGDs). The study presents a sample of 24 CSOs and 53 CSO leaders and workers representing different geographical regions, selected thematic areas, and different tiers of the organization including first and second generation. Except for four participants, all the FDGs were carried out via Zoom due to fuel shortages and time constraints to hold in-person discussions. It has also incorporated the insights and lessons on the subject gained by the author in her professional career as a human rights and institutional development consultant and as a volunteer in the community development field over four decades. The study has endeavoured to capture the latest developments that are relevant to an understanding of the legal and political environment of CSOs. The findings and recommendations of the study were shared with the CSOs that took part in the FGDs; views of CSO leaders who did not take part in the FGDs were also sought, as they possess CSO country history and key milestones. Three validation meetings were held via Zoom and except for three CSOs, all CSOs that took part in the study attended the final validation meetings and the suggestions made at the validation meetings have been incorporated.

The entire study including the literature review, FGDs and the validation meetings were carried out within a limited timeframe of seven weeks and amidst severe disruptions due to power cuts and internet connectivity issues.

## CHAPTER 1: Introduction to civil society organizations (CSOs) in the country

### Origin and Context

#### *Home grown community initiatives of pre-colonial era*

The genesis of civil society organizations can be traced back to the pre-colonial era. The Wew Sabha (the committees of users of water of the reservoir [Weva]) and Dayaka Sabha (the committees of lay supporters of temples) are described as self-organized, self-funded and mutually beneficial voluntary initiatives. These characteristics clearly illustrate the voluntary and community spirit in which these homegrown voluntary community initiatives revolved round the concept of “village, temple, stupa and the tank” and fostered the collective spirit of community initiatives that had a direct influence on individual and collective village life (Macy, 1989).

#### *Religiously motivated CSOs in the colonial era*

Promotion of religious beliefs and practices were an integral part of the colonial rule of the Portuguese, the Dutch and the British. However, it was during British rule that the missionaries gained ground in Ceylon and began establishing Christian faith-based institutions such as Baptist Mission (1802), Wesleyan Missionary Society (1814), and Church Missionary Society (1818), Young Men’s Christian Association (1882) and Young Women’s Christian Association (1882) with the objective of furthering education, health, and social welfare among those faith communities.

When Christian missionary associations started spreading their religious faith through education, health and social welfare, Buddhism also began to react to the situation by taking the initiative to establish Buddhist Theosophical Society (1880) and the Mahabodhi Society (1891). Emulating the Christian and Buddhist Associations, the Hindus established the Vivekananda Society (1902) and Ramakrishna Mission (1929). In addition, there was the Muslim Education Society (1890) (Mallawaarachchi, 2018).

#### *Collapse of peasant agriculture in the pre-independence era*

In the pre-independence era, the highly fragmented social fabric and the gravely damaged local peasant agricultural economy brought about immense suffering and hardship for the rural communities. Subjugation of economically and socially impoverished rural communities to authoritarian and repressive colonial regimes for over four decades killed the spirit of rural communities to believe in their own capacity to change their own destiny. It was against this background that the pre-independence rural development and social justice movements emerged.

In this regard, five different trends can be discerned in the pre-independence era. First, this period witnessed the birth of CSOs focusing on rural development. Mahila Samithi Movement founded by Mary Ratnam in 1930 became the first civil society organization that was dedicated to uplift the status of rural women. It was one of the social initiatives that reached out to the poorest women transcending all social barriers and implemented a whole range of programs to uplift the status and lives of women in colonial Ceylon. Second, the pre-independence political debate surrounding the universal franchise inspired women who held a privileged position to advocate for women's franchise. This movement gave birth to Women's Political Union (1904), Tamil Women's Union (1909) and the Mallika Women's Society (1920) and Women's Franchise Union (1927). Third, this period also recorded the birth of civil society activism to uphold social justice. In 1937, Father Peter Pillai founded the first Social Justice Movement. Fourth, the Cooperative Societies system was started in 1906 to fulfil the economic needs of the rural farming communities in Sri Lanka by granting loans. Fifth, this period also records the formation of civil society networks such as the Women's Conference of Sri Lanka (1944) and the Central Council of Social Services (1947) (Mallawaarachchi, 2018).

### ***Modelling "Self-reliance" and mainstreaming "Volunteerism" in the post-independence era***

In the post-independent Ceylon, the gap between the "rich" and the "poor" increased and those in power and the socially privileged class followed life styles modelled on those of the British. The local languages and cultures were looked down upon and 85 percent of people in the villages became neglected leading to unbridgeable social and economic inequalities between towns and villages, especially in the facilities provided in education, health, economic development, social amenities etc. (Marasinghe, 2014).

The Sarvodaya Shramadana Movement, founded by Dr A. T. Ariyaratne in 1958 and based on the Gandhian and Buddhist philosophies, mobilized hundreds and thousands of volunteers to liberate the impoverished, underprivileged and marginalized people belonging to different ethnicities and religions from the entrapment of powerlessness, helplessness and hopelessness. Sarvodaya helped them to discover their own potential and strength to uplift their lives for the better. The social and economic inequalities and political and cultural injustices that caused suffering, frustration, unhappiness and disharmony within/among communities were addressed through "shramadana" (sharing of labor) (Marasinghe, 2014). By 1969, Sarvodaya has mobilized 75,000 volunteers across the country (Citation, Ramon Magsaysay Award for Community Development 1969 awarded to Dr. A. T. Ariyaratne). The Saukhyadana Movement founded in 1959 was also based on the spirit of volunteerism (webpage of Saukhyadana Movement).

The people perceived their involvement with these movements as rendering a much-needed "service" to the communities and strongly believed in volunteering as a "way of life." For more than a decade, these movements implemented their programs through a volunteer force that worked according to "common agendas" devoid of "personal agendas" (Marasinghe, 2014).

The post-independence period also provided a fertile ground to spin off Christian associations to address the structural injustices in society. Devasaranaramaya founded in 1957 and the Christian Workers' Fellowship founded in 1958 gave the leadership for these initiatives. The Ceylon Red Cross Society (1949) and Family Planning Association (1953) were also established in the post-independence period (ADB Brief, 2013).

### ***Birth of Human Rights Movements after the 1971 insurrection***

The 1971 insurrection, led by educated yet underprivileged Sinhalese rural youth associated with the ultra-left Marxist organization the Janatha Vimukthi Peramuna (JVP), was speedily crushed by the armed forces but at the cost of more than 10,000 lives. Hundreds of youths who staged the insurrection were imprisoned. Against the backdrop of the 1971 insurrection, the Civil Rights Movement emerged to safeguard the rights of political prisoners together with Christian faith-based organizations (Mallawaarachchi, 2018). Through this insurrection, the youth challenged the inequities and injustices they had experienced at first hand as a direct result of the social, economic, and political structures, systems and policies created in the post-independence era. Upon a request made by the Commissioner General of Prisons, the Sarvodaya Movement carried out welfare and rehabilitation services such as setting up a library inside the Colombo Magazine Prisons. Sarvodaya provided educational services to the 48 main suspects of the 1971 insurrection; some of the detainees sat for Advanced Level examination, and gained admission to the university after they got released (Ariyaratne, 2001). Believing in the non-violent way of effecting social change, some leaders of the 1971 JVP insurrection became prominent personalities in CSOs, academia and media after they were released from prisons.

In the aftermath of the 1971 insurrection, the civil society underscored the significance of addressing the root causes that led to it as well as its ramifications. With the formation of Civil Rights Movement and Centre for Society and Religion in 1971, Satyodaya and Marga Institute in 1972, Thulana Centre for Research and Coordinating Secretariat for Plantation Areas (CSPA) in 1974, a civil society space was created for like-minded people to address diverse social, economic, and political issues through direct action or activism, advocacy, and research (Orjuela, 2004). It should be highlighted that it was the late Fr. Paul Caspersz who provided direction and leadership to individuals and CSOs to protect and promote the rights of plantation workers. The Muslim Women's Research and Action Forum (MWRAF) was started in 1976 by a few Muslim women who gathered at informal meetings to discuss critical issues facing Muslim women in Sri Lanka (webpage of MWRAF).

### ***Grappling with a free-market economy and a bloody ethnic conflict***

With the introduction of the executive presidency and the free-market economy in 1977, Sri Lanka took the first steps to lay the foundation of a fully-fledged liberalized capitalism. This situation resulted in the gradual fading away of the prominence given to the welfare system in the country

(Wickramasinghe, 2001). The authoritarian and repressive nature of the regime and the aggressive action it launched to paralyze the trade union movement, resulted in political activists and trade unionists rallying around NGOs to continue their activism (Uyangoda, 2000).

At the same time, the circumstances that led to the ethnic conflict and the war that was waged from the 1980s to 2009 were visible in the late 1970s. It is interesting to observe that the Prevention of Terrorism Act No. 48 of 1979 preceded the Voluntary Social Service Organization Act No. 31 of 1980 by only one year (Marasinghe, 2013).

In July 1979, President Jayawardane's government declared a State of Emergency following several violent incidents in the Northern region including the killing of 12 policemen. A week later, the Prevention of Terrorism Act/PTA (Temporary Provisions) No. 48 of 1979 was put before the Parliament and after a brief debate became law the next day. The PTA was originally specified to run for three years from July 1979 to 1982 but later on 11 March 1982, it was made part of the permanent law of the lands (Marasinghe, 1994).

The killing of 13 soldiers by the Tamil militants sparked the communal riots of 1983. This incident sparked more lethal fuel to the already burning country situation. The incident ignited a 33-year long war that resulted in alienating the Tamil and the Sinhala communities. It was in this context the NGOs expanded their human rights portfolio to address the devastating effects of the ethnic conflict. NGOs such as Movement for Defence of Democratic Rights (MDDR), Progressive Women's Front and Ceylon Social Institute that had their roots in leftist politics and trade union activism are examples. As a direct result of ethnic tensions, communal riots and the hostilities between the Tamil militants and the armed forces, NGOs with an emphasis on addressing issues such as human rights, relief and rehabilitation and advocacy in relation to the ethnic issue emerged in Colombo and the North and East (Bastian, 1997). These include Movement for Inter-Racial Justice and Equality (MIRJE), the International Centre for Ethnic Studies (ICES) and Eastern Rehabilitation Organization (ERO). The second insurrection led by JVP in the south in 1987 triggered a three-year period of widespread violence and a host of retaliatory measures including arbitrary arrests, illegal detention, enforced disappearances and extra judicial killings. This situation posed a grave threat to some NGOs with political affiliations and caused severe impediments to their work (Uyangoda, 2000). From 1983 to 1988, Sarvodaya organized massive peace marches, peace dialogues and amity camps across the country to promote inter-ethnic and inter-religious harmony and peaceful coexistence.

### ***A Witch Hunt against NGOs***

President Ranasinghe Premadasa established the "Presidential Commission of Inquiry in Respect of Non-Governmental Organizations Functioning in Sri Lanka" in 1990. Alongside the sittings of the NGO Commission, the entire government machinery was used to launch a witch-hunt and a well-orchestrated hostile and malicious campaign against NGOs and their leaders. However, the

repressive actions of the regime could not halt the strong opposition and resistance exerted by the NGOs against gross violations of human rights and freedoms (Neff, 1991). While cooperating and assisting the workings of the NGO Commission, the NGOs continued their struggle against grave violation of human rights and freedoms caused by excessive and arbitrary use of executive power by way of fundamental rights petitions and writ applications before the Supreme Court and the Court of Appeal. Groundbreaking judicial precedents were created in the fundamental rights and writ applications jurisprudence. [See more: *Amaratunga v. Sirimal (Janagosha Case)* (1993) 1 SLR 264; *Lanka Jathika Sarvodaya Shramadana Sangamaya v. Heengama Director General of Customs and others*, S.C. Application No.173/91, 1993; *Channa Peiris v. Attorney General (Ratawesi Peramuna Case)* (1994) 1 SLR 1, *Deshapriya v. Municipal Council, Nuwara Eliya* (1995) 1 SLR 362, *Sunila Abeysekera v. Ariya Rubasinghe* (2000) 1 SLR 314].

### ***Government forging partnerships with NGOs for poverty alleviation***

While the Ranasinghe Premadasa government launched an anti-NGO campaign, through the World Bank funded Janasaviya Poverty Alleviation Programme, the government adopted a strategy of forging partnerships with NGOs to implement its development agenda. NGO partners of Janasaviya Trust Fund received a considerable amount of funding for organizational and infrastructural development; and “participatory development” approach was put into action.

### ***NGOs forging and consolidating new pathways***

After the assassination of President Premadasa, the government attitude towards NGOs changed and a broader leverage was allowed for them to operate. The active and influential role played by NGOs in the election of People’s Alliance government in 1994 was a critical turning point in the evolution of NGOs. The pledge of People’s Alliance government to forge a peaceful settlement to the ethnic issue encouraged NGOs to collaborate with the government’s peace and reconciliation initiatives (Uyangoda, 1995). In the aftermath of the 1994 Presidential Elections, a democratic political environment conducive to civil society activism developed. It was in this context that existing NGOs like People’s Action for Free and Fair Elections (PAFFREL) expanded their scope and new NGOs started proliferating all over the country. The National Peace Council (NPC), Centre for Policy Alternatives (CPA) and Consortium of Humanitarian Agencies (CHA) were among the NGOs that were established in the post 1994 political era. It was during this period that Sri Lanka witnessed the rapid growth of NGOs working in the field of human rights, legal aid, environmental conservation and justice and the emergence of the green movement. Under the charismatic leadership of Mrs. Jezima Ismail, MWRAF played a critical role in advocating for a more equitable legal and policy regime to safeguard to rights of Muslim women in the country. During this period, CSO leaders such as Dr. Radhika Coomaraswamy and Dr. A T Ariyaratne were appointed as members of the National Human Rights Commission of Sri Lanka.

### ***NGOs navigating through a repressive period***

Towards the end of President Chandrika Kumaratunga's regime, the NGOs began experiencing restrictions and this trend escalated during President Mahinda Rajapaksha's government. Serious human rights violations against NGO personnel, human rights defenders, media personnel were reported. For the first time, NGO Secretariat was brought within the purview of the Ministry of Defence. Amidst this extremely restrictive environment, the NGOs continued to engage in relief and rehabilitation work, peace and reconciliation, transitional justice in the North and the East and other development work; the situation also contributed to the post war reconciliation process and the Lessons Learned and Reconciliation Commission (LLRC). Relying on the fundamental rights jurisdiction NGOs continued to challenge executive actions. (See more: Centre for Policy Alternatives (Re: Presidential Reference on the ICCPR - (2009) 2 SLR 389).

### ***NGO activism in post-2015 political context***

The change of government in 2015 marked a significant turning point in the discourse on democracy, good governance, transitional justice and peace and reconciliation. NGOs played an active role in lobbying and advocating for Constitutional Reform – especially the 19th amendment to the Constitution, Right to Information Act No. 14 of 2016 on the Office on Missing Persons (Establishment, Administration and Discharge of Functions), the National Audit Bill (Lia Kent, 2021). This period can be described as a period that witnessed active engagement of NGOs with the government in the field of law reform, enhancing the capacity of public officers on the newly enacted laws. Dr. Radhika Coomaraswamy, Mr. Shibly Aziz and Dr. A. T. Ariyaratne were appointed as the three CSO representatives of the newly established Constitutional Council under the 19th Amendment. It was also during this period that the NGOs engaged with the government on the new legislation which the government was planning to enact to substitute the existing Voluntary Social Services Organization Act.

### ***NGOs' search for common ground amidst Crises***

The period that followed the 2019 April Easter Sunday bombings negatively affected the existence and operation of NGOs as restrictions and surveillance of NGOs increased. While the Christian faith-based organizations worked with the victims of Easter Sunday bombings, the CSOs working predominantly with the Muslim communities in the East encountered many challenges and hardships as they tried to help the families of persons who were arrested in connection with the attack.

When the COVID-19 pandemic hit the country, lockdowns, and curfews were imposed and the service delivery mechanism of government came to a standstill, NGOs began providing relief services such as distribution of dry rations, cooked meals, health related services etc. to vulnerable communities, women, children and persons with disabilities in the institutional care.

For the first time in the post-independence Sri Lanka, people rallied together transcending ethnic, religious, social and ideological barriers to demonstrate their dissent and express their disappointment and frustration through “Aragalaya” – “the Protest” about the predicament of a State that was on the brink of failing. The people’s power behind “Aragalaya” sent shock waves across the country and the world, but the momentum and neutrality of the force could not be sustained due to multiple factors and interventions. In June 2022, Transparency International Sri Lanka and three individuals filed a petition in the Supreme Court calling for actions against persons responsible for the current economic crisis.

In the backdrop of “Aragalaya,” the government moved to promulgate an emergency regulation and a new bill on rehabilitation purportedly restricting freedom of association, freedom of expression and dissent. The extraordinary gazette notification (No. 2298/53) of 23rd September 2022 was issued by the President (later withdrawn when the legality of the regulation was questioned) declaring several areas in Colombo as High-Security Zones. The newly proposed legislation entitled “Bureau of Rehabilitation Act” is aimed at regulating *“rehabilitation of the misguided combatants, individuals engaged in extreme or destructive acts of sabotage and those who have become drug dependent person and it has become a serious problem and a national issue.”* The Centre for Policy Alternatives (CPA) filed a fundamental rights petition challenging the constitutionality of the Bill in September 2022.

Amidst these crises, the NGOs faced the difficulty of having to choose whether to focus on short-term, medium-term, or long-term measures that were necessary to ensure the sustainability of the organizations and their staff, and at the same time, to fulfil their mandate and respond to the crises and safeguard the interests of the communities they were accountable to.

## **The terminology used to define and describe CSOs**

Prior to 1980s, the NGOs were known as “Associations,” “Societies,” “Sangamaya,” “Movements,” and “voluntary organizations.” The “voluntary nature of the CSO social activism that was visible prior to 1980s may have influenced the law makers to include the word “voluntary” in the statute “Voluntary Social Service Organizations Act.” Subsequent to the use of the term “non-governmental organizations” by the United Nations, Sri Lanka began to describe voluntary organizations, associations and societies as NGOs.

## **Definition of CSOs**

### ***Society***

In terms of Section 3 of the Societies Ordinance, the definition of a society is as follows:

- (a) **Mutual provident societies** - established for the object of promoting thrift, of giving relief to members in times of sickness or distress, of aiding them when in pecuniary difficulties, and for making provision for their widows and orphans.
- (b) **Specially authorised societies** - by notification in the Gazette, societies for any purpose that the Minister may authorize as a purpose to which the powers and facilities of this Ordinance ought to be extended.

### **Cooperative Society**

Section 3 of the Co-operative Societies Law defines a Cooperative Society as follows:

- (a) a society which has as its object the promotion of the economic, social, or cultural interests of its members in accordance with co-operative principles, or
- (b) a society established with the object of facilitating the operations of a society referred to in paragraph (a), or
- (c) a society consisting of registered societies as members established for the purpose of providing cooperative education and training, advisory services to co-operative societies in Sri Lanka and other services for the promotion of the co-operative movement in Sri Lanka, or
- (d) a society consisting of registered societies as members established for the purpose of planning, coordinating, and facilitating the activities of such co-operative societies in Sri Lanka or any part thereof as are engaged in marketing, industry, agriculture, fisheries or in such other activity as may be approved by the Registrar.

### **Voluntary Service Organization**

Voluntary Social Service Organization means any organization formed by a group of persons on a voluntary basis, and

- (a) is of a non-governmental nature;
- (b) Dependent on public contributions, charities, grants payable by the government or donations local or foreign, in carrying out its functions;
- (c) Has as its main objectives, the provision of such reliefs and services as are necessary for the mentally retarded or physically disabled, the poor, the sick, the orphans and the destitute, and the provision of relief to the needy in times of disaster and includes a community hostel.  
(Section 18 VSSO Act No. 31 of 1980)

The interpretation of “Voluntary Social Services Organizations” as found in the 1980 Act is rather limited and does not adequately capture non-governmental organizations working in the field of human rights, economic development, environmental and gender related issues. However, the Gazette Notification No: 1101/14 of 15th October 1999 published by the Minister of Social Services

has expanded the scope of the interpretation of “voluntary social service organizations” by spelling out 16 items as objects of the organizations in the First Schedule of the Gazette notification. These items include “poverty alleviation, environment, entrepreneur development and training, training and education, health and sanitation, rehabilitation and reconstruction, reproductive health, human rights, disaster management, rural development, protection of child rights, women and development, gender equity, relief work, credit and saving mobilization and any others” (Gazette Notification No: 1101/14 of 15th October 1999; Uyangoda, 1995; Samaraweera, 1997).

### ***Limited by Guarantee Company***

Section 3(c) of the Companies Act No. 07 of 2007 defines Limited by Guarantee Company as “a company that does not issue shares, the members of which undertake to contribute to the assets of the company in the event of its being put into liquidation, in an amount specified in the company’s articles.”

In 2013, the Company Registrar issued a guideline to the effect that an association about to be formed as a company limited by guarantee under Section 34 of the Companies Act for promoting commerce, art, science, religion, charity, sport, or any other useful object shall include a clause that the “Company/Association” being a Voluntary Social Service Organization (Registration and Supervision) Act, shall take steps to register under the said Act after registration.

### ***Microfinance NGOs***

Section 37 of the Microfinance Act No. 6 of 2016 stipulates that Microfinance NGO mean a “non-governmental organization registered under the Voluntary Social Service Organizations (Registration and Supervision) Act, No. 31 of 1980 and issued with a certificate of registration by the Registrar of Voluntary Social Service Organizations under this Act to accept limited savings deposits.” In 2021, Cabinet approved the proposed Microfinance and Credit Regulatory Authority Act to replace the Microfinance Act No: 2016 but it has not been table before the Parliament yet.

### ***Charitable Trust***

Section 99 of the Trust Ordinance defines a “Charitable Trust” as any Trust for the benefit of the public or any section of the public within or without Sri Lanka of any of the following categories:

- (a) for the relief of poverty; or
- (b) for the advancement of education or knowledge; or
- (c) for the advancement of religion or the maintenance of religious rites and practices; or
- (d) for any other purposes beneficial or of interest to mankind not falling within the preceding categories.

### ***By Act of Parliament***

Act of Parliament presented as a private bill of a Member of Parliament can register a CSO. Lanka Mahila Samithi Movement was incorporated by an Act of Parliament entitled “Lanka Mahila Samithi Ordinance No: 5 of 1947” and Sarvodaya Shramadana Movement was incorporated by Act of Parliament entitled “Lanka Jathila Sarvodaya Shramdana Sangamaya Act No: 16 of 1972.” Mahila Samithi and Sarvodaya had adopted a constitution and rules before both organizations were recognised by Acts of Parliament (Marasinghe, 2013).

### ***Foundations***

The members of Parliament establish foundations by way of private member bills of Parliament.

### **The characteristics of CSOs**

The main characteristic of NGOs is the non-governmental nature of their objectives and activities and the voluntary or non-profit nature of their operation. There are national level organizations that have their reach across the country covering all geographical regions and engaging with people of all ethnicities and religions. Some NGOs serve specific target populations such as children in need of care and protection, teenage mothers, destitute elders, and persons with disabilities and specific target populations in a particular geographical region, for example, the North and the East and the plantation areas. The mandate of NGOs also varies according to thematic areas they have chosen for their interventions such as gender equality, environmental protection and justice, democracy and good governance, poverty alleviation, human rights, transitional justice, peace and reconciliation, social, economic, and cultural rights, child rights, health and nutrition, disaster management, micro credit and savings, rights of the disabled, advocacy and research etc. There are NGOs which are working at divisional or district level either in one or more divisional or district secretariat divisions.

## **Chapter 2: The Legal Framework on Developmental/Rural Development NGOs in Sri Lanka**

### **Description of Developmental or Rural Development NGOs**

According to the statistics maintained by the NGO Secretariat there are 1,699 national level organizations working island wide, 964 organizations operating at district level and 35,434 organizations mainly working at the divisional level. The total number of social service organizations/ NGOs amounts to 38,097. Of the 1,699 national level organizations, 1,291 are Sri Lankan NGOs and 408 comprise INGOs. As of 1 August 2022, 22 new NGOs have been registered in the year 2022 (Goonaratne, 2021).

Table 1: An overview of the NGO landscape

	Theme	Selected Sample of Organizations
1	Poverty alleviation and sustainable development	Sarvodaya, WDF, RPJ, PREDO, Safe Foundation
2	Human rights litigation, research and advocacy	CPA, CHRD, LHRD, LST, ICES, Uva Shakthi Foundation, MWRAF, National Citizens Committee
3	Conflict resolution, Peace and Reconciliation and Transitional justice Inter-ethnic and Inter-religious harmony	Sarvodaya Shanthisena, MWRAF, Viluthu, NPC, CPBR
4	Women's rights, child rights, SGBV and gender issues	WIN, WMC, WDC, CEJ, FPA, Sarvodaya Suwasetha, Viluthu, Suriya, RPJ, MWRAF
5	Democracy, Good governance	CMEV, PAFFREL
6	Conflict related trauma and rehabilitation	FRC, MHPSS.net- Institute of Health Policy
7	Environmental Protection, Conservation and Justice	CEJ, EFL, FIAN
8	Thrift and credit	SANASA Federation, Hambantota Women's Federation, RPJ, WDF, Uva Wellassa Women Farmers' Organization
9	Land rights and Farmers' rights, Green Movement	PARL, MONLAR, Pragathiseva Padanama, FIAN, National Citizens Committee
10	Empowerment of Protection of rights of Plantation workers	PREDO, Uva Shakthi Foundation
11	Networking of CSOs	SLCDF, Sanasa, PAFFREL, PARL, MONLAR, FIAN
12	Child rights	LHRD, WDC, JSAC, IWARE
13	Social Welfare Development	YMCA, YMBA, YMMA, YMHA, SEDEC/Caritas
14	Youth Engagement	Sarvodaya Shanthy Sena
15	Policy research	CPA, Advocata, Verite
16	Health and Nutrition	Sarvodaya, Sri Lanka Red Cross, Family Planning Association, Sahanaya and Sumitrayo
17	Disaster Management	Sarvodaya, Sri Lanka Red Cross, Sri Lanka Life Saving (SLLS)

## NGO Networks and Consortiums

In the selection of the NGO Network, the emphasis was given to networks of developmental NGOs, networks that have brought together NGOs committed to promote democracy and good governance and those networks that bring together societies and groups working with and for the farming community.

### *Sri Lanka Centre for Development Facilitation (SLCDF)*

The SLCDF is committed to strengthen alliances and networks of CSO actors at the subnational level. Initially it started working with six district consortiums in Ampara, Batticaloa, Galle, Kegalle, Jaffna, and Kurunegala. Later it expanded the network to include Hambantota, Matara, Kandy, and

Monaragala. The nine consortiums have a membership of 181 CSOs with an outreach to 187,000 Sinhala, Tamil and Muslim communities. The Districts' Consortiums have been focused on subjects such as human rights, clean politics etc., as well as with the aim of forging links with Government institutions, NGOs and the private sector. The current NGO Consortium partners include NGO National Action Front (NNAF), Island Wide NGO Management Development Centre (NGOMDC), Island Wide, Rajarata Vanni Sandanaya, Anuradhapura, Praja Sanvidana Sanwardena Kendraya, Galle, Gampaha Janatha Sanwardena Padanama, Gampaha, Hambantota Grameeya Sanvidana Sanwardena Padanama, Hambantota, Praja Sanwardena Sanvidana Sansadaya, Kalutara, Kurunegala District Rajya Novana Sanvidanawala Kriyakaringe Sansadaya, Kurunegala, Praja Sanvidana Sansadaya, Moneragala, Ruhunu Rajya Novana Sanvidana Balamandalaya, Matara, Polonnaruwa District Swadeena Prajamula Sansadaya, Polonnaruwa, Puttalam District Praja Sanvidana Sansadaya, Puttalam, Kandurata Rajya Novana Sanvidana Sandahavu Sansadaya, Kandy, Kegelle District Rajya Novana Sanvidana Sansadaya, Kegalle, Ampara District NGO Consortium, Ampara, Association of Local Non-Governmental Organizations, Batticaloa, Ratnapura District Sanwardena Sahayogitha Sandanaya, Ratnapura, NGO Forum for Plantation Organizations, Plantations (SLDF, 2021).

### ***March 12 Movement***

The March 12 Movement was launched with the aim of making a positive system change in the political structure and political culture in Sri Lanka. March 12 member organizations advocate minimizing the negative effects of the existing political culture and working towards a better political culture that promotes democracy, transparency and integrity of the governance process. Approximately 50 CSOs and more than 10,000 individuals from all walks of life including politicians, religious, academics, the business community, artists, youth, and professionals have joined the March 12 Movement.

### ***People's Alliance for Right to Land (PARL)***

PARL is a network of CSOs lobbying for land rights, sustainable development and environmental ethics. It has filed litigation, launched campaigns and supported community led movements to get land released. It has also engaged with local and international advocacy on land-grabbing and other reforms of land violation (webpage of PARL).

### ***Movement for Land and Agricultural Reform (MONLAR)***

MONLAR was formed as a network of farmer organizations, NGOs and people's organizations in other sectors in early 1990. It has brought together paddy farmers, dairy farmers and also the planters and like-minded organizations, movements and groups. It has campaigned against water tax; it has supported peasant's struggles, promoted structural adjustment policies, denounced farmer suicides due to indebtedness, advocated against loan traps and lobbied for better price for

paddy. It has focused on food sovereignty, right to land, right to seed and water. MONLAR is associated with local movements such as the National Movement against Poisons, People's Caravan for Food Sovereignty, People's Movement for Plantation Community Land Rights, People's Alliance for Land Rights and Justice to Panama. It has established people's planning forums in Southern, North Central, Uva, Eastern, Central and North Western provinces comprising 86 local organizations including CBOs (webpage of MONLAR).

### ***Sanasa Movement – Federation of Thrift and Credit Cooperative Societies of Sri Lanka***

Sanasa is the umbrella organization or the apex body of over 8,000 primary societies. They mainly deal with microfinance and have a presence in rural and urban areas with 1.2 million individual members. As the apex body of cooperative societies, it liaises with State cooperative authorities to forge cooperative policies, communicates to societies the cooperative policies, and guides societies on good governance and constitutional issues (webpage of Sanasa Movement).

### ***Food First Information & Action Network of Sri Lanka (FIAN)***

FIAN Sri Lanka, founded in 2016 is a Non-governmental Human Right Organization and registered under the NGO Secretariat. FIAN Sri Lanka envisions a world free from hunger and malnutrition, in which every person fully enjoys all human rights, particularly the human right to adequate food and nutrition, alone, in association with others, or as a community, in dignity and self-determination. FIAN has a network of 19 individual members and 32 organizational members in its General Assembly.

### ***All Ceylon Farmers' Federation (ACFF)***

ACFF is a network representing farmers associations across the country. It mainly campaigns and advocates for promoting and protecting the rights of farmers. The network represents over 500,000 farmers across the country. Addressing the current economic crisis, ACFF has highlighted the difficulties faced by farmers in the harvesting season due to the fuel crisis, and the increase in the price of fertilizer and seeds. It has also rejected the compensation package of 40 billion rupees that was offered to compensate farmers who have been impacted by the government's inorganic fertilizer ban stating that it is inadequate and discriminatory.

### ***Lanka Farmers' Forum***

This network was born out of the project implemented through Medium Term Cooperation Programme of the International Fund for Agricultural Development (IFAD). The main objective was to strengthen small-scale national farmer organizations and to create a powerful network among

them in order to provide improved services to their members and engage in policy processes. Lanka Farmers' Forum has formed district farmers' forums (webpage of FAO).

## Overview of Registration of Developmental/Rural Development NGOs

### *State regulatory interventions*

Between the 1940s and 1970s, the organizations that were devoted to uplifting the lives of the most marginalized and vulnerable population groups sustained their interventions mostly through the human, monetary and material resources donated by a large volunteer base. During this period, such organizations were known as “voluntary social service organizations.” The “approved charity” status given by the State to voluntary social service organizations from pre-and post-colonial Ceylon is one of the significant recognitions and incentives accorded to voluntary service organizations whose aim is to promote philanthropy (Marasinghe, 2013). The Inland Revenue (Amendment) Act No. 22 of 2011 has narrowed down the application of the approved charity status and accorded the “approved charity status” to a “charity which is established for the provision of institutionalized care for the sick or the needy.”

Organizations such as Sarvodaya Movement is still maintaining its voluntary nature by mobilizing volunteers at the community level and also at national level especially during manmade and natural disasters.

In the 1980s, the country witnessed an influx of NGOs and INGOs in the country and foreign aid started coming into the country almost at the same time (Marasinghe, 2013). It was in this context that the Voluntary Social Service Organizations (Registration and Supervision) Act (VSSO) No. 31 of 1980 was introduced. Until 1980, the voluntary social service sector operated without the intervention of any State regulatory laws but functioned within the parameters of their constitutions enacted under the laws of the land. According to the Preamble to the VSSO Act, it:

- registers with the government the voluntary social service organizations to provide for the inspection and supervision,
- facilitates coordination of the activities,
- gives recognition to such organizations which are properly constituted,
- enforces the accountability of such organizations, in respect of financial and policy management under the existing rules of such organizations to the members of such organizations, the general public and the government,
- prevents malpractices by persons purporting to be from such organizations and to regularize the Constitution of voluntary social service groups that have not been legally recognized.

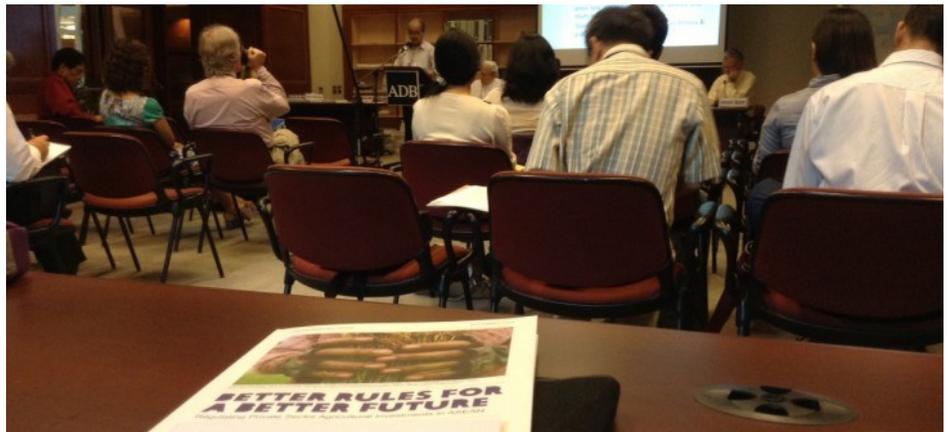
The VSSO Act introduced a system of registration and supervision of activities of NGOs. However, the provisions of the Act including the procedure for registration of NGOs were not strictly enforced (Mallawaarachchi, 2018).

The Amendment No. 8 of 1998, the regulations issued under the Act published in the Extra-ordinary Gazette 1101/14 dated 15 March 1999, followed the VSSO Act and the Circular Letter of the Secretary to the President dated 26 February 1999.

### ***Secretariat for NGOs***

In 1990, a Presidential Commission for NGOs was appointed and pursuant to the recommendations of the Commission, regulations came into force under the Public Security Ordinance requiring compulsory registration of NGOs that have a turnover of Rs. 50,000 and above. However, when the Emergency Regulations lapsed, the system of registration introduced by the regulation too became inactive (webpage of NGO Secretariat, 2017). With the introduction of the amendment to the VSSO

No. 8 of 1998 and VSSO Regulations No. 1 of 1999, the regulatory framework became much more complex. A Secretariat for NGOs was established in 1996 under the purview of the Ministry of Health, Highways and Social Services; it was subsequently moved to the Ministry of



National Co-existence, Dialogue and Official Languages in 2017. Between 2020 and 2022, the NGO Secretariat was moved to the Ministry of Defence, Ministry of Foreign Affairs, State Ministry of National Security and Disaster Management. Currently, it is under the State Ministry of Public Security.

The current state of functions and powers of the NGO Secretariat under the VSSO Act and Micro Finance Act includes registration in three levels: National, District, and Divisional levels. The Secretariat monitors all three levels, including recommendation of visa; work permit and tax reliefs; evaluation of project reports, quarterly progress reports, and annual action plans; assessment of cash inflows, cash out flows, cash disbursements, and asset details; and, inspection of activities and projects of NGOs among others. The NGO Secretariat also provides reports requested by State intelligence unit and the Criminal Investigation Department to facilitate the investigations of said institutions. In 2021, the NGO Secretariat provided 39 reports and as of 1 August 2022, it has given 22 reports (Gooneratne, 2021).

## Advisory Committee on NGOs

In 2015, then Prime Minister, the incumbent President Ranil Wickremasinghe to address the proposal No. 88 of the 100 days' work program of the President, established an Advisory Committee. Such proposal stated, "Remove the hindrances on Civil Society Groups that work on economic and social development, environmental issues, good governance and human rights to create conducive environment for the civil society." A Committee consisting of the Director General of the NGO Secretariat and three representatives of CSOs was given the task to review the existing laws and regulations governing the NGO sector and assess whether they are in line with the international obligations such as the ICCPR and other UN frameworks. The Action Plan for National Secretariat for NGOs drafted by the said Committee has identified 15 focus areas and observations, issues, activities, key performance indicators and responsible agency connected with the same.

Table 2: An Action Plan for National Secretariat for NGOs

No.	Focus Area	Observations	Issue
1.	Government-NGO cooperation	Inadequate understanding of the role of NGOs  Cooperation between NGOs and government is needed from top to bottom	<ul style="list-style-type: none"> <li>Lack of recognition of the role of NGOs as development partners and agents for social transformation in promoting good governance</li> <li>Exiting negative propaganda towards NGOs</li> </ul>
2.	Ensuring Freedom of Assembly and Freedom of Association	Freedom of Assembly and Association are the firm basis for CSO and NGO operations. Therefore, a rights and obligations approach is needed for smooth functioning of NGOs.	<ul style="list-style-type: none"> <li>Noncompliance of constitutional provisions (14-1 (B), (C) rights (G)</li> <li>Noncompliance of ICCPR</li> <li>Non-implementation of Universal Periodic Review (UPR) pledges</li> </ul>
3	Forms of Organizations	There are various organizations working to deepen democracy, democratic institutions, people's movements, civil society activism, and NGOs	<ul style="list-style-type: none"> <li>Restrictive political environment</li> <li>Lack of democratic space</li> </ul>
4.	Legal framework	INGOS and NGOs registered under the NGO secretariat are those working on social, development, economic, and environmental issues.  There are various measures by which to monitor and register voluntary organizations and there are different administrative procedures recognizing organizations for recognizing organizations.	Inconsistency in practices in the implementation of that governs regulation related to NGOs at district and national levels <ol style="list-style-type: none"> <li>Voluntary Social Service Organizations (Registration and Supervision) Act No. 31 of 1980 and Amendment Act No 08 of 1998</li> <li>Companies Act No.17 of 1982</li> <li>Special Acts of Parliament</li> <li>Societies Act of 1972</li> <li>Companies Ordinance (Amendment) of 1891</li> </ol>
5.	Administrative Procedures	Burdening of NGOs/CBOs with administrative and bureaucratic procedures  INGOS have found it easier to carry out the work at the community level with the permission received from the GA/DS regimes.	At operational level, general mindset prevailing in the society, as well as the NGO Secretariat's attitude towards NGOs, including those of their district level officers, are negative.  Restricting NGO space and defining NGOs activities by the GA/DS according to their discretion

No.	Focus Area	Observations	Issue
6.	Prevailing surveillance culture in some districts	<p>Presence of State intelligence officers during NGO forums especially in the North and East, plantation sector and human organizations.</p> <p>Regular visits by CID officers</p> <p>GA/DS linkages intelligence authorities</p>	<p>Apprehensions about surveillance by National Intelligence Bureau (NIB) and other State agencies including Grama Niladharis</p> <p>Intimidation and restrictions imposed due to presence of military in the Northern province</p> <p>Differential INGOs and local NGOs</p> <p>Shrinking of NGO activities due to various impediments and excess monitoring</p>
7.	Financial management	<p>Banks insisting mandatory NGO registration</p> <p>NGOs have to pay a 3% tax on all their income from grants, donations, and contributions</p>	<p>Conflict between registration regime under Companies Act and Voluntary Social Services Organizations Act</p> <p>Tax regime and impediments towards NGOs' activities</p>
8.	Compliance by NGOs	Reporting procedures of NGOs to be mainstreamed to avoid different levels of monitoring	NGOs activities face impediments due to administrative delays at the DS level.
9.	Capacity building of NGOs/CBOs	<p>Prevailing tensions between NGOs/CBOs the regarding reporting systems</p> <p>There is a need to clarify the objectives related to reporting to DS/GA.</p>	Lack of awareness related to administrative procedures among and NGOs/CBOs
10.	Capacity building of NGO Secretariat	There is a need to upgrade the knowledge among district officers attached to NGO secretariat/HQ staff.	Lack of technical and human resource capacity
11.	Enhancement of resources at NGO secretariat	<p>Urgent action necessary is to fulfil resource requirements (computers, systems, office items, DC's requirements, etc.)</p> <p>The objectives of the NGO Secretariat as described on the website are narrowly defined.</p>	<p>Lack of resources and infrastructure facilities at the NGO secretariat</p> <p>The objectives do not adequately express the provisions of ICCPR and other relevant human rights standard.</p>
12.	Level of interaction with NGO	NGO Secretariat is seen only as a "license provider" and controller by NGOs/INGOs and CSOs.	The NGO secretariat has no active engagement with NGOs and CBOs on social, political and economic issues.
13.	Horizontal and vertical Coordination between NGOs.	Coordinate the activities of NGOs in order to avoid duplication and repetition of services	There is lack of coordination between service providing NGOs and INGOs.
14.	Making NGOs/CBOs partners in sustainable development	UN Sustainable Development Goals require for greater and effective participation of NGOs. The new government should recognize the role of NGOs in Sri Lanka as a development partner and as a prominent advocate for good governance. Therefore, building a conducive environment for NGOs in the future is very important.	The previous regime promoted an anti-NGOs/ civil society culture that has an impact on relationship building with the new government.
15.	Ethics	There is need to facilitate voluntary regulations to promote a robust culture of accountability among the NGO community.	Absence of code of conduct for NGOs

In 2018, the draft of the amendment to the VSSO Act was withdrawn after discussions between the then Prime minister, officials of the NGO Secretariat and CSO representatives. Thus, the CSO committee was asked to submit alternatives and suggestions for draft amendment (CSO Committee Report, 2019). While this study is being finalized, the Director of the NGO Secretariat stepped down from the position and a new official has taken his place. The informal NGO collective has met the State Minister of Public Security and Disaster Management and submitted their observations and recommendations on the proposed NGO regulatory law.

### ***Proposed amendments to Voluntary Social Service Organizations Act***

In 2019, a series of consultations had been conducted with CSOs and the findings highlighted certain challenges encountered by CSOs in relation to the legal and regulatory mechanism. Among these, include:

- obtaining prior approval for submitting proposals and implementing project activities,
- impositions of strict rules and conditions to obtain approvals,
- endorsement of GS/DS for the report on activities conducted,
- directives on how to apportion/use financial resources,
- harassment and criticism at the time that the annual plan approval is sought,
- a reasonable apprehension that failure to attend meetings convened by the NGO Secretariat or the NGO Coordinator will affect the approvals of activities of such organizations,
- State officials determining the nature and scope of CSOs activities and practices by State officials,
- delays in the registration process and inconsistency in practices in the implementation of that governs regulation related to NGOs at national levels (CSO Committee Report, 2019).
- According to the informal CSO Collective, the draft version of the proposed VSSO Act has not been released yet.

### **Registration and Accreditation**

The criteria and requirements for registration varies according to the statute that an NGO has derived its legal status. The registration of NGOs in Sri Lanka can be initiated by choosing one of the following legal instruments:

- Voluntary Social Service Organization - The Voluntary Social Services Organizations (Registration and Supervision) Act No. 31 Of 1980 (VSSO);
- Microfinance Act No. 6 of 2016;
- Company Limited by Guarantee – The Companies act No. 07 of 2007;
- Charitable Trust – The Trust Ordinance No. 17 of 1917;
- Societies – The Societies Ordinance No. 16 of 1981;

- Co-operative Societies – The Co-operative Societies Law No. 05 of 1972; and,
- An Act of Parliament sponsored by a Member of Parliament through a Private Member's Bill.

### ***The Voluntary Social Services Organizations Act***

As the principal legislation applicable to NGOs, the VSSO Act prescribes the mandatory registration of NGOs. Even though an NGO has been registered under the Societies Ordinance, Cooperatives Act, Companies Act and Microfinance Act it is mandatory that the organizations registered under these statutes are also registered under the VSSO Act.

By virtue of Sections 3 and 18 of the VSSO Act, regardless of the chosen mechanism for registration, all organizations that come within the purview of one of the categories VSSO Act must also register under the same.

Irrespective of the fact that NGOs are registered under one of the seven categories mentioned above, they do not acquire the “NGO” status until they are registered at the National Secretariat of Non-Governmental Organizations.

This procedure became mandatory under the Presidential Secretariat Circular: RAD-99-01 that all organizations (All international and national level foreign funded voluntary social services organizations or Non-Governmental Organizations and all local voluntary social services organizations/Non-Governmental Organizations) were required to re-register at the National Secretariat of Non-Governmental Organizations. The circular further states that all NGOs working in more than one administrative district are required to register with the NGO Secretariat. All other NGOs are required to register at the district level. It was in accordance with this circular that the District NGO Coordinating Committee was formed comprising the District Secretary, Planning and Implementation Secretary in the District, Provincial Secretary in-charge of Social Services subject, a representative of the Provincial Chief Secretary, a Social Service Officer nominated by the Chief Secretary. In accordance with the circular, all NGOs operating only within the Divisional Secretary are required to register with the Divisional Secretary.

In 1999, the Minister of Social Services published the Gazette Notification No: 1101/14 of 15 October 1999 stipulating that the application for registration under Section 4 of the VSSO Act had to be in the form set out in the first schedule. The first schedule spells out 16 items as objects of the organizations: “poverty alleviation, environment, entrepreneur development and training, training and education, health and sanitation, rehabilitation and reconstruction, reproductive health, human rights, disaster management, rural development, protection of child rights, women and development, gender equity, relief work, credit and saving mobilization and any others” (Gazette Notification No: 1101/14 of 15th October 1999).

## **Microfinance Act**

Microfinance Non-Governmental Organizations (NGOs) was introduced under the Microfinance Act No. 6 of 2016 that came to force for the registration of NGO accepting limited savings deposits as Microfinance NGO, setting up of standards for the regulation and supervision of microfinance NGO and micro credit NGO and for connected matters.

## **The Companies Act**

Two or more persons can incorporate the limited by guaranteed company under section 34 of Companies Act (2007). Section 34 states that for the purpose of the said section the objective and non-profit nature should be specified in the articles of association. Additionally, the Registrar General of Companies has issued a mandatory guideline under the Companies Act enumerating the procedure applicable for a licence under 34 of the Act.

To quote:

“If the company is an organization formed by a group of persons on a voluntary basis and:

- a. is of a non-government nature,
- b. is dependent on public contributions, charities, grants payable by the government or donations local and foreign, in carrying out its functions,
- c. has as its main objectives, the provisions of such relief and services as are necessary for the retarded or physically disabled, the poor, the sick, the orphans and the destitute, and the provisions of relief to the needy in times of disaster and includes a community hostel.

The following clause must be included and appropriately numbered.”

*“The Company/association being a “voluntary social service organization” as defined under the Voluntary Social Service Organization (Registration and Supervision) Act, shall take steps to register under the said Act after incorporation.”*

## **Accountability Mechanisms**

The influx of foreign aid to NGOs and movements created a certain perception in society that NGOs had an abundance of money and a dependency mindset. This is the background reason why the State began to look at NGOs with scepticism and levelled various criticisms against them, raised accountability issues in view of the large sums of money they were managing (Marasinghe, 2013).

## ***The VSSO Act***

### **Reporting**

Pursuant to a Circular RD/99/01, the Presidential Secretariat introduced the requirement of submitting a proposed action plan in accordance with the prescribed format formulated by the NGO Secretariat. The information required in this format includes, nature of the proposed activities, the area and the target groups, the number of people that will be employed, source of funding, annual expenditure budget and the amount of funds that will be brought into the country.

The second schedule lays down the requirement of submitting a true copy of the rules of the organization, a copy of the latest statement of accounts including the balance sheet certified by a recognized auditor and proposed program of work plan for the ensuing year. It further stipulates that every registered Voluntary Social Service Organization shall keep and maintain: a cash book with bank accounts, a petty cash book, a main ledger, a main journal, membership fee ledger, debtors and creditors ledger, counterfoil books, a register for issue of receipts, an assets register, committee meeting report books, membership register, the details of the members, staff, officers and servants inclusive of their letter of appointment, files containing the relevant Acts and Regulations.

### **Inquiry**

According to Section 10 of the VSSO Act, the Minister can refer an NGO to a Board of Inquiry in the event that any person makes an allegation of fraud or misappropriation. Section 11 of VSSO provides a structure for the Board. Minister can form a board consisting of three members from the panel that is appointed by the Minister and all six members of panel are not public officers. The Board shall submit the report on its findings to the Minister within fourteen days after the conclusion of the inquiry and upon the receipt of the report of the Board of Inquiry in terms of section; the Minister shall refer such reports to the appropriate authority for steps to be taken according to law (section 14). However, the amendment to the VSSO Act No. 8 of 1998 imposes new provision after section 14. Section 14A gives power to Minister that if he is satisfied that the fraud or misappropriation is of such nature as would affect the financial management of the organization and that public interest will suffer if such organization continues to be carried on by its existing executive committee, he can appoint an Interim Board of Management for the purpose of administering the affairs of such voluntary organization by order published in the Gazette.

### ***Ministry of Finance Circular***

The Circular issued by the Ministry of Finance imposes several restrictions on NGOs, such as prior clearance of Secretary to the line ministry or District Secretariat (according to their level) for NGO

registration, verification of the source of funding, Memorandum of Understanding for each project and INGOs were subject to more supervisions and more prior approvals (Circular No. MOFP/ERD/2007/01).

### ***Central Bank Circular for Financial Institutions***

In 2013, the Central Bank of Sri Lanka (CBSL) mandated financial institutions to obtain NGO's constitution, funding sources and their activities and related documents as required documents to open the account.

### ***The standards of NGO accounting and auditing in Sri Lanka***

Before 2005, the standards on accounting and reporting of Non-Governmental Organization (NGO) in Sri Lanka were weak, NGOs used hybrid principles, and cash based financial statements that lacked uniformity in reporting of financial statements and showed the lack of knowledge on the applicability of accounting standards. In this context, NGOs' significant influx of foreign and national funds especially after the tsunami and proliferation of NGOs in Sri Lanka raised the necessity of ensuring accountability and transparency in accounting and auditing of NGOs (SL SoRP – NPOs, 2005). Furthermore, India's Technical Guide on Accounting and Auditing in Not-for-Profit Organizations (2003) also inspired Sri Lanka in this process. In 2005, Recommended Practice for Not-for-Profit Organisations (including Non-Governmental Organisations) was firstly adopted which became operative in April 2006. It was revised in 2012 according to the International Financial Reporting Standards (IFRS) (SL SoRP – NPOs, 2012).

### **Funding for Developmental/Rural Development NGOs**

International donor funding began flowing into the country in the 1980s especially with the eruption of hostilities. At different times in the evolution of NGOs in the country, certain trends can be discerned. The onset of the war in 1983 can be considered as a watershed event that sparked the inflow of foreign aid into the country (Orjuela, 2005).

Since the 1980s, NGOs started proliferating all over the country and the modus operandi of forming NGOs differed considerably. There were organizations at national and subnational level that had strong roots in social activism and began as movements but subsequently developed into more organized bodies with a professional outlook. Some NGOs were formed with the bona fide intention of strengthening civil society and at the same time, there were instances where NGOs were set up merely to receive foreign funding (Marasinghe, 2013). During this period, the majority of professionals were attracted to the movements and NGOs for a "job" rather than for a "cause" they truly believed in such as eradication of poverty, empowerment of women, protection of human rights or fighting against bribery and corruption, etc. Some professionals perceived NGOs as good openings for a comfortable livelihood (Marasinghe, 2013).

Foreign donor funding was flown into the country with certain strings attached to them. On a more negative note, there were instances where the strategic focus of the NGOs was heavily driven and influenced by the global and regional mandates of foreign donors even to the extent of losing control of their own destiny. Although a few NGOs desperately struggled to maintain their integrity as organizations, in most instances, while negotiating with foreign donors the NGOs forced to succumb to the terms and conditions imposed by the donors which at times at the expense of losing its visionary goals (Marasinghe, 2013).

The project-oriented spirit of the newly emerged NGO culture hijacked the strong service-oriented spirit that navigated the direction of voluntary organizations. Before the donor-driven NGO culture seeped into the civil society landscape, the community way of thinking that motivated the village communities to engage in community services was a continuous process that never started with a project and ended with a project. However, after donor-funded projects gained ground in the country, the project-oriented mindset not only adversely affected the middle level management of NGOs but also negatively affected the mindset of the people receiving their services. For example, subsequent to the practice introduced by some NGOs to pay an allowance for attending training workshops, people were not willing to participate in programs of NGOs that did not provide such allowances. The foreign donor funding strategies on the one hand had an adverse influence on people associated with the NGOs and on the other hand, they resulted in creating unsustainable structures and unhealthy structural inequities within organizations. Therefore, the impact of depending on external funding was felt at personnel and organizational levels (Marasinghe C, 2013).

The Janasaviya Trust Fund (JTF) was established in 1991 as a non-profit quasi government agency with World Bank grant of US \$100 million to alleviate poverty in Sri Lanka. The JTF program included credit and entrepreneurial development, social development, community programmes, better nutrition for women and children and welfare to 1.2 million people (Canada Research Directorate, 1998). In 1997, JTF became the National Development Trust. For the first time, NGOs became partner organizations of JTF to act as intermediaries between the Trust and beneficiaries. It was in this context, credit-based participatory poverty alleviation strategies emerged (Gunatilaka, 1997).

Since 1990s when violent conflicts accelerated in the North and the East, the donors began responding to development needs in such context. There was a dramatic increase in the interest of foreign donors on conflict resolution, peace building, democracy, and human rights issues. It is estimated that during this period more than 15 percent of all development aid was channelled through non-State actors. With the change of government in 1994 and commencement of peace negotiations between the government and the LTTE, "peace aid" was considered as a priority for peace building and donors reformulated their agenda to include national integration, language reform and devolution of power. NGOs working in the field of peace building, conflict resolution, democratic restructuring and human rights were supported by Western donor agencies (Orjuela, 2005).

After the war ended in 2009, the post-war donor priorities were redirected towards economic recovery and rehabilitation of conflict-affected areas with a greater emphasis on economic growth as a stimulus for reconciliation.

Tsunami disaster that cost the lives of 40,000 people was a key turning point in the donor landscape of NGOs. It is observed that NGOs received 24 percent share of the government funding and 59 percent share of private funding for Tsunami reconstruction and recovery. NGOs were allocated US \$3.5 billion that amounts to 25 percent by international funding allocation. NGOs and the Red Cross were the largest implementers of international funds next to the government (Jayasuriya et al., 2006).

The current international donor landscape is occupied by UN agencies such as UNDP, UNICEF, WHO, UNHCR, IOM, FAO and international financial institutions such as World Bank, IMF and ADB. It also includes bilateral donors such as USAID, European Union, Swiss Agency for Development and Cooperation (SDC) and international non-governmental organizations such as Asia Foundation, Save the Children, Child Fund, OXFAM, World Vision, Search for Common Ground, etc. Almost all foreign donor funding is granted for a specific project or program with specific objectives and outcomes to be achieved within a stipulated timeframe.

The European Union has supported human rights and civil society organisations/local authorities through its thematic instruments such as European Instrument for Democracy and Human Rights (EIDHR), Civil Society Organisations/Local Authorities (CSO-LA) in fields as diverse as women and children's rights, governance, and fundamental rights (European Commission Fact Sheet, 2016).

The UNDP continues to work with diverse civil society actors focussing mainly on extreme poverty, reduction of inequalities and exclusion to protect people and the planet.

USAID in its Sri Lanka Country Development Cooperation Strategy 2020 to 2025 has identified CSOs as implementing partners. A total estimated cost of \$13.5 million have been allocated for the period June 2021 to June 2026 for projects to be implemented by CSOs. Priority areas included CSO staff capacity development, addressing democratic and economic governance, improving inter-intra CSO coordination and information dissemination, increasing joint CSO advocacy and increasing credibility and diversity of CSO ecosystem.

In August 2022, EU has released Euro 1.5 million as humanitarian aid to respond to the ongoing socio-economic crisis affecting Sri Lankan people. This grant mainly focuses on multipurpose case interventions to respond to the basic needs of the population, among which food, health, education and protection.

## **Tax exemptions for donors and receipts of grants**

Under the Inland Revenue Act, No. 10 of 2006, CSOs were required to pay an income tax of 0.3 percent on all income received from grants, donations, and contributions. Tax remissions were available under limited circumstances and at the discretion of the Inland Revenue Commissioner.

In 2017, the Inland Revenue Act (No. 24 of 2017) introduced a new tax regime. There are three different income taxes on NGOs: Taxable income, Tax on gains, and Additional tax on receipts. In the Year of Assessment 2018/2019, the taxable income of an NGO (Other than gain on realization of investment asset) was placed at 28 percent, gains from realization of investment asset at 10 percent and according to section 68 of this Act, additional Tax on the grant, donation, or contribution or in any other manner on three percent of such receipts at 28 percent.

Tax liabilities were also imposed on Trusts. Taxable income of a trust (other than gains from the realization of investment assets) was placed at 24 percent and Gains from realization of investment asset at 10 percent.

Tax liabilities applicable to Charitable Institutions were also amended. Taxable income of Charitable Institutions (Other than gain on realization of investment asset) was increased to 14 percent and Gains from realization of Investment Asset were liable to tax at 10 percent.

Tax exemptions are only available for NGOs and Charitable Institutions under limited conditions and at the decision of Commissioner of Inland Revenue Department. NGOs which engage in rehabilitation, provision of livelihood support, infrastructure facilities to displaced persons, and humanitarian relief activities and Charitable Institutions that offer institutionalized care for the sick or the needy are entitled to tax reduction and remission on additional tax of receipts and taxable income relatively (Section 68).

In 2019, value-added tax (VAT) was reduced from 15 to eight percent, benefiting organizations that provide goods and services, including CSOs that operate social enterprises.

Due to the COVID-19 pandemic, the Government of Sri Lanka decided to give a tax relief to NGOs and Trusts on Year of Assessment 2019/2020. There was a reduction of the percentage of taxes for the 2nd period (01 January 2020 to 31 March 2020) of 2019/2020 assessment and Year of Assessment 2020/2021. The taxable income of an NGO (Other than gain on realization of investment asset) was reduced from 28 to 24 percent, additional tax on the grant, donation, or contribution or in any other manner on three percent of such receipts from 28 to 24 percent, while the gains from realization of investment asset remained at 10 percent.

The taxable income of Trusts (Other than gains from the realization of investment assets) was brought down from 24 to 18 percent while the Gains from realization of Investment Asset remained unchanged at 10 percent.

No tax relief was granted to Charitable Institutions and the Taxable income of Charitable Institutions (Other than gain on realization of investment asset) continue to remain at 14 percent and Gains from realization of Investment Asset at 10 percent.

Due to the economic crisis, VAT was increased to 12 percent in June 2022 and 15 percent in August 2022. Furthermore, Social Security Contribution Levy (SSCL) was introduced. According to SSCL Act No. 25 of 2022, all CSOs are liable to pay 2.5 percent tax on 100 percent of their turnover. Inland Revenue Act (amendment) Bill dated 11 October 2022 intended to increase taxable income of NGOs and Trusts and additional tax on receipts of NGOs from 24 to 30 percent in the Year of Assessment 2022/2023.

## **CHAPTER 3: Political environment of Government – Developmental/Rural Development NGO Relations**

Over the years, NGOs have acquired expertise on diverse thematic areas such as poverty alleviation and sustainable development, environment protection, conservation, environmental justice, human rights, conflict resolution, peace and reconciliation and transitional justice, land rights and farmers' rights, democracy and good governance, health and nutrition, disaster management, sexual and gender based violence, women's rights, child rights and child protection, social action litigation, legal and policy advocacy and research, thrift and credit, rights of people in plantations, among others.

During the past 10 years, NGOs have engaged with the government lobbying and advocating for law and policy reform, addressing political, social and economic concerns, capacitating public officers and the public on subjects that NGOs have expertise. NGOs have also been instrumental in connecting citizens with the service delivery mechanisms of government in order for them to obtain relief, support services and their entitlements. The CSOs have worked with the Government on issues relating to national integration, participated in councils, taskforces, action groups and committees of the government, contracted with government on socio-economic projects and inter-sectoral partnership with Government.

There have been ad hoc coalitions among CSOs on specific issues, but viable associations are few (ADB – Sri Lanka Brief, 2013). The competition among CSOs for funding has resulted in weakened communication among CSOs operating in the same field and the duplication of activities (Verité Research, 2014 to 2020).

## **Selected examples of active engagement of NGOs with respective Government departments**

### ***Law Reform***

Between 2015 and 2019, NGOs made a significant contribution to the law reform process of the National Unity government. For example, Transparency International Sri Lanka was in the forefront and reviewed the Right to Information Bill, based on a legislative brief, and advocated for the effective implementation of the Act after it was enacted by the Parliament. The proposed National Audit Bill was also reviewed by TISL, and written submissions were presented to the policymakers.

Another notable contribution of CSOs is in the field of electoral reform. Introducing the legal requirement of presenting the National Identity Card at the time of voting was the brainchild of PAFFREL. March 12 Movement spearheaded by PAFFREL campaigned for electoral integrity to ensure clean politics and continued to advocate for finance and asset disclosure by candidates for elections. PAFFREL has made representations on electoral reforms to the Public Recommendation Committee on Constitutional Reforms.

Muslim Women's Research and Action Forum is a pioneer in advocating the rights of Muslim girls and women that played a proactive role in researching into the gaps and deficiencies in the law and proposing progressive amendments to the law. It made representations to the Committee appointed by the Cabinet to review the Muslim Marriages and Divorce Act.

In 2016 to 2017, upon the request of the Commission to Investigate Allegations of Bribery or Corruption, the Sarvodaya Shramadana Movement contributed and played a leading role in the review cycle process of the United Nations Convention against Corruption (UNCAC). Again, in 2019, Sarvodaya was requested to submit suggestions on the proposed policy for the Declaration of Assets and Liabilities in line with UNCAC and other internationally accepted standards.

### ***Policy Reform***

When the Ministry of Women and Child Affairs initiated the National Action Plan for Female Headed Household, Viluthu, as one of the leading organizations working with Female Headed Households in the North and the East, contributed to the public consultations on the action plan (webpage of Viluthu).

Plantation Rural Education and Development Organization (PREDO) engaged with the "Think Tank Committee" of the Upcountry New Villages, Estate Infrastructure and Community Development Ministry (Ministry of UNVEICD) and advocated for amending Section 34 of the Local Government Act that excluded the plantation sector from the mainstream development work of the government.

For many years, PREDO has advocated for visibility of the plantation sector in the mainstream development agendas of successive governments. These advocacy initiatives resulted in the government's decision to establish four new Pradeshiya Sabhas in the Nuwara Eliya district and the amendment to Section 33 of the Pradeshiya Sabha Act and the enactment of the Plantation Development Authority Act in 2018 that brought the plantain area within the purview of government administration, service delivery mechanism and development programs.

PREDO created the concept of recognizing labor migrants as "Development Partners in Migration" which found expression in the National Policy on Migration drafted by the Foreign Employment Policy Reform Committee of the Ministry of Foreign Employment.

### ***Forging linkages between citizens and public servants***

CSOs have played an intermediary role in connecting citizens with government institutions and government officers to obtain their services and resolve problems. For example, Law and Society Trust mediated between the farmers and Forest Officers, Wildlife Officers and Colonial Officers attached to the Divisional Secretariats and helped 18,302 families to obtain land permits.

In 2018, through CSO advocacy interventions relating to land and housing rights of plantation workers title deeds were given to 400 owners of model houses.

Subsequent to the enactment of the Right to Information (RTI) Act, many CSOs began educating the public on using the provisions of the RTI Act to seek remedies for any difficulties or injustices they have encountered or experienced. Through the interventions of CSOs (such as TISL, Viluthu, PAFFREL, and LST), people were able to obtain information from the government authorities on important subjects that have a direct bearing on their lives such as disaster management, land construction, Samurdhi, water supply and sanitation, employment, education and school administration, health, corruption, and elections.

Sri Lanka Centre for Development Facilitation (SLCDF) has empowered Livestock Cooperatives by providing them training on documentation to receive government grants.

### ***Educating policy makers and public servants***

March 12 Movement under the leadership of PAFFREL has educated 1,000 politicians in 25 districts on Sustainable Development Goals.

Centre for Environmental Justice (CEJ) continues to conduct capacity building programs for public officers on Environment Impact Assessments (EIA) and Initial Environment Examinations (IEE).

Women's Development Centre (WDC) is a leading organization that often receives requests from district and divisional level agencies to conduct training programs on their subject specialities such as SGBV, women's rights, child rights and rights of disabled persons. In 2016, the National Child Protection Authority instructed Suriya Women's Development Centre (SWDC) to monitor the court proceedings of the widely known Vidya Sivaganathan rape case (webpage of WDC).

## **Selected examples of the restrictions on NGO activism**

It is also important to highlight those NGOs with mandate on human rights, conflict resolution, peace and reconciliation, inter-ethnic and inter-religious harmony and empowerment, and those that had a presence in the North and the East, were subjected to more scrutiny than those organizations that focussed on development and social welfare related subjects.

### ***Freedom of speech and expression***

The Right to Information Act was enacted to ensure "freedom of speech and expression, and media freedom. Under the law, every public authority is required to appoint an Information Officer to provide information to the public on request" (UPR Report, 2017).

In the aftermath of the Easter Sunday Attack, the intelligence apparatus has carried out surveillance operations during emergency curtailing rights and freedoms of citizens. A ban was also imposed on face coverings such as the burqa, niqab, and full-face helmets for reasons of national security and public safety. (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2019).

The State's restriction of hate speech included insults to religion or religious beliefs was enforced by the police ordinance and penal code. Media and journalists also were obliged to comply with this (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2020).

NGOs have been requested to "minimize" programs such as women empowerment, child rights, youth training, human rights, land rights training, formulation and strengthening of self-help groups and required to follow guidelines from the District Secretariat on programmes (Sri Lanka Brief, 2020).

The UN High Commissioner's report on human rights stated that the International Covenant on Civil and Political Rights (ICCPR) Act which prohibits incitement to hatred, has also been misused in a discriminatory manner to arrest or detain people for peacefully expressing their opinion. Furthermore, the "Special Rapporteur on Freedom of Religion or Belief has observed that the ICCPR Act has ironically become a repressive tool used for curtailing freedom of thought or opinion, conscience and religion or belief" (A/HRC/46/20 Report, 2021, para.35).

## ***Freedom of Association***

The civic space that was created in 2015 enabled CSOs to constructively engage with the Government and contribute to dialogues and discussions on law and policy reform in a significant way. During this period, CSOs were also actively engaging with the visits of UN Human Rights Working Groups such as Promoting reconciliation, accountability and human rights in Sri Lanka (A/HRC/40/23, 2019).

In 2017, the NGO Secretariat “was assigned to the Ministry of Coexistence, Dialogue and Official Languages (MNCDOL), thus removing it from the Ministry of Defence and ensuring that its oversight was assigned to a civilian authority” (UPR Report, 2017). In 2017, the circular of MNCDOL requested CSOs to send documents relating to administration, financial matters and programmes. It was specified that failing to do so would result in such organization being categorized as an “inactive organization” (Circular no. MNCDOL/NGO/MON/04/17).

In 2019, the Government of Sri Lanka informed the Working Group on Enforced Disappearances that it had taken measures to prevent any surveillance and intimidation of persons, including members of civil society, human rights defenders and journalists (A/HRC/42/40/Add.1, 2019, page 13).

However, following the Easter Sunday attack and the presidential elections in 2019, reports of harassment or surveillance of human rights defenders and victims of human rights violations have increased (A/HRC/43/19 Report, 2020). According to UPR Report 2020, more than a dozen CSOs working on documentation or litigation relating to accountability and disappearances issues have reported that agents claiming to be from the security agencies have visited their offices and requested administrative details of the organizations, lists of staff, funding sources and external travel. There were also reports that the police question the motives of Sri Lankans who visited Geneva for the sessions of the Human Rights Council either at the airport or at their residences upon returning to the country. In its concluding remarks, the High Commissioner highlighted that the space for civil society and critical and independent media had widened in recent years and stressed the importance of protecting that space. “The High Commissioner urged the authorities to end immediately the intimidating visits by State agents and all forms of surveillance and harassment of and reprisals against human rights defenders, social actors and victims of human rights violations and their families” (A/HRC/43/19 Report, 2020).

With the change of Government in 2020, the Sectoral Oversight Committee on National Security announced plans to regulate finances of NGOs and investigate NGOs registered under the previous (2015 to 2019) government and the NGO Secretariat was again brought under the purview of the Ministry of Defence. The TID, CID, and other state security services made frequent visits to the offices of CSOs and participated in programs organized by CSOs and the intelligence officers have questioned about the details of the staff, source and amount of funding and the activities

implemented by the CSOs (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2020). Then in 2021 the “government moved the NGO Secretariat, which handled government oversight of NGO operations, including inspections of NGO finances, from the Ministry of Defence to the Foreign Ministry” (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2021).

The UN High Commissioner for Human Rights reports that as of December 2020, more than 40 CSOs have lodged with the OHCHR reports of harassment, surveillance and repeated scrutiny by a wide range of security agents such as Criminal Investigation Department, the Counter-Terrorist Investigation Division and the State Intelligence Service. These CSOs were questioned about the administrative details and the activities of their organizations and requested information on staff, including their personal contact details, donors and funding sources. There were also reports relating to questioning of the whereabouts of the relatives of civil society representatives living abroad. The Special Procedures of the Secretary General have also received similar allegations of surveillance and reprisals. Although the Government has stated that the objective of such surveillance is to prevent violent extremism, the High Commissioner has expressed its concern that this has created a chilling effect on civic and democratic space and leading to self-censorship (A/HRC/46/20 Report, 2021).

While acknowledging that the Government had been successful in holding Parliamentary elections in August 2020 amidst the COVID-19 pandemic, the High Commissioner’s report states that the pandemic had also been used to justify excessive or arbitrary limits on freedom of expression and association. This situation got aggravated when institutional arrangements for the oversight of NGOs changed and laws on counter-terrorism or money laundering were used to repress legitimate activities. It should be noted that the National Secretariat for Non-Governmental Organizations that supervises and monitors the registration and operations of NGOs was shifted from a civilian ministry to the purview of the Ministry of Defence and its intelligence arms (A/HRC/46/20 Report, 2021, para.32, para.33).

In 2020, the High Commissioner raised concerns about the proposed revisions to the VSSO Act which regulates the operations of NGOs especially those reforms that are aimed at controlling access of NGOs to foreign funds. The High Commissioner highlighted that any legislative reforms must comply with international legal obligations and constitutional provisions of Sri Lanka and protect human rights. It was further emphasized the need to strengthen an enabling environment for civil society instead of unreasonably restricting their activities and access to resources. (A/HRC/46/20 Report, 2021, para.34)

In its concluding remarks the High Commissioner observed that in recent years the civil society space including the space enjoyed by independent media has been rapidly shrinking and reiterated that the authorities must refrain from imposing further restrictive legal measures on legitimate civil society activity. The High Commissioner further urged the authorities to put an end to all forms of

surveillance immediately, stop intimidating visits by State agencies and harassing human rights defenders, lawyers, journalists, social actors and victims of human rights violations and their families. (A/HRC/46/20 Report, 2021, para.55)

The report of the High Commissioner issued in April 2022 reiterated that the pattern of surveillance and harassment of civil society organizations (CSOs) and human rights defenders and victims had continued particularly for those in the North and the East. The Government stressed that complaints relating to intimidation, monitoring and surveillance should be submitted to national mechanisms. (A/HRC/49/9 Report, 2022, para.27).

The High Commissioner observed that the police had visited the offices or homes of staff members and questioned them and asked them to divulge the contact details of staff, donors, foreign contacts of staff members, their travel history and the passwords of their social media accounts. For example, the Terrorist Investigation Division (TID) of the police had questioned the staff of at least four organizations in the Northern Province for so called ‘inquiries’ and requested them to submit information relating to their funding organizations and beneficiaries. The Government had asserted that such scrutiny was necessary to combat money laundering and financing of terrorist activities. (A/HRC/49/9 Report, 2022, para.28).

The requirement of obtaining the prior approval of the district secretary and activities that do not involve material service delivery such as psychosocial support has been discouraged. The banks have also informed the CSOs that they require prior approval from the district secretary before releasing the funds (A/HRC/49/9 Report, 2022).

In March 2021, the Government issued new “de-radicalization” regulations that permitted arbitrary administrative detention of individuals for up to two years without recourse to legal proceedings supposedly for the purpose of “rehabilitation” in relation to violent extremism. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms warned that the regulations might jeopardise the rights and freedoms of persons without due process guarantees. The CSOs have obtained a stay order on their implementation and the Supreme Court is deliberating a fundamental rights petition filed against the regulations (A/HRC/49/9 Report, 2022).

### ***Freedom of assembly and unrestricted mobility***

In 2017, the “government decided to review and repeal the PTA and replace it with new counter-terrorism legislation that is compatible with international human rights standards” (UPR Report, 2017).

“On 30 August 2018, the OMP hosted an event to commemorate the International Day of the Victims of Enforced Disappearances. The event marked the first time a Sri Lankan State institution

commemorated the missing and disappeared. Over 600 members of families of missing and disappeared persons from across the country, civil society organizations, Members of Parliament and religious dignitaries attended the event” (A/HRC/42/40/Add.1 Report, 2019).

The emergency regulations that were promulgated “following the Easter Sunday attacks, granted the security services wide powers to detain and question suspects without court orders for up to 90 days” (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2019). The government authorities used COVID-19 health guidelines in some instances to prevent CSOs’ activities. The report also indicated a disproportionately high number of military checkpoints in the Northern province hindering freedom of movement and contained complaints of discriminatory treatment or harassment during security checks, particularly for women (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2021).

The UN High Commissioner’s report released in April 2022 cited two cases where the police obtained injunctions to prevent victims’ groups, CSOs and politicians from holding peaceful events and commemorative activities (A/HRC/49/9 Report, 2022).

### ***Right to information and participation***

Since 2015, CSOs have been exercising a certain level of freedom to engage with government’s initiatives to protect and promote human rights, democracy and peace and reconciliation through transitional justice. In 2016, a Consultations Task Force, a group of civil society representatives appointed by the Government of Sri Lanka, carried out national consultations on reconciliation mechanisms (UPR Report, 2017).

CSOs played a proactive role in reviewing the Right to Information Bill and proposing amendments to the bill and making the Right to Information Act of 2015 a living document by advocating for the effective implementation of the Act. From 2016 to 2018, TISL established RTI Hubs and thematic RTI CSO Coalitions. TISL also facilitated awareness raising and capacity building on RTI through handbooks and other publications and educated the subnational level and grassroots level organizations on the Right to Information Act.

The Ministry of Disaster Management and Human Rights that was established in 2006 appointed an advisory committee to the Minister of Human Rights where civil society actors were invited to engage with key government stakeholders, to raise concerns and initiate public policy formulation (UPR Report, 2008).

A National Action Plan for the Promotion and Protection of Human Rights (NHRAP), a principal pledge, has been formulated and CSO had nearly equal representation on the drafting committees (UPR Report, 2012).

During the UPR 3rd cycle, the government noted that it has no policy on CSO to stifle criticism, activism, or dissent. However, the government did not condone such attacks. An Advisory Committee was established to address proposal No. 88 of the 100 days' work of the ex-president Maithripala Sirisena, and it submitted an action plan on removing hindrances to the work of CSOs.

"It appears that COVID-19 measures including quarantine rules and other laws have been used to limit demonstrations over different economic and social issues and in some cases to arrest and charge protesters, even though the protests were peaceful" (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2020).

"In June 2021, a police media spokesperson had announced that the Criminal Investigation Department (CID) had formed a special team to patrol cyberspace and arrest those who spread "false news" on social media about COVID-19 or other sensitive issues (Waravita, 2021). The Government has also informed OHCHR that it is drafting a new law on "Protection from Online Falsehoods and Manipulation" (A/HRC/46/20 Report, 2021).

"In its concluding observations, the High Commissioner encouraged the Government to take careful account of the observations made by UN Human Rights Mechanisms on laws of this kind which can seriously impact the exercise of the rights to freedom of expression, opinion and information, and to ensure full consultation with representatives of civil society and independent media in the formulation of this law" (A/HRC/49/9 Report, 2022).

The High Commissioner has expressed concern by the Government's public responses to human rights advocacy by well-known civil society representatives.

## CHAPTER 4: Findings and Recommendations

### **Finding #1: Influence of Social, Economic, Political and Cultural Country Context**

The analysis of the origin and evolution of CSOs clearly illustrates the way in which social, economic, political, and cultural factors have influenced the emergence, progression, and at times the regression of CSO landscape in Sri Lanka from the colonial era to the present time.

Even though Ceylon gained independence from British imperialism, the socio-economic, political, and cultural legacy left behind by the colonial masters adversely impacted on the lives of the most marginalized and impoverished communities of colonial Ceylon and which were perpetuated unabated into the post-independence era. The Portuguese, Dutch and the British used religion tactically as an instrument to consolidate their power, even using coercive means to achieve their goals. The so-called "political elite" class that enjoyed the privileges and honors of the colonial masters alienated themselves from the ordinary masses who were socially, economically, politically

and culturally marginalized and ostracized. For example, the British colonial masters were of the view that only the “elite class” is capable of exercising their franchise in an intelligent and responsible manner.

The post-independence political leadership failed to resurrect the country from the divisions created under the imperial rulers and find viable solutions to the grave socio-economic hardships and cultural intimidations experienced by the masses. The education system introduced during the colonial rule was unsuccessful in ensuring equal access to quality education that transcended all ethnic, religious, social and geographical barriers that enabled successive generations to reap the benefits of education to uplift their status in the larger society at par with the most affluent “class.” The 1971 insurrection, the 1988 to 1993 southern insurrection, the 33-year war and the Aragalaya speak volumes about the unresolved socio-economic, political, and cultural divisions and complexities created by the successive governments of the post-independence era and the failed “development models.” Last but not least is the unequal distribution of social, economic and educational entitlements that was heavily influenced by the “newly rich class” which emerged in the post 1977 open market economy.

The social contract between the rulers and the ruled has been betrayed for 74 years at the cost of losing hundreds and thousands of precious human lives mostly youth, depriving thousands of people of a decent life to satisfy their basic human needs, widening the gap between the haves and have nots, widening the class system, demeaning the value of “democracy” to its lowest level, and dishonouring the sanctity and grandeur of rule of law. The situation blatantly violated the rights and freedoms of citizens of all ages, ethnicities and religions enshrined in the Constitution, destroyed the ecosystem and the irreplaceable damage caused to the natural environment, tarnished the integrity of financial governance accumulating wealth by the powerful and imposing immense suffering on the powerless, deceived and misled the sentiments of masses by promoting “patriotic,” “nationalistic,” “fundamentalist,” and “extremist” ideologies to gain petty party political mileage, politicized the public service, public institutions and public servants and paralyzed the public service delivery mechanisms to quote a few from a very long list. This is the predicament of a country that has had to endure infinite suffering for 74 long years! What have the ordinary citizens done to prevent and mitigate the harm and damage to humans, animals, fauna and flora and the social, economic, and political institutions? It is in this context that the legal and political environment of CSOs emerged and evolved largely over seven decades. The thematic areas of CSOs clearly demonstrate that the CSOs have stepped in and occupied the space created by the dysfunctional governance systems of 74 years to prevent harm and damage and to repair and redress the harm and damage caused to humans, animals, fauna and flora and the social economic and political structures and processes. Undoubtedly, if CSOs did not occupy the socio-economic, political, and cultural landscape of the country, Sri Lankan scenario would have been a different one.

## Recommendations:

***Learning from the lessons of the past.*** History is a vital aspect of forging the present as well as the future. The CSOs operate within a highly complex and polarised socio-economic, political, and cultural environment that has evolved over many decades influenced by diverse causes, factors and conditions. The lessons from the past will provide valuable insights, guidance in understanding the present scenario, making the right decisions, accordingly envisaging, and planning.

***Breaking the cycle of perpetuating the failures and mistakes of the past.*** The historical context of the evolution of CSOs is vital in comprehending the dynamics and the root causes of the issues connected with the thematic areas that the CSOs have been predominantly working on namely: poverty alleviation and sustainable development, human rights litigation, research and advocacy, conflict resolution, peace and reconciliation and transitional justice, inter-ethnic and inter-religious harmony, women's rights, child rights, SGBV and gender issues, democracy, good governance, conflict related trauma and rehabilitation, environmental protection, conservation and justice, thrift and credit, land rights and farmers' rights, empowerment of protection of rights of plantation workers, networking of CSOs, child rights, social welfare development, youth engagements and policy research etc.

The journey of CSOs provides ample examples of the successes, failures, shortcomings, obstacles, and challenges encountered by CSOs while making interventions to uplift the lives of socially, economically, politically, and culturally marginalised and ostracised rural and urban communities in a highly charged and polarised socio-economic and political environment. Since many of the first generation CSO leaders and workers have retired or are on the verge of retiring, it is important to keep this historical memory and perspective intact of the journey traversed by the CSOs over a century by constantly engaging the second generation with the first generation.

### **Finding #2: Inter-ethnic, inter-religious, and inter-cultural understanding and coexistence**

History also provides ample evidence on ethnic, religious, and cultural dimensions that have shaped the evolution of CSOs from the time of the colonial rule to date. The CSO engagement and activism have contributed to inter-ethnic, inter religious, intra-religious and intercultural understanding and peaceful coexistence through proactive and preventive interventions. These interventions have defused ethnic and religious tensions which otherwise could have led to violent conflicts. At the same time, Sri Lankan people in general, and Tamil and Muslim people in particular, have suffered at first-hand the deadly consequences of "extremist" and "nationalistic" agendas.

Propagation of "racist," "nationalistic," and "extremist" religious ideologies and indoctrination of religious and fundamentalist ideologies and belief systems have provided ammunition for people

with party political agendas to manipulate the citizenry in two different ways. First, such ideologies have been used to manipulate the Sinhala Buddhist voter base *vis a vis* the minority communities and gain political mileage and consolidate party political power. Second, such ideologies have also been used in a manipulative way to ignite not only inter-ethnic and inter-religious divisions, mistrust and tensions but also intra-ethnic and intra-religious divisions, disunity, insult and ridicule. Both manipulative approaches have been used for party political advantage to alienate people from each other rather than bringing diverse ethnicities and religions together. This trend has seeped into the CSO landscape producing detrimental results on the engagement of CSOs with the communities they serve.

## Recommendations

***Comprehending the polarized and divisive environment and power dynamics.*** The CSOs working with and for communities representing all ethnicities and religions need to correctly comprehend and assess the ever-changing highly polarised and divisive environment and power dynamics that control or influence the external environment in which they operate. It is equally important for CSOs to understand that their own internal organizational environment and culture is a microcosm of the external country environment that they operate. As such, CSOs should take all precautions to safeguard the internal organizational culture from succumbing to the ethnic or religious extremism that is somewhat dominant in the larger society if they are to play a catalytic role in serving the communities without being entangled in the power dynamics of the extremely divisive and polarised environment.

***Honoring ethnic, religious and cultural identities.*** There is a strong trend towards taking the country towards a multi-ethnic, multi religious and multi-cultural nation-State influenced by Western ideologies (Wickramasinghe, 2006). To a certain extent these concepts have downplayed the importance of nurturing an environment from individual to community levels that is conducive for Sinhala Buddhists, Sinhala Christians, Tamil Hindus, Tamil Christians, and Muslims to freely practice and preserve their ethnic, religious, and cultural identities without undue interference, influence and indoctrination. The notion of a multi-ethnic, multi-religious and multi-cultural nation-State that works for the wellbeing of all would become a reality only to the extent the country has recognized, preserved, and upheld the rights and freedoms of all ethnicities and religions. If people belonging to different ethnic and religious groups were uprooted from their own identities, the notion of a “multi-ethnic, multi-religious and multi-cultural” nation-State would become merely rhetoric. Therefore, the CSOs need to operate within a space that allows communities to freely practice, nurture, and preserve their ethnic, religious, and cultural identities.

### **Finding #3: Resilience of CSOs beyond a crisis**

The historical evolution of CSOs also demonstrates that CSOs have been a bridge between the State and the citizenry when the country was faced with natural and man-made disasters. There have been instances where CSOs founded in the midst of natural or manmade crises and could not survive beyond the specific crisis. The CSO community is yet to ascertain how many CSOs have withered away during the COVID-19 pandemic and the current economic crisis. The CSOs that were established from the 1990s to 2009 to respond to the HIV/AIDS pandemic, tsunami and war can be cited as examples. It has been revealed that issues relating to HIV/AIDS and sex workers have surfaced in the post-COVID scenario against the backdrop of the present economic crisis, and a few organizations have surfaced to respond to these newly emerging issues. This trend of forming CSOs to address contemporary issues will continue in the CSO landscape with the current economic, political, social and cultural crisis and beyond.

### **Recommendation**

***Self-appraisal of organizational capacity.*** At this critical juncture in the history of the country and the CSO landscape, it is imperative that CSOs take a serious stock of the post pandemic socio-economic and political landscape. They should engage in a self-appraisal of its organizational capacity and challenges, and forge strategies and approaches to make CSOs resilient beyond the current crisis to avoid them becoming irrelevant, and important thematic area/s to become obsolete or insignificant in the larger societal landscape beyond a crisis situation.

### **Finding #4: Diversity and complexity of the country landscape and CSO Landscape**

The post-COVID-19 world has created unprecedented challenges and issues that many of the CSOs have not encountered before. Sri Lanka faced the COVID-19 pandemic, while trying to resurrect the country from the deadly Easter Sunday Attack of April 2019. The current economic crisis that has triggered high inflation, increase in essential food items, power scarcity and fuel shortages is phenomenal. The catastrophic consequences of the economic crisis have raised serious concerns about the economic and social rights of people as millions have sunk into extreme poverty. Humanitarian assistance is flooding into the country to lift the people impacted by the crisis out of it. In a situation where the efficiency and accountability of the State-owned service delivery mechanism has been questioned, the CSO infrastructure is being heavily relied upon by UN agencies, INGOs and the corporate sector to channel humanitarian funds to the people adversely affected by the economic crisis.

The diversity and outreach of CSO on the thematic areas they cover, the geographical outreach and the institutional capacity of CSOs have created somewhat of a hierarchical structure in the CSO landscape. The capacity of NGOs also differs significantly based on the number of years of their

existence as a NGO, the infrastructure they have managed to build over the years, the extent to which the organization has been successful in professionalising their approach to program planning, administration, financial and human resource management; and, regarding their reputation and integrity which they have earned over the years through their performance in the field.

Significant inequities and variations exist among national, subnational and community-based organizations relating to physical infrastructure, human resources, programme and financial management systems, organizational structures, and even in relation to organizational culture. Only a few national organizations have a physical presence at the district level and often national NGOs mainly rely on district level NGOs and divisional level CBOs to implement their program and project portfolios. The foreign donor agencies also disburse funds through three channels: first, national NGOs with a physical presence at subnational levels; second, national NGOs without a physical presence at the subnational levels; third, directly through district level NGOs. This centralized intervention mechanism to a certain extent offered practical and workable solutions during the armed conflict because the subnational and community level organizations had to operate under extremely challenging circumstances and the presence of national level organizations gave some confidence and strength for the subnational level organizations to cope up with the challenges produced at the local level.

The NGOs with a physical presence at the subnational level and district level NGOs and divisional level CBOs at the subnational level are the entities geographically closest to the impoverished communities. Therefore, in the post-COVID-19 context, these NGOs at national, district levels, and divisional level CBOs have a catalytic role to play in strengthening the capacity of individuals and communities.

## **Recommendations**

***Contextualizing and conceptualising the operational landscape.*** The old patterns of interventions will not work in extraordinary circumstances. The strategies and approaches that worked in a war situation or a natural disaster such as tsunami will not work in a crisis of this magnitude. Therefore, CSOs need to have an accurate understanding of the severity of the crisis and the complex facets of the present economic crisis, and carryout a critical assessment of the constituents they serve and understand the depth and breadth of the economic and social hardships experienced by them. If CSOs are to make their presence relevant and meaningful to the communities, they need to re-imagine and re-image their organization's profile and mandate, as well as their strategies, approaches, interventions, and outreach.

***Hierarchical structure of CSOs, inequities, variations and ethical dimensions.*** The national NGOs as well as foreign donor agencies using the infrastructure of sub-national NGOs, CBOs and informal groups are accountable to their partners to clearly acknowledge and give credit to partners'

contributions in achieving programme outcomes. The partner organizations at sub-national and grassroots level should not feel that their profile and services have been exploited to the advantage of the national NGOs. The national NGOs, when interacting with sub-national level organizations, community-based organizations and village groups, need to consider the latter as equal partners and honor their dignity and integrity and move away from Colombo-centric attitudes, perceptions and arrogance. It will be in the best interests of CSOs to engage in internal reflections and engagements to enhance their organizations' accountability standards and mechanisms that would enhance the integrity of the governance systems, processes and procedures in relation to programs and finances. CSOs need to make a conscious effort to promote collective social activism transcending class, caste and other social barriers.

***Modelling transparency, accountability and consensus-oriented decision-making.*** CSOs as organizations constructively challenging the actions and inactions of State power, authority and functions need to model legally and ethically acceptable standards, procedures, and processes of governance within their organizations that uphold transparency, accountability and consensus-oriented decision-making. It will be in the best interests of CSOs to engage in internal reflections and engagements to enhance their organizations' accountability standards and mechanisms that would enhance the integrity of program and financial governance.

#### **Finding #4: Making the legal and regulatory framework more draconian and complicated**

Sri Lanka has seen many twists and turns in the legal and regulatory landscape and NGO-Government relationships. The influence of socio-economic and political factors has made the NGO legislative and regulatory mechanism more stringent, cumbersome, bureaucratic and intimidating. Between 1996 to 2022, depending on the external environment, the NGO Secretariat has been brought within the purview of multiple ministries: Ministry of Social Service, Ministry of Defence, Ministry of Dialogue, Co-Existence and Official Languages, Ministry of Foreign Affairs and State Ministry of National Security and Disaster Management.

It is emphasized that the original version of the VSSO Act and the subsequent amendment to the same have enumerated explicit and elaborative provisions relating to the procedure to be followed in the event of an allegation of fraud or misappropriation of an NGO is brought to the notice of the Minister, to appoint a Board of Inquiry to investigate such allegations and upon receipt of the report if the Minister is satisfied that the fraud or misappropriation is of such nature as would affect the financial management of the organization and that public interest will suffer if such organization continues to be carried on by its existing executive committee, he can appoint an Interim Board of Management for the purpose of administering the affairs of such voluntary organization by order published in the Gazette. Such is the severity of the existing legal and regulatory regime prescribed by the VSSO law.

For many years, the representatives of NGOs and the relevant government officials have discussed and debated the scope and limitations of the NGO legal and regulatory regime. There have been instances in which some consensus was reached between the NGOs and the government; attempts to make the law more draconian have been withdrawn, and there have been instances where such discussions had come to a deadlock without reaching any consensus. The discussion on the legal and regulatory regime continues to date and the outcomes of the current discussions yet to be seen.

The need to make the NGO legal and regulatory mechanism more stringent has been justified in the interests of “national security” and prevention of “money laundering.” Table 3 below highlights the legal and regulatory framework governing the subject of “national security” and “money laundering” including the purpose enumerated in the preamble of the statutes, the regulatory authority established under the statute and the ministry-in-charge. It is emphasized that the two ministries, namely the Ministry of Finance and Ministry of Defence occupy the highest position in the ministerial hierarchy.

Table 3: Legal and regulatory framework governing “National Security” and “Money Laundering”

Name of the statute	Object of the statute	Regulatory authority	Ministry in charge
<b>Prevention of Money Laundering Act, No. 5 of 2006</b>	Providing the necessary measures to combat and prevent money Laundering	Financial Intelligence unit	Ministry of Finance
<b>Financial Transactions Reporting Act, No. 6 of 2006</b>	Providing for the collection of data relating to suspicious financial transactions and prosecution of the offences of money laundering and the financing of terrorism	Financial Intelligence unit	Ministry of Finance
<b>Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005</b>	Giving effect to the Convention on the suppression of Terrorist financing	Financial Intelligence unit	Ministry of Finance
<b>Prevention of Terrorism (temporary provisions) Act, 48 of 1979</b>	For the prevention of acts of terrorism Sri Lanka, the prevention of unlawful activities	Terrorist Investigation Department (TID)	Ministry of Finance
<b>Foreign Exchange Act, No. 12 of 2017</b>	Promoting and regulating foreign exchange in the central bank as the agent of the government	Central Bank	Ministry of Finance
<b>Inland Revenue Act, No. 24 of 2017</b>	Providing for imposition of income tax	Inland Revenue Department	Ministry of Finance

Despite the existing strong legal and regulatory mechanisms to tackle “national security” and “money laundering” issues, arguments in favor of a more stringent NGO legal and regulatory mechanism to respond to the two issues is incomprehensible. If the argument to enact more stringent laws to regulate, control, and monitor NGOs for ensuring national security and actions against money laundering, such arguments make the legality, validity and relevance of existing laws to address the issues of national security and money laundering and the investigation obsolete and redundant.

It is reported that the first draft of the Constitution that was submitted to the Minister of Justice, Prison Affairs and Constitutional Reforms by President’s Counsel Romesh de Silva in October 2022, contains a provision under “national security” which stipulates *inter alia* “To establish a National Security Council to formulate and implement a national defence strategy and to regulate organizations operating with foreign funds and to regulate inward remittances.” (Sunday Times, 16 October 2022)

## Recommendations

***Constructive environment for CSO work as “development partners”.*** The existing NGO legal and regulatory mechanism as it confers the relevant authorities with extensive powers to supervise, inquire, monitor, and take drastic action to curtail the operation of NGOs alleged to have committed offences of fraud and misappropriation. The proposals to make the legal and regulatory framework more draconian need to consider the catalytic role played by NGOs as “development partners.” The legal and statutory framework needs to create a conducive environment that would strengthen services rendered by NGOs without fear and intimidation. It is equally important that the NGO regulatory mechanism does not override the legal regime under other statutes and make other laws obsolete.

***Unlawful harassment of individuals and organizations.*** The lawmakers need to avoid making baseless and unjustifiable statements or insinuations that NGO activities need to be monitored on the grounds of “national security” and “money laundering.” If the authorities have relevant and reliable evidence to prove that any NGO or a person affiliated is alleged to have committed any offence relating to “national security” and “money laundering,” such allegations should be investigated and prosecuted and tried under the laws mentioned in the table instead of using such statements and insinuations to destroy, malign and insult the organizations and the individuals.

## Finding #5: Value of preserving the space for diverse collective initiatives

The multiple registration procedures for statutory compliance have created cumbersome, complex, and time-consuming documentation workload for the CSOs and raises serious questions about the efficacy and usefulness of the legal procedures to achieve the purpose for which they have been spelt

out. The rationale for establishing CSOS differ in terms of mandate and operation and accordingly they decide the type of law under which they register to derive legality and legal personality. It was observed that CSOs have been registered under the Societies Ordinance, Trusts Ordinance, Cooperative Societies, Companies Act, Microfinance Act and by Act of Parliament. Each statute has been enacted to achieve specific objectives and they stipulate the requirements and procedures for the CSOs to follow under each legal regime to derive legality and legitimacy.

In addition to the original statutory registration under which the CSOs have derived its legality and legitimacy, they are also required to register under the Voluntary Social Services Organization Act that lays down additional statutory requirements for compliance. Apart from these national level legislative requirements, CSOs providing institutional care for destitute elders and persons with disabilities are required to register with the Provincial Department of Social Services and CSOs providing residential care facilities for children in need of care and protection are mandated to register with the Provincial Department of Probation and Child Care Services. On top of the national and provincial level statutory registration requirements, CSOs are required to register with the district and divisional secretariats for administration purposes. The administrative requirements have been pronounced by way of circulars and guidelines issued by the President's Secretariat, Ministry of Finance, NGO Secretariat, Company Registrar etc.



## Recommendations

**Legality and legitimacy for CSOs.** The multiple registration procedures for statutory compliance must not vitiate the rationale and justification given to each statute such as Societies Ordinance, Cooperative Societies Ordinance, Trusts Ordinance, Companies Act and Microfinance Act. Depending on for what purpose an organization is to be established, CSOs should have the freedom to decide under which law they intend to derive its legal personality. The NGO regulatory legal regime must at all costs abstain from vitiating the legal basis of statutes that allow people to come together collectively for the purpose of furthering diverse social, economic, or cultural causes that would uplift the lives of people, animals, flora, and fauna. The current legislative framework under the Societies Ordinance, Cooperative Societies Act, Trusts Ordinance and Companies Act provides a constructive and diverse legal regime for people to choose from to derive legality and legitimacy for their collective action.

**Promote collective spirit of philanthropy, altruism and compassion.** The most opportune time has come for us to resurrect the human value systems that once governed the lives of individuals, communities and organizations of our country but now buried beneath the pile of rupees and cents culture. The people need to be motivated and inspired to open their hearts and minds to rediscover their true virtues such as love, compassion, altruism, generosity but also nurture a fertile soil for people to sow seeds of virtue. The ongoing deliberations on forging the legislative and regulatory framework need to understand the importance of creating a fertile ground for people to come together to bring out the best of humanity through CSO activism and such legislation must not be drafted based on the worse characteristics of humanity.

### Finding #6: Funding for Developmental/Rural Developmental NGOs

The country is moving towards forging and implementing ultra-capitalist development policies and models backed by neoliberal ideologies. Repercussion of these on the poor and the marginalized communities is yet to be seen. In the interim, the damage control will have to be handled by the NGO sector similar to other manmade and natural disasters. The donors are also to a certain extent influenced by the ultra-capitalist policies, models and ideologies and have limited their funding assistance to CSOs that respond to hardcore economic, social, and political issues. For example, extending financial support for public interest litigation that challenges the State action or inaction detrimental to the socially, economically, and politically powerless and marginalised people and hardcore environmental issues is no longer a priority for mainstream development donors.

The Corporate Social Responsibility (CRS) projects implemented by corporate entities with the support of mainstream development donors had been symbolic and could not sustain due to sustainability issues. Only those corporate entities that incorporated the sustainability standards of the Global Reporting Initiatives (GRI) have managed to sustain their CSR portfolio. In the backdrop of

the COVID-19 pandemic, the economic crisis and Aragalaya, the concept of “socially responsible capitalism” or “conscious capitalism” has also emerged to mitigate the damage precipitated by the inequities and equalities of the existing capitalist economic policies.

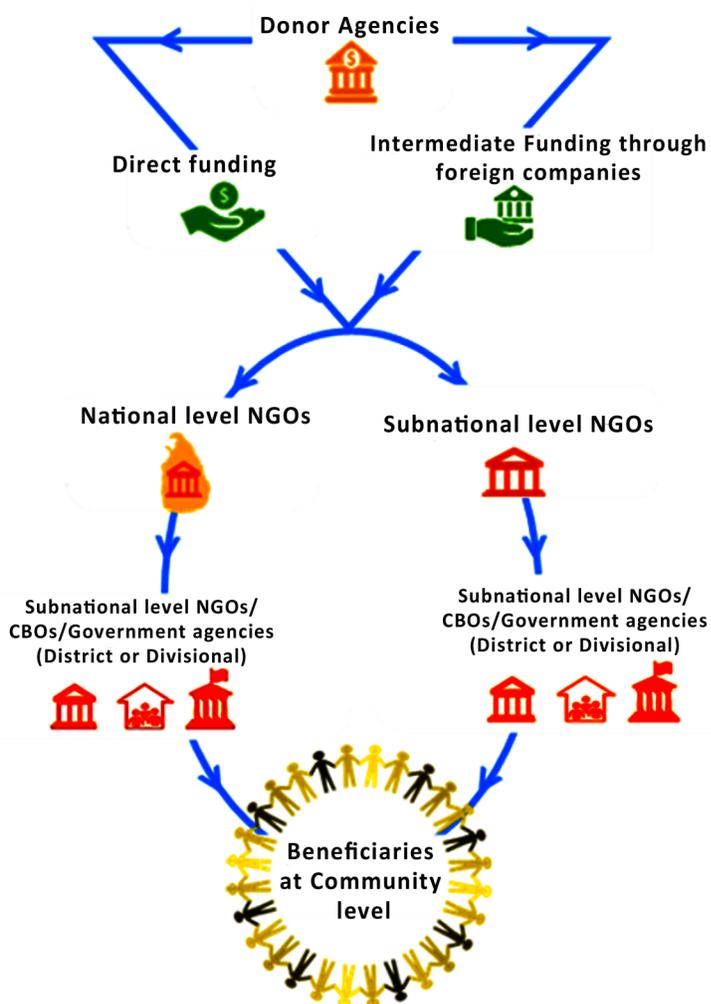
The mainstream donor landscape began shrinking after the war ended and World Bank upgraded Sri Lanka as an upper middle-income country. According to the records maintained by the NGO Secretariat from 2005 to 2015, NGOs have received a total of LKR 11,584,661,018.15 as foreign funding. It needs to be highlighted that this period also includes the Tsunami reconstruction and recovery and pre and post war period. From 2005, total grants have decreased from LKR 23,953,561,898.38 to LKR 6,964,466,680.00 by 2015.

The traditional mainstream donors have been phasing out of Sri Lanka during the past two decades while USA, European Union and UN agencies continue to occupy the donor landscape. Even though sustainability has been a key issue that has dominated the development discourse, the NGOs are heavily dependent on external foreign funding and yet to become self-sustainable from donor funding. This situation has even more aggravated because of COVID-19 crisis and the current economic crisis. Self-sustainability is only possible for few organizations that have set in motion income generating activities (ex. renting the premises, engaging in agricultural and poultry farming).

Except for a few donors, most of them come with strict project mandates and play an active role in the implementation of projects now than in the past. It appears that the trust and confidence the donors placed on the CSOs for the effective utilization of their funds have been deteriorated. For example, the donors have also imposed stringent guidelines and procedures including minute details as to the venue, refreshments, transportation given to participants and resource persons.

International companies have come to the donor landscape and administer between the donor and the recipients at huge administrative and managerial costs. This approach is quite a contrast to the

Table 4: Disbursement of foreign donor funding



“participatory development” approach adopted by the Janasaviya project where local NGOs acted as intermediaries between the donor – World Bank and the beneficiary. The current arrangement of recruiting international companies to act as intermediaries portrays the NGO sector as an “industry” as opposed to the “participatory development” approach that strengthened the local NGOs.

The predicament of the CSOs in the social welfare sector providing institutional care facilities to the children in need of care and protection, destitute elders and the persons of all ages with disabilities is far worse than the NGOs in the mainstream development sector. For example, the government contribution ranges from a minimum of LKR20 to LKR150 per beneficiary per day in all provinces. Unless the effective and efficient programs to alleviate the suffering of people are introduced, the CSO’s social welfare burden will increase to unprecedented levels.

## Recommendations

**Economic Crisis and NGOs as “development partners.”** The country is engulfed in a phenomenal economic crisis and according to a study released in October 2022, 9.6 million people have been driven below the poverty line compared to three million people who lived below the poverty line in 2019 (Newsfirst, October 2022). This demonstrates an alarming figure of 43.63 percent of the total population living below the poverty line. In this scenario, the government needs to consider seriously whether to continue its “hostile” stance towards NGOs and allow the gulf between the government and NGOs to increase or whether to recognize NGOs as “development partners” and invite them to work together with the government in all sectors to resurrect the country from the present plight. The meaning of “development partners” needs to be comprehended and interpreted in the context of the draft Convention on the Right to Development that is being negotiated under the auspices of the Human Rights Council (Teshome, 2022).

**Ultra-capitalist development models and neo-liberal ideologies.** The CSOs need to explore the seriousness of the current economic crisis and calculate its repercussions correctly, assessing the ramifications of the ultra-capitalist and neo-liberal ideologies on the lives of millions of people who have fallen into severe poverty.

**Appropriate, effective, and timely interventions.** The government agencies and CSOs need to keep a constant track of the deterioration of living standards and socio-economic conditions of the rural, urban and plantation population and make appropriate, effective and timely interventions to mitigate the harm caused by the current economic crisis instead of continuing with their standard program and project portfolios.

**The spirit of trusteeship.** NGOs need to remind constantly themselves that the foreign donor agencies are providing the money for the benefit of people in desperate need of assistance. Legally, morally and ethically, NGOs are expected to hold and manage these funds in a spirit of “trusteeship” as an intermediary or a channel between donor and beneficiary.

**Organizational integrity.** CSOs as organizations constructively challenging the actions and inactions of State power, authority and functions need to demonstrate legally and ethically acceptable standards, procedures, and processes of governance within their organizations to model transparency, accountability and consensus-oriented decision-making.

**Change of approach of donor agencies.** The donor-driven projects and programs need to cater to the actual needs and requirements of the communities at any given point of time because the issues affecting the communities are constantly changing. In this regard, donors should honor the autonomy of CSOs to identify the ground level needs that require CSO interventions. Accordingly, the mandates and priorities of donors should be designed and developed.

**Ensuring sustainability.** The issue of sustainability of CSOs has to be addressed by the donor agencies. At the same time, CSOs need to explore new pathways to release themselves from the clutches of foreign donor funding by forging new strategies for sustainability and self-reliance. Revisiting the organizational infrastructure and ascertain ways and means of restructuring the organization will be of great help to the organizations to ensure long-term sustainability and prevent it from disappearing from the CSO landscape. In this regard, CSOs need to take into consideration the escalating costs that they have to incur to maintain complex structures and systems and deliberate on lean institutional arrangements that are less costly and therefore more sustainable. CSOs need to review constantly their cash flow status to reduce costs and increase revenue. Unless immediate measures are taken, CSOs will be compelled to tap into their Endowment Funds and other savings to survive the current economic crisis.

## **Finding #7: Tax regime**

The rationale behind placing the profit-making sector and the non-profit sector on the same tier and imposing the same percentage of taxes unfathomable. It is ironical while imposing the same tax regime that the government has imposed on the corporate sector and on the NGO sector. While generating tax revenue to the maximum level from the NGO sector, the government has also imposed severe restrictions on the freedom of association and freedom of expression (scrutiny, supervision, and surveillance) of NGOs. Even though the non-profit sector is an important foreign exchange importer to the country, they are not given any significant tax concessions. On the contrary, the government has granted maximum incentives and concessions to the corporate sector for boosting modern day capitalist economic model.

### **Income Tax**

According to Table 5, the profit sector and Non-profit sector are taxed similarly except Charitable Institutions and there is an additional tax on NGOs of their receipts.

Table 5: Standard Rate of Income Tax

Standard Rate of Income Tax					
Type of Organizations	Year of Assessment				
	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023*
Company	28%	24%	24%	24%	30%
Trust	24%	18%	18%	18%	30%
Charitable Institution	14%	14%	14%	14%	14%
Non-Government Organizations	28%	24%	24%	24%	30%
Additional tax on NGO (3% of funds received by NGOs through grants, donations, or contributions)	28%	24%	24%	24%	30%
Gains from the realisation of investment assets (Apply to all 4 types of organizations)	10%	10%	10%	10%	10%

\*Inland Revenue Act (amendment) Bill dated 11.10.2022

## Tax Concessions

While the profit sector enjoys specific tax concessions, the non-profit sector has to rely on the decision of the Commissioner-General of the Department of Inland Revenue for exemptions that are provided under limited conditions.

Table 6: Income Tax Concessions

Income Tax Concessions				
Type of Organizations	Year of Assessment (Y/A)			
	2018/2019	2019/2020	2020/2021	2021/2022
<b>Company related to:</b>				
Small and medium Enterprises	14%	14%	14%	14%
Business of exporting goods and services	14%	14%	14%	14%
An agricultural business	14%	N/A	N/A	N/A
Agro Processing	N/A	14%	14%	14%
Promoting of Tourism	14%	14%	14%	14%
Information and Technology Services	14%	N/A	N/A	N/A
Educational Services	14%	14%	14%	14%
Construction Services	N/A	14%	14%	14%
Health Care Services	N/A	14%	14%	14%
Remittance Tax on non-resident companies	14%	14%	14%	14%
Relocation International Headquarters in Sri Lanka	0% (For 3 years)	0% (For 3 years)	0% (For 3 years)	0% (For 3 years)
Trust	None	None	None	None
Charitable Institutions	Tax exemptions are for Institutionalized care for the sick or the needy	Same as Y/A of 2018/2019	Same as Y/A of 2018/2019	Same as Y/A of 2018/2019
Non-Government Organizations	None	None	None	None
Additional tax on NGO (3% of funds received by NGOs through grants, donations, or contributions)	Tax exemptions are only available for NGOs engaged in rehabilitation, provision of livelihood support, infrastructure facilities to displaced persons, and humanitarian relief activities	Same as Y/A of 2018/2019	Same as Y/A of 2018/2019	Same as Y/A of 2018/2019

## Value added Tax

Though VAT rate is similar to both sectors, some profit sector industries are entitled to get full VAT relief.

Table 7: Value-Added Tax

Value-Added Tax (VAT)					
Type of Organizations	Year of Assessment (Y/A)				
	2019/2020	2020/2021	2021/2022	2022 (June onwards)	2022 (August onwards)
Company	8%	8%	8%	12%	15%
Trust	8%	8%	8%	12%	15%
Charitable Institution	8%	8%	8%	12%	15%
Non-Government Organizations	8%	8%	8%	12%	15%

Table 8: VAT Concessions

Vat Concessions for %	
Year of Assessment (Y/A)	Applicable sectors
2018/2019	<ul style="list-style-type: none"> <li>Direct export of goods and supply of certain referred to in section 7 of the VAT Act (Zero rated supplies)</li> </ul>
2019/2020 (1st December onwards)	<ul style="list-style-type: none"> <li>Direct export of goods and supply of certain referred to in section 7 of the VAT Act (Zero rated supplies)</li> <li>Supply of services by hotel business, registered with the Sri Lanka Tourism Development Authority, if not less than sixty per centum (60%) of the total value of the inputs are sourced from local supplies/sources</li> <li>Import of goods (fabrics)</li> </ul>
2020/2021	Same as 2019/2020
2021/2022 (until May 31st)	Same as 2019/2020
2022 (1st June onwards)	<ul style="list-style-type: none"> <li>Import of goods (fabrics)</li> </ul>
2022 (1st August onwards)	<ul style="list-style-type: none"> <li>Import of goods (fabrics)</li> </ul>

## Social Security Contribution Levy (SSCL)

Comparatively, liable turnover is high for service providers and there are no exemptions to CSOs.

Table 9: Social Security Contributions Levy (SSCL)

Social Security Contributions Levy (SSCL)		
Applicable Sectors	Rate	Liable turnover
Import of any article	2.5%	100% (of import value)
Manufacture of any article	2.5%	85%
Sale of any article by a registered distributor in relation to any manufacturer or producer of any goods in Sri Lanka	2.5%	25%
Wholesale or retail sale other than item (a) above including importation and sale	2.5%	50%
Providing services*	2.5%	100%
*NGOs, Trusts, Charitable Institutions comes under this category		

## Recommendation

### ***Liberalizing the profit sector and constricting the non-profit sector.***

The government need to recognize that the NGO sector has generated a large percentage of foreign exchange for the benefit of the country and this trend is continuing, although the percentage of funding has decreased. It is equally important for the government to acknowledge the monetary contribution that the NGO sector has made to the development sector, especially in times of man-made and natural disasters and filled a vacuum created in the service delivery mechanism of government. In this context, treating the profit-making sector and the non-profit sector on the same basis for tax purposes should be changed and tax concessions should be accorded to the non-profit sector considering its contribution towards the betterment of the country and its people.

### **Finding #8: Restoring the integrity of the human rights landscape**

Sri Lanka has ratified 28 international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The country has undertaken an obligation at the international level to adopt legislative, administrative, and other measures to implement the rights and freedoms guaranteed in these treaties at the domestic level in Sri Lanka. By ratifying the international treaties, Sri Lanka has recognized and accepted the legality of the monitoring mechanisms established under the said treaties to ensure that the citizens of member countries enjoy the rights and freedoms enshrined in the treaties.

Subsequent to these ratifications of treaties, Sri Lanka has enacted new laws and amended existing laws to give effect to the treaty obligations. To quote a few: ICCPR Act No. 56 of 2007, The National Plan of Action for the Promotion and Protection of Human Rights 2011 to 2016; CEDAW: The Citizenship (Amendment) Act (2003), the Penal Code (Amendment) Act (2006) and the National Strategic Plan to Monitor and Combat Human Trafficking (2015 to 2019); CAT: National Strategic Plan to Monitor and Combat Human Trafficking (2015 to 2019), Policy Framework and National Action Plan to address sexual and gender-based violence (2016 to 2020), and the Penal Code (Amendment) Act No. 16 of 2006; CRC: Amendments to the Penal Code introduced in 1995 and 1998, Amendments to the Employment of Women, Young Persons and Children Act of 2003 and National Plan of Action for Children (2010 to 2015).

In the above context is important to highlight that Sri Lanka is one of the eight countries receiving Generalized System of Preferences known as GSP+ tax concessions from the European Union. This zero percent concession on export tariff is extended to vulnerable low and lower-middle income

countries that implement 27 international conventions related to human rights, labor rights, protection of the environment and good governance. Sri Lanka was blackballed and lost its GSP+ concession in August 2010 due to allegations of human rights, resulting in a loss of export revenue amounting to LKR150 to 250 billion until it was reinstated in May 2017 (see more, Premadasa T.K).

Over the years, CSOs have gained recognition as a third force in the country and the engagement of CSOs with the government has taken different twists and turns depending on how the government in power perceive and recognize the role of CSOs in the development landscape. The extent to which the legislative and regulatory mechanism has been influenced by the socio-economic and political landscape of the country can be inferred from the way in which the NGO Secretariat has been governed by the respective governments.

There were times when CSOs were considered as development partners and there have been other times when governments felt threatened by NGO activities. For example, there have been instances where NGOs have challenged the legality and legitimacy of State action and inaction before the law using the fundamental rights and writ jurisdiction and other legal legislative guarantees.

The State will often perceive NGOs as a threat to maintaining their status quo because they occupy a space that the State has failed to fulfil through State-sponsored service delivery mechanisms. The history of CSO evolution reveals that CSOs have been subjected scrutiny, surveillance, and politically backed witch-hunt based on malicious allegations when CSOs have questioned or challenged the legitimacy and legality of State actions and inactions. In such eventualities, the State has used its entire administrative machinery to harass, intimidate, persecute, and even launch vilification campaigns and character assassinations using State-sponsored media.

CSOs that are working in the field of human rights more specifically on issues relating to land rights, farmers' rights, women's and children's rights and environmental rights have been subjected to greater scrutiny and surveillance than other organizations. Those organizations that do work on "development" issues per se have not been subject to much scrutiny. CSOs working with ethnic and religious minorities have endured immense hardships due to investigations and surveillance carried out by the officials of the Criminal Investigation Department (CID), Terrorist Investigation Department (TID), Financial Investigation Department of the Central Bank and the NGO Secretariat. Fear psychosis has been created among CSO workers and the communities they serve.

Even though project/program for each quarter including budgets is submitted to the national, district and divisional regulatory mechanisms, the investigation officers from the above departments participate in the programs and request the contact details of staff members. The public officers of the National NGO Secretariat, District and Divisional Secretariat have requested NGOs to invest in improving the infrastructural facilities of the communities rather than on programs that the NGOs offer to empower communities in the socio-economic and political spheres especially on their civil and political rights, economic, social and cultural rights and freedoms and entitlements.

## Recommendations

***Sri Lanka's human rights commitments and GSP+.*** The Sri Lanka government needs to honor its international human rights commitments and take positive measures to guarantee rights and freedoms enshrined in the international human rights treaties. At the same time, Sri Lanka has a negative obligation to abstain from unlawfully interfering with or violating the human rights of its people. The resolution entitled "Situation of Human Rights in Sri Lanka" adopted by the UN Human Rights Council on the 4 October 2022 will have serious repercussions on the GSP+ concession unless Sri Lanka takes the resolution seriously and adopts measures to implement the 16 recommendations.

***Resuscitating an acutely ailing nation.*** As a sector that has facilitated an inflow of LKR11.5 billion (2005 to 2015) in foreign exchange into the country and for its people, it has implemented program portfolios as de facto "development partners" and undoubtedly contributed to improving the development indicators in the country. Amidst the current economic crisis, the most opportune time has come for the government to recognize the NGO sector as de jure "development partners" and embark upon an accelerated development road map to resuscitate the acutely ailing nation before it takes the last breath.

***Ensuring the human rights of "development partners."*** The legal responsibility that Sri Lanka has undertaken by ratifying 28 international human rights conventions to uphold the rights and freedoms of its citizenry also extends to the approximately 800,000 personnel employed in the NGO sector. At this critical hour in the history of Sri Lanka, if NGOs are to contribute to the development discourse of the country as "development partners" they need to uphold the human rights and freedoms of people working in the NGO sector by adopting measures to support and encourage the work and also by abstaining from violating their human rights.

***Upholding individual and organizational integrity.*** NGOs have a legal, moral, and ethical responsibility individually and collectively to adopt all measures to ensure that legal, statutory and regulatory requirements are adhered to, foolproof standards and procedures are maintained within the organization to safeguard the integrity and reputation of the organization, and the individuals associated with the same. Safeguarding the individual and organizational integrity is so crucial to the sector that is legally and ethically committed to empower the most impoverished and vulnerable communities they serve. ■

**List of Acronyms**

ADB	Asian Development Bank
CBO	Community based Organization
CBSL	Central Bank of Sri Lanka
CEJ	Centre for Environmental Justice
CID	Criminal Investigation Department
CMEV	Centre for Monitoring Election Violence
CPA	Centre for Policy Alternatives
CPBR	Centre for Peacebuilding and Reconciliation
DS	Divisional Secretariat
EFL	Environmental Foundation Limited
FAO	Food and Agriculture Organization
FIAN	Food First Information & Action Network of Sri Lanka
FPA	Family Planning Association of Sri Lanka
FRC	Family Rehabilitation Centre
GA	Government Agent
ICCPR	International Covenant on Civil and Political Rights
ICES	International Center for Ethnic Studies
IHP	Institute of Health Policy
IMF	International Monetary Fund
INGO	International Non-government Organization
IOM	International Organization for Migration
JTF	Janasaviya Trust Fund
JVP	Janatha Vimukthi Peramuna
LHRD	Lawyers of Human Rights and Development
LST	Law and Society Trust
LTTE	Liberation Tigers of Tamil Eelam
MDDR	Movement for Defence of Democratic Rights
MHPSS	Mental Health and Psychosocial Support Network
MONLAR	Movement for Land and Agricultural Reform
MOU	Memorandum of Understanding
MWRAF	Muslim Women's Research and Action Forum
NGO	Non-government Organization
NPC	National Peace Council
OHCHR	Office of the United Nations High Commissioner for Human Rights
OXFAM	Oxford Committee for Famine Relief
PAFFREL	People's Action For Free & Fair Elections
PARL	People's Alliance for Right to Land
PREDO	Plantation Rural Education Development Organization
RTI	Right to Information
SLCDF	Sri Lanka Centre for Development Facilitation
TID	Terrorist Investigation Department
TISL	Transparency International of Sri Lanka
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund
UNHCR	United Nations High Commissioner for Refugees
UNVEICD	Upcountry New Villages, Estate Infrastructure and Community Development
USAID	United States Agency for International Development
VAT	Value-Added Tax
WDC	Women's Development Centre
WHO	World Health Organization
WIN	Women In Need
WMC	Women and Media Collective
YMBA	Young Men's Buddhist Association
YMCA	Young Men's Christian Association
YMHA	Young Men's Hindu Association
YMMA	Young Men's Muslim Association

**Acknowledgments**

This CSO assessment study would not have been a meaningful and constructive exercise if not for the unending kindness, support, cooperation and assistance extended by representatives of CSOs at national, district and divisional levels in Sri Lanka and Mr. Nathaniel Don Marquez, the Executive Director of Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) in the Philippines.

I wish to express my sincere thanks to first generation CSO representatives contributed to this process, namely: Mr. Hemantha Withanage (Centre for Environmental Justice), Mrs. Sriyani Mangalika (Hambantota Women's Development Federation), Mr. Ravi Kandage (Sarvodaya Shanthi Sena), Mr. Nishantha Preethiraj, Mr. Ravi Ariyawickrama, Mrs. Priyanthika Chandani Liyanage and Mr. Bandula Senadheera (Sarvodaya Shramadana Movement), Mrs. Samadanie Kiriwandeniy (Sanasa Federation), Mr. Tissa Wijetunga (SLCDF), Mr. K.S. Ratnavale (CHRD), Mrs. Sashi Stephen (WDC), Mr. Michael Joachim (PREDO), Mr. Nadesan Suresh (Uwa Shakthi Foundation), Father Jude Nishantha de Silva (Caritas Sri Lanka), Mr. Rohana Hettiarachchi (PAFFREL), Mrs. K.P. Somalatha, Ms. P.G. Podinona (Uva Welllassa Women Farmers' Organization), Dr. Wimal Dissanayake (Habaraduwa Participatory Development Foundation), Mr. Nimal Senanayake (Citizen

Committee), Ms. G. Rupa Gamage, Ms. G. Kusumlatha Rajapaksha, Ms. R.M. Sheila Ratnayake (Rajarata Praja Kendraya), Mr. S. Senthurajah (SOND), Mr. N. Sukirtharaj (JSAC), Mrs. Aneesa Firthous (IAWARE), Mr. Kumudu Priyantha Gunawardane (Pragathisewa Foundation) and Mr. V. Paramasingam (Social Welfare Organization Ampara District (SWOAD)) for sharing their valuable time and insights.

The second generation CSO representatives namely: Ms. Upekshi Fernando, Mr. S. Sathiyaraj, and Ms. S. Sangary (PAFFREL), Mr. Dilena Pathragoda and Ms. Chalani Rubesinghe (CEJ), Mr. Kamal Gamage, Mr. J.M.M. Niswi, Mrs. Inoshi Jayatileke, and Mr. Udesch Fernando (Sarvodaya Shramadana Movement), Mr. Sinniah Kitnan Chandrasegaran (PREDO), Mr. Harsha Jayaratne (Safe Foundation), Ms. Sujitha Fernando (Rajarata Praja Kendraya), Ms. Niruba Thivakaran (SOND), Ms. Sivanjali Sivashanmugapillai (Jaffna Social Action Centre (JSAC)), Mrs. Chandratilleke Liyanarachchi (WDC), Mr. Rasika Geetanga (Sarvodaya Shanthisena Movement), Ms. Nirmala (Uwa Wellassa Women Farmers' Organization), Mrs. Kamani Galappaththi (Praja Shakthi Sahabagithwaka Padanama), Ms. M.K. Chamila Kumari and Ms. K.G. Chandrani (Hambantota Women's Federation) are remembered with gratitude for providing me with important inputs and insights.

Dr. Vinya Ariyaratne and Mr. Shevon Gooneratne of Sarvodaya, Mr. A. Sornaligam of SLCDF, Mr. Thilak Kariyawasam (FIAN) and Mr Rohan Panditakorage of RMD Consultants (Pvt) Ltd for sharing important information, insights and suggestions.

Ms. Emaajine Selvaraja is remembered with much gratitude for all the hard work she did and the dedication she demonstrated for the successful completion of this study report.

I wish to express my thanks to Mr. Raja Gunaratne, former Director of the NGO Secretariat for the support and assistance extended to me by providing important information and documentation.

A very special thanks to Mr. Simon Marlow and Mrs. Sushila Gunawardane for their valuable comments and proofreading the document.

#### Citation

Marasinghe, C. (2022). *Legal and Political Environment for Civil Society Organizations in Sri Lanka: CSO Assessment Study*. [Paper prepared for the project, "Study on Legal and Political Environment for CSOs in Asia" implemented by the Asian NGO Coalition for Agrarian and Rural Development (ANGOC) and supported by the Fair Finance Asia (FFA) through the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS)].

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