



This study presents the evolution and present state of CSOs in Sri Lanka. Approaching the study from a historical perspective, the study intends to elaborate on the complex factors that have shaped the CSO political landscape positively and negatively. This study aims to present the state of the political environment in which CSOs have to operate and the threats and challenges CSOs face. Based on the analysis of the historical and contemporary developments, the study proposes recommendations to safeguard and expand the CSO landscape in the face of constricting civic space.

Methodology

The study has relied on secondary sources such as legislative enactments, regulations, circulars, books, and articles. The study also contains information and documents shared by the CSO leaders and workers who were interviewed for the focus group discussions (FGDs). The FGDs were attended by representatives from 24 CSOs and 53 CSO leaders and staff. Most FGDs were carried out via Zoom due to fuel shortages and time constraints to hold in-person discussions.

This work also incorporates the insights and lessons gained by the author in her professional career as a human rights consultant and as a volunteer in the community development field for over four decades.

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. Three validation meetings were held via Zoom. 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.

¹Marasinghe, C. (2022). *Legal and Political Environment for Civil Society Organizations in Sri Lanka: CSO Assessment Study*. The said paper was prepared for the project, "Study on Legal and Political Environment for CSOs in Asia," implemented by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and supported by the Fair Finance Asia (FFA) through the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS)].

History and evolution of civil society in Sri Lanka

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. The start of the British ruling in Sri Lanka (then known as Ceylon) in 1815 marked the establishment of various Christian faith-based institutions and missionary associations. Social welfare was among the key strategies in spreading religions. Buddhist, Hindu, and Muslim missionary societies also came into the social work in the 1880s to the 1900s.

Collapse of peasant agriculture in the pre-independence era. The pre-independence era witnessed the birth of CSOs focusing on rural development – fighting the highly fragmented social fabric and the gravely-damaged local peasant agricultural economy brought about immense suffering and hardship for the rural communities.

The pre-independence political debate surrounding the universal franchise also inspired women who held a privileged position to advocate for women’s franchise giving birth to various women’s unions since the 1904. In 1930, a civil society organization dedicated to uplift the status of rural women was established.

The pre-independence period also recorded the birth of civil society activism to uphold social justice. In 1937, Father Peter Pillai founded the first Social Justice Movement.

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. Various movements for the marginalized were found.

The Sarvodaya Shramadana Movement, founded 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.

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.

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 at the cost of more than 10,000 lives. Hundreds of youths who staged the insurrection were imprisoned. 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.

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).

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 J, 2000).

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, C. 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.

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. Ground-breaking judicial precedents were created in the fundamental rights and writ applications jurisprudence.

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.

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.

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.

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).

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.

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 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. 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 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."* In September 2022, the

Centre for Policy Alternatives (CPA) filed a fundamental rights petition challenging the constitutionality of the Bill.

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.

Developmental 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, Sri Lankan NGOs number to 1,291 while international NGOs (INGOs) total to 408. As of 1 August 2022, 22 new NGOs have been registered in the year 2022 (Goonaratne, 2021).

Legal environment for the registration and operation of NGOs

Registration and regulation of NGOs

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. The VSSO Act introduced a system of registration and supervision of activities of NGOs.

As the principal legislation applicable to NGOs, the VSSO Act prescribes the mandatory registration of all NGOs, regardless of NGOs' registration status with other offices.

A Secretariat for NGOs was established in 1996. After moving from one office to another, it is now under the State Ministry of Public Security. Organizations may only acquire "NGO" status after registration with the National Secretariat. The Secretariat monitors work permits and tax reliefs; evaluates of project reports, quarterly progress reports, and annual action plans; assesses cash inflows, cash out flows, cash disbursements, and asset details; and, inspects activities and projects of NGOs, among other functions.

NGOs are also required to register at the district level, supervised by the District NGO Coordinating Committee.

According to the VSSO Act, and pursuant to Circular RD/99/01, the Presidential Secretariat introduced the requirement for NGOs to submit 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) a cash book with bank accounts, (b) a petty cash book, (c) a main ledger, (d) a main journal, (e) membership fee ledger, (f) debtors and creditors ledger, (g) counterfoil books, (h) a register for issue of receipts, (i) an assets register, (j) committee meeting report books, (k) membership register, (l) the details of the members, staff, officers and servants inclusive of their letter of appointment, and (m) files containing the relevant Acts and Regulations.

The NGO Secretariat also serves to provide reports requested by State intelligence unit and the Criminal Investigation Department. In 2021, the NGO Secretariat provided 39 reports (Gooneratne, 2021). Further, 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.

CSOs in Sri Lanka have identified several issues with the VSSO Act, particularly ways in which the Act restricts the operations of CSOs. Since an initial proposal in 2015, CSOs have been lobbying for the Act's amendment. In 2019, a series of consultations had been conducted with CSOs and the findings highlighted certain challenges encountered by CSOs in relation to legal and regulatory mechanisms:

- obtaining prior approval for submitting proposals and implementing project activities;
- impositions of strict rules and conditions prior to obtaining project approvals;
- endorsement of Grama Sevaka (Village Headman, the public officer based at the village level) or Divisional Secretariat 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; and,
- 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.

Sri Lanka has seen many twists and turns in the legal and regulatory landscape and NGO-Government relationships. NGO legislative and regulatory mechanisms are more stringent, cumbersome, bureaucratic, and intimidating.

There have been government efforts to enact more stringent regulatory mechanisms for NGOs, allegedly to tackle "national security" and "money laundering" issues. Yet, enacting more stringent laws to regulate, control, and monitor NGOs make the legality, validity, and relevance of existing laws to address the issues of national security and money laundering redundant.

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.

Financing NGO operations

Between the 1940s and 1970s, CSOs 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 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). 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 were 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. 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, 2013).

There have been instances where donors have responded to development needs in the context of conflicts and natural disasters. For example, during and after the war, the donors focused more on supporting initiatives relating to conflict resolution, peacebuilding, democracy, human rights, economic recovery, rehabilitation, or reconstruction.

At present, the international donor landscape is occupied by UN agencies and international financial institutions. 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, and Search for Common Ground. 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.

NGOs are heavily dependent on external foreign funding and are yet to become self-sustainable from donor funding. This situation has got aggravated because of COVID-19 crisis and the current economic crisis.

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 deteriorating. For example, the donors have imposed stringent guidelines and procedures including minute details as to the venue, refreshments and transportation given to participants and resource persons.

The influx of foreign aid to NGOs and movements in the 1980s 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 skepticism and levelled various criticisms against them, raised accountability issues in view of the large sums of money they were managing (Marasinghe, 2013).

Several regulations are in place related to the inflow and management of their finances. Circular No. MOFP/ERD/2007/01 of 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, and having a Memorandum of Understanding for each project. INGOs are subject to more supervisions and more prior approvals.

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

Limited tax exemptions

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: (a) taxable income, (b) tax on gains, and (c) additional tax on receipts. In the Year of Assessment 2018/2019, the taxable income of an NGO was placed at 28 percent, gains from realization of investment asset at 10 percent, and additional taxes on the grant, donation, or contribution or in any other manner on three percent of such receipts at 28 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.

In 2019, value-added tax (VAT) was reduced from fifteen 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 and additional taxes (for grants and donations) were reduced from 28 to 24 percent. The taxable income of Trusts was also brought down from 24 to 18 percent. No tax relief was granted to Charitable Institutions.

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.

The rationale behind placing the profit-making sector and the non-profit sector on the same tier and imposing the same percentage of taxes is unfathomable. 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.

Government-CSO relations

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. CSOs have worked with the government on issues relating to national integration, participated in councils, task forces, action groups and committees of the government, contracted with government on socio-economic projects and inter-sectoral partnership with Government.

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 (TISL) 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. The People's Action For Free and Fair Elections (PAFFREL) campaigned for electoral integrity to ensure clean politics and continued to advocate for finance and asset disclosure by candidates for elections.

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).

Policy reform. When the Ministry of Women and Child Affairs initiated the National Action Plan for Female Headed Households, 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 (Viluthu, 2022).

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.

Forging linkages between citizens and public servants. The 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.

Educating policy makers and public servants. The March 12 Movement² under the leadership of PAFFREL has educated 1,000 politicians in 25 districts on Sustainable Development Goals.

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

The 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 specialties such as SGBV, women's rights, child rights and rights of disabled persons.

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 focused 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 (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 (U.S. Department of State – Bureau of Democracy, Human Rights, and Labor, 2020).

NGOs have been requested to "minimize" programs and required to follow guidelines from the District Secretariat (Sri Lanka Brief, 2020).

²The 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.

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.

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 programs. 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, 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).

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. 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. 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 (A/HRC/46/20 Report, 2021, paragraph 32, paragraph 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, paragraph 34)

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 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).

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. There were also 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).

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.

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 the Easter Sunday attacks.

Further, "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).

Conclusions and recommendations

The evolution of CSOs clearly illustrates the way in which social, economic, political, and cultural factors have influenced the political landscape in Sri Lanka. CSOs have occupied the space created by the dysfunctional governance systems of 74 years in their attempt to prevent damage and to repair any harm caused to the population and the environment. CSOs have been a bridge between the State and the citizenry when the country was faced with natural and man-made disasters. Further, CSOs have contributed to inter-ethnic, inter religious, intra-religious, and intercultural understanding and peaceful coexistence through proactive and preventive interventions.

However, there appears to be a hierarchical structure in the CSO landscape. Significant inequities and variations exist among national, subnational and community-based organizations (CBOs) relating to physical infrastructure, human resources, program and financial management systems, organizational structures, and even in relation to organizational culture.

There were times when CSOs were considered as development partners and there have been other times when governments felt threatened by NGO activities. Yet, the State will often perceive NGOs as a threat to maintaining their status quo because they fulfill actions that government has failed to do. CSOs have been subjected to scrutiny, surveillance, and politically backed witch-hunt based on malicious allegations when CSOs have questioned or challenged the legitimacy 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. CSOs working with ethnic and religious minorities have endured immense hardships due to investigations and surveillance carried out by State agencies.

Considering the present scenario, below are several recommendations for CSOs, donors, and the government:

For CSOs

- *Comprehending the polarized and divisive environment and power dynamics.* CSOs need to correctly comprehend and assess the ever-changing and highly polarized environment and power dynamics that control or influence the environment in which they operate.
- *Self-appraisal of organizational capacity.* At this critical juncture in the history of the country, 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.
- *Organizational integrity.* CSOs need to be models for good governance. Internally, these organizations must have processes that uphold transparency, accountability, and consensus-oriented decision-making. It will be in the best interests of CSOs to reflect and enhance their organizations' accountability standards.

- *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.

For donors

- *Change of approach of donor agencies.* The donor-driven projects and programs need to cater to the actual needs and requirements of the communities. 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.

For government

- *Constructive environment for CSO work.* The legal and statutory framework needs to create a conducive environment that would strengthen services rendered by NGOs without fear and intimidation.
- *Unlawful harassment of individuals and organizations.* The lawmakers need to avoid making baseless and unjustifiable statements 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 tried under appropriate laws and not merely used to destroy, malign, and insult organizations and individuals.
- *Tax concessions.* The non-profit sector should not be treated in the same way as the for-profit sector. Tax concessions should be accorded to the non-profit sector considering its contribution towards the betterment of the country and its people.
- *Ensuring the human rights of “development partners.”* The legal responsibility that Sri Lanka has undertaken by ratifying 28 international human rights conventions extends to the approximately 800,000 personnel employed in the NGO sector. If NGOs are to contribute to the development discourse of the country as “development partners,” government needs to uphold the human rights and freedoms of people working in the NGO sector by adopting measures to support and encourage their work and by abstaining from violating the rights of NGO workers. ■

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