



# **SHRINKING CIVIC SPACE:**

The legal and political environment for  
CSOs in seven Asian countries

ANGOC





Founded in 1979, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in 10 Asian countries together with some 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and diversity of CSOs highlight the need for a development leadership to service the poor of Asia – providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives. Thus, the ANGOC network promotes land and resource rights, smallholder agriculture, and human rights and civic participation, by serving as a platform for Asian CSOs to generate knowledge, share tools, and conduct constructive policy dialogues.

ANGOC is a member of the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium, the International Land Coalition (ILC), and Fair Finance Asia (FFA).

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**ISBN: 978-971-8632-69-7**

**Citation:**

Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). (2022). *Shrinking Civic Space: The Legal and Political Environment for CSOs in Seven Asian Countries*. Quezon City: ANGOC.

This publication is produced by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) with support from Fair Finance Asia (FFA) through the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS), Inc. The views expressed in this publication are those of the authors and do not necessarily reflect the views of FFA and IDEALS.



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# ACKNOWLEDGEMENT



The following researchers and organizations contributed to the contents of this publication:

<b>Bangladesh</b>	Md. Rizwanul Islam, PhD.   Association for Land Reform and Development (ALRD)
<b>Cambodia</b>	Nhek Sarin   STAR Kampuchea (SK)
<b>India</b>	Dr. B. Mishra   Association of Voluntary Agencies for Rural Development (AVARD)
<b>Indonesia</b>	Irvan T. Harja   Bina Desa Foundation
<b>Nepal</b>	Binod Gautam   Community Self Reliance Centre (CSRC)
<b>Philippines</b>	Jose Ignatius Pagsanghan   Asian NGO Coalition (ANGOC)
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Our appreciation to the organizations and individuals who participated in the data gathering, analysis and workshops.

Support for the country studies and this publication was provided by Fair Finance Asia (FFA) through the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS), Inc.



# ACRONYMS

ALRD	Association for Land Reform and Development
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
AVARD	Association of Voluntary Agencies for Rural Development
BAPPENAS	National Development Planning Ministry (Indonesia)
BD	Bina Desa
CEDAW	Convention on the Elimination of All Discrimination Against Women
CSO	civil society organization
CSR	corporate social responsibility
CSRC	Community Self Reliance Centre
DAC	Development Assistance Committee
DAO	District Administration Office (Nepal)
DCC	District Coordination Committee
FAO	Food and Agriculture Organization
FCRA	Foreign Contribution Regulation Act (India)
FGD	focus group discussion
GNI	gross national income
ICCPR	International Covenant on Civil and Political Rights
ICNL	International Center for Not-for-Profit Law
INGO	International NGO
IPs	indigenous peoples
ITE Law	Information and Electronics Transaction Law (Indonesia)
KPA	Consortium for Agrarian Reform (Indonesia)
LANGO	Law on NGO and Association (Cambodia)
NFN	NGO Federation of Nepal
NGO	Non-Government Organization
NGOAB	NGO Affairs Bureau (Bangladesh)
ODA	Official Development Assistance
SDGs	Sustainable Development Goals
SK	STAR Kampuchea
SWC	Social Welfare Council (Nepal)
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
VAT	Value-Added Tax
VO	Voluntary Organization
VSSO	Voluntary Social Service Organization Act (Sri Lanka)

# FOREWORD



People are sovereign over institutions. Institutions are responsible and accountable to the people on whose behalf they exercise public power. However, with increasing State power due to the rise of populist and authoritarian regimes, governments have isolated communities by increasing State power while at the same time decreasing people's participation and constricting civic space.

An important dimension of civic space is "civil society organization space" - the nature and dynamics of the environment under which civil society organizations (CSOs) operate in a specific country. Representing the organized sector of civil society, CSOs are non-profit, voluntary citizens' groups which are organized either on local, national or international level. Task-oriented and driven by people with a common mission, CSOs perform a variety of services and humanitarian functions, bring citizens' concerns to governments, monitor policies, and encourage political participation at the community level. They act as public watchdogs, promote self-reliance among the poor, and are a source of development innovation and extension in public policy formulation and program implementation.

Given the important role played by CSOs in society, "CSO space" must be viewed as an important facet of civic space and indeed, of democracy itself. Do the laws, policies and practices of the State encourage or restrict the operations of CSOs in a particular country? Laws and regulations on registration of CSOs, accessing of funding, reporting of activities and expression of opinions all have an impact on the ability of CSOs to perform their functions.

It is in this context that the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) has incorporated in its goal statement for 2021 to 2025 "to protect civic and democratic spaces." In order to operationalize this goal, seven assessment studies have been undertaken to: a) provide a brief overview of CSOs in the countries, b) assess the legal environment for developmental NGOs and the political space for CSOs; and, c) present recommendations to empower and increase CSO participation in development in the region.

The studies are by no means academic but CSO perspective papers assessing the legal, regulatory, policy, financial and political environment affecting civil society and CSOs in Bangladesh, Cambodia, India, Indonesia, Nepal, Philippines, and Sri Lanka. They were written by researchers whose narratives have been shaped by their years of experience working with CSOs.

From May to September 2022, five online meetings with the country writers were convened by ANGOC to finalize the research framework, and to review the

progress of the studies. Focus group discussions, key informant interviews and validation workshops in the seven countries collectively engaged at least 171 NGO/CSO representatives (71 females, 99 males, 1 undisclosed). Nonetheless, the papers do not claim to represent the views of the whole CSO sector in these countries.

This publication contains the abridged version of the country studies. The full papers can be downloaded at <https://angoc.org/portal/cso-assessment-study-legal-and-political-environment-of-developmental-rural-development-ngos-in-7-asian-countries/>

We thank the country writers: Md. Rizwanul Islam, PhD. (Bangladesh), Nhek Sarin (Cambodia), Dr. B. Mishra (India), Irvan T. Harja (Indonesia), Binod Gautam (Nepal), Jose Ignatius Pagsanghan (Philippines), and Dr. Charika Marasinghe (Sri Lanka). We are indebted to the organizations and individuals who participated in the data gathering, analysis and validation workshops. Our appreciation goes to the ANGOC network members for supporting the processes: Association for Land Reform and Development (ALRD), STAR Kampuchea (SK), Association of Voluntary Agencies for Rural Development (AVARD), Bina Desa Foundation, Community Self Reliance Centre (CSRC), and Sarvodaya Shramadana Movement (SARVODAYA).

Special thanks to Antonio “Tony” Quizon for hemming the country papers into a solid and concise regional overview.

Thank you as well to the production team: Denise Hyacinth Joy Musni, Marianne Jane Naungayan, Joseph Onesa, Joy Dumalanta, Lennie Rose Cahusay and Maria Azel Cabello Gorne.

Finally, we acknowledge the support provided by Fair Finance Asia (FFA) through the Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS), Inc.

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# REGIONAL OVERVIEW:

## The legal and political space for CSOs in seven Asian countries<sup>1</sup>

Asia is home to a vibrant civil society sector. Yet over the past several years, civil society has seen a rise in authoritarianism and a corresponding shrinking of civic space. In varying degrees and with different dynamics, Asian countries have experienced growing policy restrictions on civil society organizations (CSOs) and communities, limitations on funding, and government interference in civic action. Fundamental rights are being suppressed, and key actors who exercise these rights are being harassed and persecuted.

Asia's young and fragile democracies remain under threat. As highlighted by the Asia Foundation Report on *The State of Conflict and Violence in Asia 2021*: "The trend towards more authoritarian governance, even in established democracies, is well established in many Asian countries ... The deterioration of political rights and civil liberties is reflected in the diminishing space for free media and growing restrictions on civil society."

While Cambodia has been under a single ruler for nearly four decades, the Philippines and Indonesia have seen a decline in civil liberties, growing military influence in politics and growth of political dynasties. In South Asia, countries such as Bangladesh and India have witnessed the growth of authoritarian governments with the dominance of single political parties. Many Asian countries are also constantly dealing with internal challenges arising from intolerant or extremist forces.

In Asia-Pacific, press freedom has deteriorated. Even in those countries reputed to be more democratic, the media face pressure from increasingly authoritarian and/or nationalist governments, such as in India, Sri Lanka, and the Philippines.<sup>2</sup> The curtailment of free speech and media has expanded to online content. In Bangladesh, the Digital Security Act has been called as one of the world's most draconian laws for journalists (RSF, 2022), resulting in the imprisonment of hundreds of people including human rights defenders, journalists and activists (Amnesty International, 2022).

<sup>1</sup> Written by Antonio B. Quizon for Asian NGO Coalition

<sup>2</sup> Reporters Without Borders/RSF (2022), Press Freedom Index. <https://rsf.org/en/index>. From a list of 180 countries, these countries rank as follows: India (150th), Sri Lanka (146th), and the Philippines (147th). Others are: Bangladesh (162nd), Indonesia (117th) and Nepal (76th).

And in the midst of the COVID-19 pandemic, politicians and State leaders used the pandemic as a pretext to clamp down on rights and to consolidate their power. In Asian countries, there were disturbing instances of increased State militarization and aggressive policing, and of government crackdowns on dissent, media and free speech. In the Philippines, a new Anti-Terror Law was enacted during a lockdown and in the absence of public scrutiny and debate (ANGOC, 2020).

In this context, it becomes imperative for CSOs to examine the policies and forces that shape the deteriorating civic environment in which they operate, and to address the challenges that confront them.

## **Context of the country studies and regional overview**

The seven papers in this compendium provide assessments of the legal, regulatory, policy, financial and political environment affecting civil society and civil society organizations (CSOs) in four countries of South Asia (Bangladesh, India, Nepal, and Sri Lanka) and three countries of Southeast Asia (Cambodia, Indonesia, and the Philippines). The ability of CSOs to register and operate freely, access resources, engage with government, and work collectively, form part of the enabling environment for CSOs. The studies do not assess the impact of CSOs on their countries' development. Rather, they examine the legal and political environments in which CSOs operate, and are therefore able to contribute to their countries' development. The papers identify challenges and steps for protecting and preserving the democratic space for CSOs.

The study objectives are:

- provide a brief description of the civil society organizations in the seven Asian countries;
- assess the legal and political environment for developmental NGOs; and,
- present recommendations on protecting and enhancing CSO space in the region.

These country assessments were written by researchers whose narratives have been shaped by their years of experience working with CSOs. As such, the papers reflect the views of CSOs "from within." The papers cover six areas of inquiry along two themes:

*Theme 1* is on *the legal and regulatory environment for NGOs* that examines: (1) an overview of the formation and operation of CSOs in the country; (2) systems for legal recognition and accreditation of NGOs; (3) legal framework that impacts on NGO access to financial resources; and, (4) requirements for NGO reporting and accountability.

*Theme 2* is on the *political environment* which delves into: (5) the protection of rights, including rights to freedom of association, expression and peaceful assembly and how they affect CSO space; and, (6) the state of CSO-Government relations.

The country assessment studies were carried out in mid-2022. For methodology, the country assessments used three key data collection methods: (1) desktop research of materials on CSOs, and analyses of the statutory/legal framework that govern the operations of NGOs; (2) focus group discussions (FGDs) involving two generations of CSO workers; and, (3) key informant interviews. In addition, the Indonesia study introduced a weighted scoring system for CSO respondents to assess the legal and political environment for CSOs in the country.

**Regional overview paper.** This paper provides a regional overview of the legal and political space for CSOs in Asia. It provides a perspective as well as overview of the country papers in the seven Asian countries. It is noted here that the country papers differ widely – in terms of their content and focus, level of detail, writing styles, and perspectives. Thus, while this regional overview paper draws its main findings and recommendations from the country papers, it supplements these by drawing from other sources as well.

Drawing lessons from earlier studies of ANGOC, this regional paper introduces a simple framework for examining the state of CSO-Government relations in the country. It seeks to operationalize and differentiate the terms used by the different country studies to describe the regulatory and political environment for CSOs – i.e., whether the conditions for CSOs are “supportive”, “regulatory” or “restrictive.” Using these terms, a summary rating of the regulatory and political environment for CSOs for each country is presented in Table 2 – as discussed among the researchers. This helps to provide a descriptive summary for the seven countries.

Finally, this paper cites the need to use a human rights approach towards framing the overall legal environment for NGOs. It then summarizes the recommendations drawn from the country papers along certain themes. Other sources (i.e., International Center for Not-for-Profit Law/ICNL and UNOCHCR documents) have been used to supplement and elaborate on the country studies’ findings and recommendations.

**Outline.** This paper is presented in six sections:

- Understanding the CSO legal and political environment;
- Civil society organizations;
- Historical evolution of CSOs;
- Legal and regulatory framework for NGOs;

- Summary assessments of the political and legal environment for CSOs; and,
- Summary recommendations.

## Understanding the CSO legal and political environment

The context within which CSOs operate, and the breadth of activity they are allowed, is determined to a large extent by the interaction between the State and CSOs. This “political space” constitutes a sensitive and changing environment in which different actors strive to shape their purpose and pursue their visions of “development” (Riker, 1993).

The State is not a neutral actor that stands high above all contending entities; rather, it actively intervenes in the very constitution of different entities in society as well as in social movements. Thus, the “space” or environment within which CSOs operate is defined to a large extent by the government. The State may encourage, tolerate, interfere, discourage or abolish CSO activity through legal or coercive means (Riker, 1993). However, CSOs may in turn influence these parameters, by bringing salient issues to public discussion, advocating for certain policies or development priorities, asserting their rights and thereby expanding the boundaries of their political space. For instance, when CSOs adopt an empowerment strategy that serves to organize, link, and mobilize grassroots initiatives into a cohesive social movement, this can create a countervailing force that can widen the political space for participatory, self-help development.

The concept of *CSO space* refers to the arena in which non-State actors are able to undertake initiatives independently of the State. It refers to the interplay between two or more actors where contrasting principles of *CSO autonomy* versus *government control* define CSO-Government relations. The boundaries of political space may then increase or shrink, if one actor perceives its legitimacy as being affected by activities of the other sector.

Certain key dimensions largely shape the political space between government and CSOs, that may provide focal points for analysis:

- *Issue orientation* or the core differences in vision, values and ideology between CSOs and government;
- *Organizational*, or the level of control over the management, and the human and technical resources of CSOs;
- *Financial*, or the issue of control over available CSO material and financial resources; and,
- *Policy dimension*, or the extent to which CSOs are able to participate in policy debates on development issues, in terms of having access and influence in policy-making processes.

However, it must be noted that CSO space is not solely determined by CSOs' interaction with the central government. The environment in which CSOs operate is also affected by a confluence of other factors. These may include, i.e.: the presence (or absence) of an independent media; the prevailing peace and order situation; and, the presence (or absence) of societal tensions and extremism that may be driven by political ideologies, ethnic conflicts and insurgencies, religious fundamentalism or other polarizing groups and beliefs. Moreover, CSO space is affected by the level of support it receives from donors domestically and from abroad, by public perception and attitudes towards CSOs, and by the willingness of people to contribute to voluntary action.

**Modes of interaction between Government and CSOs.** In analyzing how the organizational, financial and policy dimensions play out in a country, we might find five different modes of interaction between the central government and CSOs across the spectrum of political space in a country. While government cannot be treated as a monolith, being constituted by different interests that may not always agree with each other, its general attitude towards CSO initiatives may be assessed by reviewing the predominant mode of government interaction with CSOs.

The following framework (Table 1) may provide a useful tool to describe the dominant relationship between CSOs and government by analyzing the underlying state of *CSO autonomy versus government control* in different aspects of CSO existence and operations.

**Table 1. Examining the dominant modes of Government-CSO interaction**

<i>Mode of interaction</i>	<i>Description</i>	<i>Salient features / examples</i>
BENIGN NEGLECT/ AUTONOMY	Central government views CSO as non-threatening or lacks interest in the work of CSOs. It adopts a hands off policy and allows CSOs to operate as self-sufficient and autonomous entities.	CSOs enjoy organizational, financial, and policy autonomy.
SUPPORTIVE	Central government perceives CSOs as a <i>complementary partner</i> in development and creates a conducive or enabling policy environment.	Central government may facilitate (or also potentially inhibit) CSO initiatives, e.g.: <ul style="list-style-type: none"> <li>• <i>Organizationally</i>: giving greater recognition and legitimacy to CSO roles; upgrading CSO capacities;</li> <li>• <i>Financially</i>: tax exemptions and donor incentives; and,</li> <li>• <i>Policy</i>: joint forums at different levels; CSO representation in government bodies; adoption and upscaling of CSO initiatives; collaborative programs.</li> </ul>

<i>Mode of interaction</i>	<i>Description</i>	<i>Salient features / examples</i>
REGULATIVE	Central government attempts to direct CSO initiatives by regulating their activities. On one hand, there are regulatory functions that are somewhat similar to those required for other entities (e.g., private sector). On the other hand, central government also attempts to define the boundaries and limits of “CSO political space.”	Central government regulates CSO initiatives by, e.g.,: <ul style="list-style-type: none"> <li>• <i>Organizationally</i>: CSO registration and accreditation; definition of CSOs (as non-profit and “non-political”);</li> <li>• <i>Financially</i>: audit and reporting requirements; and,</li> <li>• <i>Policy</i>: control over policy-making forums; attempts to avoid or minimize public debate and political visibility on sensitive issues.</li> </ul>
RESTRICTIVE	Central government is wary of CSOs and moves to curb CSO initiatives that government perceives as may potentially undermine or challenge its authority. The actions taken by the central government may serve to impede, constrain, and prevent CSOs from freely undertaking their work and activities.	Central government undertakes measures to restrict CSO initiatives by, e.g.,: <ul style="list-style-type: none"> <li>• <i>Organizationally</i>: security clearances for CSO registration; vague concepts of national security and political activity that prevent CSOs from engaging in legitimate activity; monitoring of CSO staff; constraints on CSO mobility and operations;</li> <li>• <i>Financially</i>: controlling licenses and permits necessary for CSOs to operate; stringent regulations and procedures on foreign financing; and,</li> <li>• <i>Policy</i>: restricting CSO activities to narrowly defined “non-political” activities; scrutiny and harassment of CSOs; withholding permits for meetings and public activities.</li> </ul>
CONTROL	Central government exercises full control over civil society activities and civil liberties. Organized voluntary action is not permitted unless sanctioned by the State or undertaken with the expressed permission or acquiescence of government officials.	Central government controls civic space through, i.e.,: <ul style="list-style-type: none"> <li>• <i>Organizationally</i>: mandatory registration; legal sanctions for unregistered groups and activities; security investigations;</li> <li>• <i>Financially</i>: prohibition on foreign financing; transactions controlled by government agencies and State banks; and,</li> <li>• <i>Policy</i>: exercise of full discretionary powers over all civic activities; organization of State-sponsored “CSOs.”</li> </ul>

References: ANGOC, 1992; Riker, 1993

## Civil Society Organizations (CSOs)

**Scope.** Civil society organizations (CSOs) in Asia are known by different names: non-governmental organizations (NGOs), developmental NGOs, voluntary sector, non-profit/non-stock corporations, non-State associations, and voluntary social service organizations. In Indonesia, the popular term is *Lembaga Swadaya Masyarakat (LSM)* or non-profit organization. In India, those with Gandhian background prefer to be called *voluntary organizations*.

CSOs encompass a wide range of organizations that include traditional associations, faith-based organizations, foundations, voluntary groups, cooperatives, labor unions, community-based organizations (CBOs), professional associations, and student groups.

International NGOs, local NGOs, associations, networks/federations, and membership organizations are likewise included as part of civil society. CSOs also include those informal organizations that may have no legal status.

**Definition.** Civil society organizations are often referred to as non-governmental organizations (NGOs). They are commonly defined by four characteristics: (1) voluntarily formed; (2) non-profit by nature; (3) independent and not part of the State; and, (4) operates in the public interest through the delivery of public services or goods.

Non-profit means that they are not created for the purpose of profit or other financial gains for the people that establish, control or finance them, and any surpluses they happen to generate cannot be appropriated by other institutional units. They are independent by nature and are controlled by those who have formed them or by the Board of Management to which such people have delegated or are required by law to delegate responsibility for control and management. Thus, private trusts whose beneficiaries are specifically designated individuals are not considered as CSOs that are *nonprofit* (Islam, 2022).

Moreover, the United Nations (UN) defines CSOs as voluntary non-State entities, also not for profit, that is separate from the State and the Market. CSOs do not cover businesses or for-profit associations (UNGP Reporting Framework). Moreover, political parties are not considered as civil society. The UN Policy on Engagement with CSOs (2001) states that “CSOs are non-state actors whose aims are neither to generate profits nor to seek governing power.” In some way this definition echoes the philosophy of Gandhian constructive workers in India who emphasize not the politics of parties, elections, parliaments and government (or *Rajniti*), but the politics of the people (or *Lokniti*).<sup>3</sup>

The terms civil society organization (CSO) and non-governmental organization (NGO) are often used interchangeably. In common usage, however, the NGOs belongs to a subsector of civil society; CSO is a more encompassing term than “NGO” (Islam, 2022).

The term “non-governmental” itself was first introduced by the UN in 1950.<sup>4</sup> And while the formal label “NGO” initially applied only to entities working

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<sup>3</sup>To state that CSOs or NGOs by definition are “non-political” can be misleading. Indeed, many CSOs work in the realm of politics, defined as “the activities associated with the governance of a country or State.” However, they are not established to seek or to contend for governing power or State power.

<sup>4</sup>The term “non-governmental” was first introduced in the UN through ECOSOC Resolution 288(x) of 28 February 1950, giving it legitimacy in the world of nation-State governments. The UN Resolution simply stated that “any international organization which is not established by international agreement shall be considered as an international non-governmental organization”. The term “nongovernmental” arose largely from pressures exerted by International Trade Unions, which were among the largest and most powerful non-State entities at that time (De Fonseca, 1992).

internationally, the term was later applied also to domestic organizations. And with the advent of foreign aid, NGOs preoccupied with social and economic issues gained the additional attribute of being formally “developmental” (Fowler, 2011).

For purposes of this paper, the terms CSO and NGO are used interchangeably. Moreover, the main focus of the discussions in this study is on those CSOs *involved in development work*, or “development NGOs”.

## **Brief historical overview of the CSO sector in Asia**

In Asia, civil society has evolved into a significant third sector outside the formal sphere of politics (State) and economy (market) to play an active role in the pursuit of development and democracy.

***Civil society organizations long preceded the establishment of independent States across Asia.*** Voluntary groups first emerged from homegrown community initiatives. Service and care of the poor, sick, weak, disabled and destitute were seen as social, moral and religious obligations on the part of society and of individuals. The first civic organizations consisted of religious and community groups that engaged in emergency relief, health care, charity work, and corporeal acts of mercy. In India, social reform movements emerged against prevailing cultural practices like *sati*, child marriage, ban on widow remarriage, untouchability, *purdah*, and others.

***Different forms of voluntary action later evolved into clearer organizational expressions of development work.*** With the establishment of colonial systems for company registration such as the Societies Registration Act of 1860 (India), Staatsblad 1870 64 (Indonesia), and the Corporation Law of 1906 (Philippines), the first non-governmental institutions emerged within the legal framework of the State. These consisted of schools, maternity homes, homes for widows, orphanages, hospitals, and welfare centers. In colonial Asia, many of the first registered societies were established by Christian missionaries. In the Philippines, the first nonstock corporations were Catholic hospitals and schools that were holdovers from the Spanish colonial regime.

***Mutual-aid societies, unions, cooperatives and workers’ guilds also emerged as formal institutions.*** In the Philippines, the formation of cooperatives as formal institutions began in the late 1800s, in the form of guilds composed of local craftsmen. The formation of cooperatives in the Philippines later continued during the American occupation as part of the colonial pacification strategy (Pagsanghan 2022).

In Sri Lanka, the pre-colonial period was marked by the birth of associations focused on rural development, emergence of women's unions, the birth of civil society activism, the start of cooperative societies, and the formation of civil society networks (Marasinghe, 2022).

***Some unions became an integral part of nationalist movements. In turn, nationalist movements spurred voluntary action.*** In Indonesia, one of the CSOs that took part in the the nationalist movement was the *Sarekat Islam*, a cooperative of Muslim Javanese batik traders founded in 1911 that later evolved into a political organization that demanded self-governance against the Dutch colonial regime and gained wide popular support. By the early 1920s, its total membership was reported to be between 350,000 and 800,000.

In India, Mahatma Gandhi emerged on the political scene starting in the 1920s as the leader of the freedom movement, with a vision of strengthening voluntary action at grassroots level.

***Development-oriented civil society organizations emerged in the post-independence periods,*** as the gap between rich and poor widened, and the new elite continued the policies and lifestyles of former colonial rulers. Being largely peasant economies, peasant insurgencies became a marked feature of the changing socio-political landscape. New forms of civil society organizations and social movements emerged to address issues in nation-building.

In India and Bangladesh (West Pakistan), NGOs assisted in the tasks of migration and resettlement of refugees during the period of partition. In other countries, groups and associations emerged to address the structural injustices in society. In Sri Lanka, the Sarvodaya Shramadana Movement was founded in 1958 and based on Gandhian and Buddhist philosophies. The period saw the emergence of movements that emphasized "voluntary service" to the communities with a strong belief in volunteering as a "way of life" (Marasinghe, 2022).

Agrarian and trade union movements emerged in several countries to address the need for structural reforms. In the Philippines, the Federation of Free Farmers and the Federation of Free Workers were initiated in the 1950s.

***Growing instability and conflict in the new republics led to the rise of authoritarian governments and civil wars; there was massive ebb and flow in the political space for civic action.***

In Indonesia, the development of NGOs began in the late 1960s with the emergence of the New Order. Despite high economic growth at seven to eight percent per year,

poverty increased, and civic space was closed and restricted. In the 1980s and 1990s, Indonesian NGOs began to address issues of human rights, agrarian conflict, and environmental destruction in line with the increasingly authoritarian and repressive character of the regime. From these, a new democratic movement emerged.

In the Philippines, the period of Martial Law (1972 to 1986) gave rise to progressive NGOs. Community organizing became a major strategy for empowerment of the poor.

Cambodia went through over two decades of civil war and foreign occupation (1970 to 1993) that prevented the emergence of CSOs. The Khmer Rouge regime (1974 to 1979) completely destroyed Cambodian institutions that had previously evolved and functioned for hundreds and for even thousands of years (Sarin, 2022).

In Nepal, the establishment of the Panchayat regime (1960 to 1990), prevented the emergence of CSOs as the regime exercised tight control over society. The Social Services National Coordination Council regulated and supervised the NGOs, while the Social Welfare National Coordination Council (SWNCC) handled majority of the funding agencies. The end of the Panchayat regime was marked by a period of political instability that led to a decade-long civil war in 1996 to 2006.

In Bangladesh, there was a succession of three military governments from 1975 to 1990. During this period, CSOs grew as an alternative system for delivery of a wide range of services for the poor, as donors channeled their assistance to CSOs.

***As CSOs grew in scope and influence, they were met with State-led harassment at particular periods of history.*** Two events are worth noting. In India, Prime Minister Indira Gandhi's state of internal emergency (1975 to 1977) was marked by a massive crackdown on civil rights and the political opposition. In particular, Gandhian organizations and leaders were prosecuted with false charges of acting against the national interest and misappropriation of foreign funds for political purposes. This led to the enactment of the Foreign Contribution Regulation Act (FCRA) of 1976 to monitor and control the entry of foreign funds, a policy that continues to this day.

In Sri Lanka, President Premadasa established in 1990 the "Presidential Commission of Inquiry in Respect of NGOs' Functioning in Sri Lanka." Alongside the NGO Commission, the government machinery was used to launch a witch-hunt and a malicious campaign against NGOs and their leaders.

***The growth of CSOs were spurred by specific events – i.e., an era of civil war, the fall of authoritarian regimes, and the restoration of freedoms. These marked the rise of a new generation of rights-based CSOs working for democracy and good***

***governance and for the rights of poor and disadvantaged sectors in society.*** As many CSO researchers point out, these occurred from the late 1980s to the mid- 2000s, at different points in each country's history.

In Bangladesh, NGOs first emerged in the aftermath of the Liberation War of 1971. Among these was the Bangladesh Rural Advancement Committee (BRAC) that was involved in resettlement of refugees, and in providing relief and rehabilitation. In the 1980s, NGOs began to operate on a more formalized structure, and emerged as major players in the delivery of services, primarily in health and education. Their growth was partly propelled by international donors who opted to channel their assistance to NGOs instead of government. This gave rise to some of the region's largest NGOs (Islam, 2022).

The fall of the Ershad regime in 1990 marked the end of the military era, and the start of parliamentary democracy. This gave rise to rights-based NGOs that addressed issues of human rights, land-water and indigenous rights, minority rights and gender justice.

In Sri Lanka, there was a birth of human rights movements after the 1971 insurrection led by Sinhalese rural youth associated with the ultra-left Marxist organization the Janatha Vimukthi Peramuna (JVP) that was crushed by the armed forces (Marasinghe, 2022). And with the outbreak of civil war in the North and East (1983 to 2009) between the Government and the Liberation Tigers of Tamil Eelam (LTTE), there began an influx of International NGOs and inflow of foreign aid into the country. There was increased emphasis on conflict resolution, peace building, democracy, and human rights issues. And after hostilities ended in 2009, assistance shifted towards economic recovery and rehabilitation of conflict-affected areas.

In Sri Lanka, the assassination of President Premadasa in 1993, and ensuing change in government gave NGOs a broader space in which to operate. The NGOs played an active role in the election of People's Alliance government in 1994, and later collaborated with the government's peace and reconciliation initiatives. With a more conducive political environment, NGO work expanded in the fields of human rights, legal aid, environmental conservation and justice and the emergence of the green movement (Marasinghe, 2022).

In Sri Lanka, the change of government in 2015 marked another turning point in the discourse on democracy, good governance, transitional justice, and peace and reconciliation. NGOs played an active role in lobbying for Constitutional Reform and several legislated reforms.

In Nepal, the Comprehensive Peace Accord of 2006 (between Maoists and the Government), formally ended the Civil War that lasted for over a decade. With the

restoration of democracy and enactment of a multi-party system, the CSO movement flourished as part of the democratic reform movement. CSOs stood together with political parties on the streets for abolition of the monarchy in 2008. CSOs advocated for the rights of marginalized and indigenous communities, *Dalits* and women.

In Indonesia, the resignation of President Suharto in 1998 after 32 years in power signaled the end of the New Order and a transition to democracy. The ensuing *reformasi* period was marked by the emergence of new NGOs and civil society movements. With the restoration of basic freedoms, CSOs grew rapidly in number and scope of involvement.

In the Philippines, the nonviolent 1986 People Power Revolution saw the ousting of the Marcos regime by a broad, multi-sectoral opposition consisting of a wide range of civil society organizations and formations that composed the People Power Movement. These included groups from the business sector, the military, women, professionals, NGOs, and basic sectors (urban poor communities). CSOs were the catalysts in the passage of major policy reforms laws in governance (Local Government Code, civil society participation), asset reforms (agrarian reform, urban land reform, indigenous peoples' rights, fisherfolk reforms) and women's rights. Several key CSO leaders also assumed high posts in government.

In Cambodia, the Paris Conference of 1991 and arrival of the United Nations Transitional Authority in Cambodia (UNTAC) in 1992 marked the disarmament of factional armies, the end of civil war, the repatriation of refugees, and the transition to democracy. In rebuilding the country, NGOs became an important force by contributing to development efforts in the country ranging from basic service delivery roles to more sensitive areas, including advocacy, human rights, democratic development, and environmental protection (Sarin, 2022). NGOs grew with international recognition and financial assistance from international donors.

***However, the periods of social reform were curtailed as authoritarian regimes arose and political oligarchies found their way into power.*** In Cambodia, the bloody coup of July 1997 gave rise and dominance to a single ruling party. Over the years, NGOs have played an important role in advocating for democracy and human rights, including participation in street protests. However, human rights advocates, land rights activists, and environmental NGOs have encountered pressures from local authorities as well as shrinking political space.

In the Philippines, the election into office of President Duterte in 2016 resulted in his "war on drugs" involving extrajudicial killings of thousands of drug suspects consisting of mostly urban poor people, now under investigation by the

International Criminal Court. Hundreds of activists, rights defenders, Indigenous leaders, lawyers, journalists, trade unionists, and environmentalists were killed in a counter-insurgency campaign that involved the vilification, called “red-tagging,” of people deemed to support communist insurgents. Duterte also sought to silence his critics, including independent media organizations (Pagsanghan, 2022).

## Legal and regulatory framework for NGOs

**Number and reach.** The number of NGOs in each country is difficult to determine. In the Philippines, their numbers vary widely due to the lack of authoritative data. In India, registration is at State level, and in some States, this is further decentralized at district and sub-district levels. Most countries provide for multiple registration systems and categories for NGOs; data are not consolidated, and in many cases, data are not updated to reflect those NGOs that remain in active status.

In India, a staggering 3.1 million CSOs in India are registered under the Societies Registration Act, based on information collated from all States and Union Territories in 2015. In terms of development NGOs, however, a more realistic number might be the 143,196 organizations registered with NGO DARPAN of NITI Aayog (Policy Commission), which is mandatory for accessing government funds (AVARD, 2022).

In Bangladesh, estimates from secondary sources vary widely, but some 40,000 CSOs are registered as non-profits under company laws. However, making reliable estimates of the number of CSOs engaged in development work or in the rural developmental sector would be nearly impossible (Islam, 2022).

In Nepal, some 51,513 NGOs are registered with the Social Welfare Council as of June 2021. However, since only 6,259 NGOs have renewed their registration in 2020 to 2021 to be eligible for foreign funding, this latter figure might provide a more realistic estimate of *active, development-oriented* NGOs in Nepal (Gautam, 2022).

In Sri Lanka, statistics maintained by the government’s NGO Secretariat show that there are 38,097 social service organizations/NGOs in the country. These consist of 1,699 national level CSOs (including 408 international NGOs), 964 CSOs operating at district level and 35,434 organizations working at the divisional level. Approximately 800,000 personnel are employed in the NGO sector (as cited, Marasinghe, 2022).

In Cambodia, estimates on the number of CSOs range from 4,000 to 6,000, with figures drawn from different studies and government sources (Sarin, 2022).

In Indonesia, data from the Ministry of Home Affairs shows a total of 512,997 registered NGOs as of January 2022. Of this total, some 202,903 are registered as associations; 307,434 are incorporated as foundations; and 56 are foreign NGOs. However, these numbers are far from complete as there are other NGOs such as cooperatives and trade unions that are registered outside the legal framework of the NGO Law, Law 28/2004, and Staatsblad 1870 No. 64 (Harja, 2022).

### **Incorporation, registration and legal status**

***In most countries informal groups and unregistered associations are allowed to exist and to operate, without the need for registration. Mandatory registration is not the norm.*** There are no sanctions against the formation and existence of unregistered groups. In Indonesia, Law No. 17 of 2013 on Societal Organizations recognizes a category of “societal organizations without legal entity status.”

***However, in some countries, registration is mandatory for associations*** and this requirement is covered with criminal sanctions. In Nepal, the Association Registration Act of 1977 (as amended) prohibits the formation of an unregistered association without registration (Art 3) and imposes a fine “of up to 2,000 Rupees on each member of the management committee of such an association” (Art 12).

***In all countries, registration is required for an entity to open bank accounts, enter into contracts and to raise funds or contributions from the public.***

***The right to association is recognized under the Constitution of each country.*** In the Philippines, the Constitution declares that “The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation” (Art 2, Sec 23). It also mentions People’s Organizations, which it defines as “bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure” (Art 13, Sec 15).

***However, the Constitutional right to association in some countries is bound by legislations that may impose restrictions to freedoms in order to protect national security, national unity and internal harmony.*** In Indonesia, Article 28 of the 1945 Constitution states that freedom of association, assembly and expression is part of human rights in the life of the nation and State (Art 28). The formation of NGOs is allowed as long as it does not conflict with *Pancasila* and the Constitution.

In Nepal, the Constitution guarantees the “freedom to form unions and associations.” However, the Constitution states that this freedom may be subject to laws that may impose “reasonable restrictions on any act which may undermine the sovereignty, territorial integrity, nationality and independence of Nepal, ... or

on an act of sedition or on any act which may undermine the harmonious relations between the Federal Units or on any act of incitement to caste-based or communal hatred or on any act which may undermine the harmonious relations between various castes, tribes, religions and communities or on incitement to violent acts or on any act which may be contrary to public morality” [Article 17(d)].

Thus, in Nepal, while the contribution of CSOs is recognized by the Constitution, the laws legislated after promulgation of the 2015 Constitution seem to control CSOs, including their freedom of expression, assembly and association. Some provisions of law such as restricting criticisms on the president's and government's actions, and limitations imposed on rights to information are some of the examples that showcase the growing sense of fear that the legal environment for civil society is becoming increasingly restrictive (Gautam, 2022).

In Cambodia, the Constitution states that “Khmer Citizens shall have the right to establish associations and political parties” (Chapter 3, Art 42). Yet, the same Article also states that “These rights shall be determined by law.” Thus, the Law on Association and NGOs (LANGO), which was legislated by the National Assembly in 2015, gives the government the legal tool for total control over civil society, grassroots groups, and independent human rights organizations. Human rights groups have observed that the restrictions on the right to freedom of association contained in the LANGO goes well beyond the permissible limitations allowed by international human rights law (as quoted in Sarin, 2022).

The LANGO also provides that an organization may be denied registration, if its purpose and goal would endanger, among other things, “national unity, cultures, traditions, and custom of the Cambodian national society” (Section 18, LANGO).

***The legal frameworks provide for multiple systems and channels for registration.***

In Bangladesh, CSOs register as non-profit companies, societies, or trusts. There are separate registration systems for other types of organization such as trade unions. In India, there are nine different acts for registration of CSOs but most of the *developmental NGOs* are registered under the Societies Registration Act, Indian Trusts Act and Non-Profit Company Act. Indonesia recognizes six categories of CSOs: membership-based associations, foundations, non-profit companies, trusts, charities, and special forms, such as companies for the public interest, study centers/institutions, and others. Sri Lanka provides registration for societies, non-profit companies, cooperative societies, and voluntary social services organizations. In the Philippines, many developmental NGOs register as non-stock, non-profit corporations, while other types of organization such as cooperatives and labor unions register with the appropriate government agencies. This makes it possible

for some organizations to have more than one registration. Also, as CSOs have different mandates and operations, they are able to select the legal system under which they should register and operate.

However, in Cambodia, a “non-governmental organization” or “NGO” is defined as a discrete type of organization under the LANGO, enacted in 2015.

***The registration body may vary with each particular kind of organization.*** The government agencies responsible for registration usually include: company registration agencies; ministries/departments of interior or home affairs; ministry of development planning or ministries for particular fields (education, health, labor); special stand-alone registration agencies for NGOs; or, office of the State Minister or Provincial Governor. In India, the laws make State authorities the key agencies for incorporation and registration for several types of organization.

***Registration defines the scope of the permissible purposes of organizations, laws or regulations. These sometimes include broad statements of prohibition and allow wide discretion to government regulators*** (Sidel and Moore, 2019). These limitations may include:

- *Limitations based on concerns for “national security”,* which is sometimes open to wide ranging interpretation.
- *Prohibition from engagement in “political” activities,* which is often left undefined. For instance. Cambodia’s LANGO states that foreign and domestic organizations should “maintain their neutrality towards political parties in the Kingdom of Cambodia” (Art 24). Indonesia’s Law No. 17 of 2013 (Law on Societal Organizations) prohibits organizations from propagating an ideology that conflicts with State principles of *Pancasila*.<sup>5</sup>
- *Other limitations, such as involvement of foreign citizens or non-citizens.* In Nepal, foreign persons do not have the right to participate as founders of an association or as members with voting rights. In Bangladesh, non-citizens are excluded from founding or belonging to non-profit organizations (Sidel and Moore, 2019).

Depending on how these provisions are implemented, they may prevent CSOs from engaging in a wide range of legitimate activity. These include assistance to ethnic and religious minorities, support for vulnerable communities especially those in areas of conflict, and many areas of advocacy work.

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<sup>5</sup> Criticism of the State ideology of *Pancasila* is forbidden under Article 68 of the Criminal Code in Indonesia. In 2017, for instance, the government revoked the legal status of Hizbut Tahrir Indonesia, a conservative Islamist group deemed to threaten *Pancasila* (Burhani, 2017).

***In some countries, incorporation or registration at the national or State level is not enough. CSOs must likewise register with certain agencies, as well as re-register with the regions, districts or municipalities where they operate.*** The multiple registration procedures for statutory compliance can create cumbersome and time-consuming documentation workloads for CSOs. In Sri Lanka, in addition to their original statutory registration, CSOs are also required to register under the Voluntary Social Services Organization (VSSO) Act that lays down additional statutory requirements for compliance. CSOs providing institutional care for destitute elders and persons with disabilities, as well as residential care facilities for children are mandated to register with the appropriate Provincial Departments. Also, all CSOs are likewise required to re-register with the district and divisional secretariats for administration purposes (Marasinghe, 2022).

In India, the task of CSO registration itself is devolved at the State level, and in many cases at the district and sub-district levels. In Nepal, CSOs already registered or incorporated at the national level must likewise register in those local municipalities where they operate. Moreover, the approval of local authorities is required for any activities that CSOs may undertake. And because CSO registrations must be renewed, this creates unnecessary bureaucratic burdens on CSOs. Moreover, due to the lack of guiding laws at the federal, provincial and local levels, the jurisdiction of the three levels is not clear and the laws are conflicting.<sup>6</sup> While decentralized approaches may help broaden geographic access to registration, they also pose distinct challenges regarding the consistency and professionalism of implementation. Especially when implementing provisions are vague or nonexistent, officials may exercise discretion in interpreting legislation; some might even impose added requirements not based on the law.

Meanwhile, rights based CSOs may also face difficult situations vis local governments especially when they advocate on sensitive *local* issues (e.g., on corruption, land grabbing, or conflicts).

***Legal and operational distinctions must be made between registration and accreditation.*** While *registration* bestows upon groups their legal personae, *accreditation* may be required for registered groups to exercise certain rights and privileges, to undertake certain activities, or to participate in programs of government. In some countries these accreditation requirements for CSOs are:

- *To access foreign funds;*
- *To access government funds or to participate in ODA-funded projects;*

<sup>6</sup> NGO Federation of Nepal/NFN (2022). "FGD Report on the Current Situation and Future Direction of CSOs in Nepal." Kathmandu, 18 August 2022.

- *To obtain tax exemption status, or to qualify as donee institution for the purpose of determining tax-rebates for domestic donors; and,*
- *To undertake certain activities that might be covered by professional licensing arrangements and industry standards.* These include the provision of institutional services in health, education and social care; microfinance services; engineering; and, construction works.

***Moreover, there has been an increasing "securitization" of the registration and incorporation process of CSOs.*** In Bangladesh, for example, prior clearance from National Security Intelligence (NSI) is mandatory for registration under the Societies Registration Act.

***Often, there is no judicial recourse when registration is denied.*** In most cases, CSOs can inquire into the reasons for denial with the relevant registration agency and can re-apply after fulfilling requirements. In Sri Lanka, the VSSO Act stipulates that a person aggrieved by the registration decision can only appeal to the "Secretary to the Ministry of the Minister in charge of the subject of Social Services..." (No. 31, Art. 6).

In Nepal, the Association Registration Act of 1977 does not stipulate the specific grounds to reject a registration application. Rather the law states that "the Local Authority shall make the necessary inquiry, and register the Association, if he/she deems it *appropriate* to register the Association." Many CSOs have criticized the term "appropriate" as being vague and arbitrary (Gautam, 2022).

***The duration and renewal of registration varies across countries. However, in some countries there are stricter requirements for CSOs than for other types of organization.*** In the Philippines, nonprofit and non-stock corporations registered under the Securities and Exchange Commission (SEC) have perpetual existence unless otherwise provided for under their articles of incorporation.<sup>7</sup> This provision for non-profits is similar to that of a business (for profit) corporation.

However, in India, NGOs registered under the Foreign Contribution Regulation Act (FCRA) must renew their registration every five years (Secs 12A, 80G, and 35A). Periodic renewal is also a prominent feature in the registration system for CSOs in Bangladesh and Nepal. Such requirement for periodic renewal of registration is seen as *discriminatory* to CSOs, as business corporations are not burdened by similar regulations. As explained in the Nepal paper:

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<sup>7</sup> As provided under the Philippine Revised Corporation Code of 2018.

“The registration system is different between profit-making companies and non-profit NGOs in Nepal. Profit-making companies can simply submit the necessary documents to the Company Registrar to get their approval for registration. It is not mandatory for them to renew their registration with multiple agencies annually; one can just pay the tax or VAT to get a tax clearance certificate to continue the company every year. They also receive incentives from the government. However, for CSOs, the process is more complicated and cumbersome as they must register with the local government where the CSO operates. This is mandatory. In addition, CSOs face undue political interference from government officials. The requirements for each CSO may differ; the processes and requirements are not fair for all” (Gautam, 2022).

## Funding, taxation and reportorial arrangements

*The flow of foreign funding has been increasingly scrutinized in many countries in Asia. This includes funding from government-related entities, international NGOs and foundations, and individuals.* Some governments seem to view foreign funding as a means of interference in domestic political processes.

In India, the Foreign Contributions Regulation Act, 2010 (FCRA) imposes significant limits on the foreign funding that CSOs and political groups can receive. The FCRA requires every person or NGO wishing to receive foreign donations: (a) to be registered under the FCRA, (b) to open a bank account for receiving the foreign funds in the State Bank of India, New Delhi, (c) to secure prior permission on a case-by-case basis to receive foreign funding, and (d) to utilize those funds only for the purpose for which they were received. Information on the NGO and its members are then reviewed by the Intelligence Department of the Home Ministry, who may physically visit the NGO premises and check their documents. Further, NGOs are required to file annual returns and must not transfer the funds to another NGO.

In India, NGO registration with the FCRA must be renewed every five years. Similarly, one has must complete a CSR registration under the Ministry of Corporate Affairs, for mobilizing financial support from corporations.

NGOs often face problems related with renewal of their FCRA Registration. The numbers of NGOs are huge and the staff with intelligence agencies for verification are limited so there are repeated delays. Some cases of corruption in the department have been reported. The licenses of some NGOs have been cancelled for not following the proper procedure while some others are fighting their cases in courts (Sidel and Moore, 2019).

India's FCRA regulatory framework has been in place for 46 years. The law was first enacted during the Emergency Period in 1976 amid apprehension that foreign powers were interfering in India's affairs by pumping in funds through independent organizations. The amended FCRA was passed in 2010, and this was again amended in 2020, giving the government even tighter control and scrutiny over the receipt and utilization of foreign funds by NGOs.

Similar restrictions on foreign funding are imposed in other countries especially within South Asia. Some common features include the need for secondary registration, and the need for prior approval of both the proposed project and the donor by the government.

In Bangladesh, there is a complex system of regulatory approval for foreign funding that has been in place for years. This has been expanded under the Foreign Donations (Voluntary Activities) Regulation Act of 2016 that requires all organizations wishing to receive and use foreign donations/contributions to: (a) register with the NGO Affairs Bureau; and, (b) to secure advance project approval, on a case-by-case basis.

In Nepal, the Social Welfare Act requires NGOs who seek to receive foreign funding to: (a) register with the Social Welfare Council (SWC), and (b) submit a project proposal and an application for the project. The SWC then scrutinizes each funder for the project. Also, foreign funds must pass through the Ministry of Finance and the SWC. Meanwhile, fundraising and use of local resources are allowed only with the permission of Home Ministry and line agencies.

In Sri Lanka, the VSSO Act similarly regulates the operations of NGOs and controls the access of NGOs to foreign funds.

In countries of Southeast Asia, there is also increasing scrutiny of foreign funding. In the Philippines, in February 2021, Department of Foreign Affairs (DFA) Note Verbale No. 2021-0592 was issued, notifying all diplomatic missions that all foreign government funding for NGOs should be coursed through the DFA for "appropriate clearance." According to the DFA Secretary, this note verbale is part of "how responsible government monitors where money comes from and goes to in the face of insurgent and terrorist-secessionist threats."

In Indonesia, in order to access foreign funds and implement projects, NGO recipients must first be registered with the Ministry of Home Affairs. Foreign aid can be received by NGOs indirectly or directly. If the foreign aid is to be received *directly*, then the NGO is required to report the plan to the Minister of Home Affairs (for

national work areas), the Minister of Home Affairs through the Governor (for provincial work areas), or to the Minister of Home Affairs through the Regent/Mayor (for district, municipal and city work areas) (Art. 10, Minister of Home Affairs Regulation 38/2008). In Indonesia, foreign donors must also be registered by the government.

***Some countries have introduced additional requirements for CSOs, in order to monitor their funding sources.*** In Sri Lanka, the Central Bank of Sri Lanka (CBSL) mandated financial institutions to obtain the NGO's constitution, funding sources and their activities and related documents as requirements to open an account. In the Philippines, while the registration requirements under the Securities and Exchange Commission (SEC) are straightforward, SEC Memo Circular 15 Series of 2018 prescribes additional reportorial requirements for NGOs considered "medium" or "high-risk" of being so-called funding channels for terrorist organizations, creating difficulties for organizations labelled as "leftist," and even for independent progressive organizations (Pagsanghan, 2022).

## **Taxation and tax exemptions**

***Most countries provide for tax-exemptions for registered non-profit organizations.*** Tax exemption usually requires an accreditation approval by the Tax Department or Internal Revenue Agency. An application for tax exemption requires an additional step that is separate from incorporation/registration.

In India, NGOs must register under section 12 A of the Income Tax Act for getting income tax exemption, and under sections 80 G and 35 AC for providing tax rebate to persons making donations to the organization. On the other hand, the individual donors get 50 percent exemption in income tax if they donate to an organization registered under 80 G, and 100 percent if the recipient organization is registered under 35 AC of the Income Tax Act.

One main problem that NGOs face is their renewal of registration. Prior to 2010, NGO registration under the Income Tax Act used to be a one-time requirement for life. But following the amended FCRA Law in 2010, NGO registration under 12 A, 80 G, and 35 AC for income tax exemption now has to be renewed every five years.

Meanwhile, for accessing CSR funding, NGOs in India must register under the Ministry of Corporate Affairs. And for accessing government funds, NGO must sign up with an office under NITI Aayog (National Policy Commission) as a mandatory requirement.

In Bangladesh, NGOs that are registered with the NGO Affairs Bureau are not required to pay any tax on funds received from donors. However, donations made

to NGOs generally do not allow the donors to be entitled to any blanket tax exemption. However, corporations and individuals may “claim a tax deduction for donations made for certain designated public benefit purposes, e.g. donations for old age homes, forestation, waste treatment plants, care for the disabled, education for orphans and street children,” among others (as cited, Islam 2022).

In Nepal, NGOs that receive a tax-exemption certificate from the Department of Internal Revenue, are tax exempt on their income from grants, donations and investments. The Income Tax Act of 2002 recognizes a category of tax-exempt organizations that include social, religious, educational, or benevolent organizations of public nature established with a non-profit motive. However, individual and group donors that provide financial support to NGOs are not tax exempt.

NGOs in Nepal may also apply for exemption on customs duties for certain types of imported equipment such as those intended for the disabled and orphans. However, the process is lengthy, tedious and complicated, and may require multiple approvals from several ministries.

In Sri Lanka, NGOs may be taxed up to 30 percent of their “profits” (or “income”) which the tax regulation code defines as three (3) percent of the money these groups received as grants and other forms of contributions. In other words, donations received by NGOs are taxed by the government, except for those CSOs categorized as “charitable institutions,” i.e., those providing institutionalized care to the sick and the needy.

Also, NGOs may be freed of the tax liability if the country’s Commissioner-General of Inland Revenue determines that the funds are directed towards “humanitarian activities.” In this case, NGOs should be providing and rehabilitating infrastructure facilities and livelihood support in areas identified by the said Commissioner to be stricken by disasters, civilian conflicts or poverty.

In Sri Lanka, 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 (Marasinghe, 2022).

In Cambodia, Article 20 of LANGO states that “an association or non-governmental organization, which has registered or signed the memorandum of understanding, shall be subjected to the existing taxation regime law, and receive incentives and enjoy exemptions in accordance with the existing laws and provisions.”

***In the Philippines, there is an innovative system of NGO certification for tax exemption, managed by NGOs themselves. It provides one example of self-regulation by the NGO sector itself.*** The Philippine Council for NGO Certification (PCNC) is a self-regulatory body of the NGO sector, whose main purpose is to accredit NGOs that meet established good governance standards. PCNC certification, which involves a rigorous review of NGOs' operations, is a pre-requisite for the registration of NGOs and foundations with the Bureau of Internal Revenue (BIR) as qualified donee institutions. Donations made to qualified donee institutions are tax-deductible. PCNC is governed by a nine-member board of trustees composed of representatives from Philippine NGOs and foundations. The role of PCNC is covered by a special Memorandum of Agreement signed in 1998 between the Department of Finance and the PCNC.

***In all countries, apart from tax exemptions on donations received, NGOs are generally subject to the same regulations and requirements as for-profit companies.*** NGOs pay the same VAT rates and Social Security Contributions as for-profit companies, and NGO personnel pay their income taxes on salaries and wages received. When NGOs are engaged in income-generating activities such as training or services on fee basis, or engage in commodity-selling, they also have to pay taxes similar to other entities.

## **Reporting and accounting requirements**

***Annual reporting is usually required by the registration agency as well as by other regulatory agencies.*** These usually consist of minutes of board meetings, reports of activities for the given period, and audited financial reports.

***Reportorial requirements may be tedious and cumbersome.*** This is especially true in those cases where:

- *Multiple registration agencies and accreditation bodies are involved, together with other State actors at multiple administrative levels (national, district, municipality);*
- *More frequent reporting (e.g. quarterly) is required for certain groups involving specific types of information;*
- *NGOs require pre-approval for their funding and activities (i.e., where foreign funding is involved), and thus, must submit their upcoming plans alongside their completed annual reports; and,*
- *Foreign NGOs do their own reportorial and accountability requirements.*

In Bangladesh, CSOs must submit activity reports and audited financial reports of the preceding year, and activity plans (programs) and the budgets of the coming year to their registration authority on an annual basis. The government can

suspend activities of a CSO or even cancel its registration for non-submission of reports to its registration authority.

However, in almost all cases, there are questions regarding the capacity of the relevant regulatory bodies to meaningfully assess the filings made to them. Reporting obligations are even more extensive when it comes to foreign donations (Islam, 2022).

In Nepal, NGOs must submit annual reports on their activities and finances to the District Administration Office (DAO), and the SWC. This includes an audited financial report by a certified accountant that is *appointed by the NGO's Annual General Assembly* (Association Registration Act, Nepal). All these submissions are compulsory as they form part of the application process for renewal of registration. Furthermore, an NGO must submit to the SWC an activity plan for the following year. In Nepal, reporting goes through multiple processes and multiple levels.

In India, all registered organizations must conduct general body and executive committee meetings as prescribed by law and inform the relevant authority about any changes made in the board. Besides, they have to submit audited statements of accounts to income tax department and to FCRA division, if registered under FCRA. All organizations have to report the funds received from foreign sources *every quarter*. All donations made to the organization by individuals are reported to the Income Tax Department that issues certificates for exemption of tax to the persons making donations.

In Sri Lanka, the reporting requirements for NGOs is quite detailed and tedious. Given the influx of foreign aid to NGOs and movements, there is public perception that NGOs have an abundance of funds and are dependent on donors. This is why the State tends to look at NGOs with skepticism and raises accountability issues in view of the large sums of money that NGOs are seen to be managing.

Pursuant to Circular RD/99/01, NGOs in Sri Lanka are required to submit a proposed action plan in accordance with the prescribed format formulated by the NGO Secretariat. The information required in this format includes: (a) the nature of the proposed activities, (b) the area and the target groups, (c) the number of people that will be employed, (d) source of funding, (e) annual expenditure budget, and (f) the amount of funds that will be brought into the country.

An NGO must submit: (a) a true copy of the rules of the organization, (b) a copy of the latest statement of accounts including the balance sheet certified by a recognized auditor, and (c) a proposed program of work plan for the ensuing year.

The Circular further stipulates that every NGO registered under the VSSO Law shall keep and maintain: (a) cash book with bank accounts; (b) petty cash book; (c) main ledger; (d) main journal; (e) membership fee ledger; (f) debtors and creditors ledger; (g) counterfoil books; (h) register for issue of receipts; (i) assets register; (j) committee meeting report books; (k) membership register; (l) details of the members, staff, officers and servants inclusive of their letter of appointment; and, (m) files containing the relevant Acts and Regulations. According to 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 (Sec 10).

In Cambodia, the law requires domestic NGOs to submit a copy of its activity report and annual financial report by not later than the end of February of the following year (Art 25 of LANGO). In practice, NGOs or associations submit their annual activity report together with the financial report to the Ministry of Interior (MoI) and the Ministry of Commerce (MoC). Meanwhile, the LANGO law allows local authorities to come and inspect without prior notice to the NGO, and this threat tends to limit NGO space (Sarin, 2022).

In Indonesia, the government requires NGOs to make financial accountability reports in accordance with general accounting standards based on AD/ART, especially for NGOs that collect and manage funds from member fees (Article 38 of Law 17/13 on Society Organization). The same law also requires NGOs to periodically publish their financial reports to the public.

***Reporting requirements for foreign NGOs tend to be more extensive.*** Foreign NGOs may be required: (a) to report any new activities, new partners, or operation in new parts of a country; (b) to report on a quarterly or other very frequent basis; (c) to report in detail and for approval before activities are carried out; (d) to report in detail after activities are carried out; (e) to report to one or multiple State authorities and partners; and/or (f) to report voluminous, highly detailed information at any step in the activity process.

In Cambodia, the government has required foreign NGOs to submit their annual report on “activities and finances status” to the Ministry of Foreign Affairs and Ministry of Economy and Finance “within thirty days from the date of their submission to donors.” Foreign NGOs are also required to submit copies of all proposals and financial agreements with donors to the Ministry of Foreign Affairs and Ministry of Economy and Finance within thirty days of the donor agreeing to the proposal (LANGO, 2015).

In Indonesia, NGOs established by foreigners are required to make periodic reports to the Government or Regional Government and to publish these for the public through an Indonesian language mass media (Article 51 of Law 17/13).

***In addition to reporting, State agencies also utilize other measures to ensure accountability and compliance among NGOs.*** In Sri Lanka, under the VSSO Act, the Registrar has the power “to enter and inspect at all reasonable hours of the day” the premises of an organization registered under the Act. The Societies Ordinance authorizes “any person having an interest in the funds of the society to inspect the books and names of the members at all reasonable hours.

In Bangladesh, the 1961 Voluntary Social Welfare Agencies Ordinance gives the Department of Social Services (DSS) the power to suspend the executive committee of a CSO registered under the Act, without giving any right to appeal. At the same time, the governing body of the CSO cannot dissolve itself without the approval of the DSS.

## **Summary assessments of the political and legal environment for CSOs**

Table 2 below provides a summary description of the working environment for development NGOs/CSOs in seven Asian countries. It is noted that:

- The three broad categories used here to describe the CSO environment are: Supportive (A) to Regulative (B) to Restrictive (C). These three categories are described by Table 1 in an earlier section. (Refer to pages 14-15 of this publication.)
- The rating system shows a *continuum* rather than exclusive categories. This is because the CSO environment in each country may have elements that are supportive, regulative, or restrictive at the same time (See Figure 1). Also, the CSO environment may shift over time, with changes in government administrations, or in State policies.
- The ratings here are based on the research papers plus the writers’ individual and collective assessments.
- The “CSO environment” is assessed in terms of two related categories:
  - *Political environment* – looks into the state of *collective* human rights such as freedom of association, assembly, and expression, and how they affect CSO space.
  - *Legal and regulatory environment* - looks into official laws and policies that govern the registration, financing, reporting requirements, and other facets of NGO operations.



OVERALL POLITICAL ENVIRONMENT FOR CSOs	LEGAL AND REGULATORY ENVIRONMENT FOR NGOs
<b>Bangladesh</b>	
<p><b>Restrictive / C</b>            CSOs have carved a significant role since the birth of Bangladesh in 1971. As the State has been unable to assist the poor, or to alleviate poverty, CSOs have grown to fill the gap in delivering a wide range of services (education, health, livelihoods, micro-finance) and in pushing for women's rights. The government remains wary of the expanding scope and reach of CSOs and their perceived political influence, given the reality that Bangladeshi partisan politics is extremely antagonistic. Over the years, the struggle for free space has changed, depending on whether a democratically elected or a military government has ruled the country. Overall, CSOs feel that they operate within a restrained framework. Given the rise of fundamentalist groups, and without a fully functioning democracy and growth of a democratic culture, the struggle for CSO space continues.</p>	<p><b>Restrictive / C</b>            The legal framework for NGOs is restrictive (i.e., registration and 5-year renewals, restrictions on foreign funding, need for security clearances, prior approvals for funding proposals from multiple agencies, etc.) An NGO Affairs Bureau, created in 1980, regulates all NGOs that receive foreign funding. Moreover, the regulations for NGOs are constantly redefined through the issuance of circulars. These create more bureaucratic red tape, more policies, and the exercise of discretionary powers by government agencies. The resulting administrative and procedural bottlenecks make it difficult for NGOs to comply with all formalities of existing regulations. Most affected are the smaller NGOs and those involved in rights-based initiatives and advocacy work.</p>
<b>India</b>	
<p><b>Supportive to Regulatory / B+</b>            Constitutional rights and basic freedoms are exercised and protected by law. However, the political environment is operationalized at the <i>State</i> level which may vary widely from State to State. Overall, there is a vibrant civil society which, at times, acts as counterbalance to excesses of the government.</p>	<p><b>Regulatory / B</b>            The overall policy environment for the voluntary sector is supportive and at times pro-active (e.g., Law on Corporate Social Responsibility, representation in government bodies) yet there are restrictive policies in place (e.g., on foreign funding, 5-year renewal of NGO registration, on foreign NGOs operating in the country, etc.).</p>
<b>Nepal</b>	
<p><b>Regulatory / B</b>            The overall political environment for CSOs improved after the Peace Accord of 2006, the end of monarchical rule in 2007, and the ratification of a new Constitution in 2015. Government-CSO collaboration may work in the field of physical development, but government is not supportive of CSO rights-based work (i.e., legislative advocacy, awareness building, public campaigns and community mobilization). The government's attitude towards CSOs varies, and there is no equal treatment for all CSOs. Government-CSO working relations are based mainly on individual perceptions, availability of resources, and the nature of work. Moreover, there are some CSOs formed by government or by political parties – which itself creates political/ideological divisions within the CSO sector itself.</p>	<p><b>Regulatory to Restrictive / C+</b>            Despite having ratified a progressive new Constitution in 2015, many of the old laws and bureaucratic attitudes of government remain. This includes the Association Registration Act of 1977 that was promulgated during the authoritarian Panchayat Regime. These have affected the working space for NGOs. Complex registration and renewal procedures, lack of a one-door policy for registration, monitoring of NGOs, restrictions on foreign funding, and political and bureaucratic biases of government functionaries – are some challenges that NGOs face. The policy and legal provisions for NGOs are deemed to be as "of controlling rather than of monitoring nature."</p>

OVERALL POLITICAL ENVIRONMENT FOR CSOs	LEGAL AND REGULATORY ENVIRONMENT FOR NGOs
Sri Lanka	
<p><b>Regulatory / B</b>            In a country marked by ethnic strife (1983 to present), insurgency (JVP revolt, 1987 to 1989) natural disasters (Asian tsunami, 2004), and a national economic/political crisis (starting in 2019), the response of CSOs has enabled them to gain public recognition and a major role in the nation's social and political life. However, CSOs working on human rights, conflict resolution, peace and reconciliation, inter-ethnic and inter-religious harmony, and those with a presence in the North and the East, have increasingly been subjected to more State scrutiny than those CSOs focused on development and social welfare.</p>	<p><b>Regulatory to Restrictive / C+</b>            Since 1996, with the creation of the National Secretariat for NGOs (following the VSSO Act of 1980 as amended), NGO legislative and regulatory mechanisms have become increasingly "stringent, cumbersome, bureaucratic and intimidating." These include laws on registration and renewal, foreign funding, NGO taxation, and audit and reporting requirements. Stringent requirements (e.g., on prior approval for project proposals and activities) also affect NGO operations. The overall regulatory framework for NGOs continues to be shaped by growing State concerns over "national security" and "money laundering."</p>

References: CSRC, 2022; Harja, 2022; Islam, 2022; Marasinghe, 2022; Mishra, 2022; Nhek, 2022; Pagsanghan, 2022; and other

## Recommendations to improve the space for CSOs and the voluntary sector

The following recommendations identify some critical areas that governments, CSOs, and other entities need to address, in order to protect and broaden the political and legal space for voluntary action.

### Improve the existing legal and regulatory framework for CSOs

**Identify specific areas for the reform of existing laws affecting NGOs.** Government regulatory controls on civil society are becoming increasingly restrictive, especially for advocacy groups and those engaged in rights-based work. It becomes imperative to identify priorities for legal reform in order to create an enabling legal framework where NGOs can work without fear and intimidation. Recommendations from the country papers include:

- **Provide for voluntary registration.** Laws that provide for compulsory registration, or that penalize non-registered groups or unsanctioned activities are a violation of citizens' rights and of international law.
- **Provide for simpler and more efficient systems of CSO registration.** Reduce red tape and onerous requirements that make registration mechanisms unnecessarily stringent, cumbersome, bureaucratic and intimidating.
- **Abolish or minimize the need for multiple registrations with different agencies for statutory compliance.** CSOs should have the freedom to decide under which law they intend to derive its legal personality. The legal regulatory regime must at all costs abstain from vitiating the legal basis of statutes that allow people to come together collectively.

- **Abolish the need for multi-level registration and pre-approval of CSO activities** in each locality where the CSO operates. In Nepal, government needs to create a one-door policy for registration of CSOs in accordance with the Constitutional mandate.<sup>8</sup>
- **Abolish the requirement of periodic registration to ease the burden of the CSOs.** It is discriminatory to require CSOs (in India, Bangladesh, Nepal) to renew their registration every five years, yet other entities (i.e., stock and for-profit corporations) have no such requirement.
- **Streamline reporting requirements and ensure that the amount of government supervision is commensurate to the risks involved.** Advanced approval processes, including prior clearances for certain activities, may result in undue interference in CSO activities.
- **Remove or reduce foreign funding restrictions.**
- **Improve tax concessions for the non-profit sector.** 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.
- **Facilitate philanthropy.** Provide for tax deductible contributions to qualified recipients. Other efforts may include provisions for company profit-sharing with workers and communities, and support for corporate social responsibility.
- **Address the issues and proposals raised by CSOs to amend existing laws.** CSOs in Cambodia have proposed specific amendments to LANGO in view of its highly restrictive provisions, e.g., requiring permission from the Ministry of Interior for CSOs to transfer their office.

**Furthermore, identify and address regulations that limit the freedom and independence of civil society actors.** The UNOHCHR describes the nature of some of these regulations, i.e.:

- "Requiring registration without positive benefits (e.g. tax benefits);
- Limiting what types of activities can be done;
- Criminal sanctions for unregistered activities;
- Restrictions placed on the registration of specific associations, including international NGOs, or associations receiving foreign funding or groups working on human rights;
- Setting criteria for who or what can undertake activities or limiting those activities;
- Restricting sources of financing (i.e., foreign sources);

<sup>8</sup> As provided for under Point 14, Article 51(j) of the Nepal Constitution related to "policies regarding social justice and inclusion."

- Legislation governing freedom of peaceful assembly, association and expression that contains discriminatory provisions, or have a disproportionately negative impact on some groups; and,
- ... burdensome administrative procedures and discretionary measures that may inhibit or delay civil society actors from carrying out activities” (UNOHCHR, 2014).

## Build better Government-CSO relationships

***Establish platforms at National and State level where government and CSOs can freely discuss matters pertaining to the policy framework (i.e., rights and obligations) of the civil society sector.*** Also, strengthen existing forums for dialogue between government and NGOs at the local level to dispel distrust, foster dialogue, and initiate cooperation. In each country, there are already policy pronouncements that provide the basis for Government-CSO cooperation.

***CSOs should continue engagement with the government.*** Depending on the current state of CSO-Government relations, the stance taken by Asian CSOs with their governments may range from confrontation to cooperation, to avoidance. But since the main focus of CSOs is to assist poor and marginalized sectors and communities, CSOs should continue to engage the government even in hostile political conditions. They should make it clear that CSOs are *not* anti-government; rather, they are for *good governance*. Some approaches may include:

- ***Work with credible and supportive officials/agencies within the government.*** Governments are not monoliths, and there are competent and well-meaning civil servants in every agency.
- ***Focus on, and work with local governments,*** especially where the powers of government have been devolved. At local level, the results of development interventions may be more impactful and lasting.
- ***Diversify CSO strategies.*** CSOs working in difficult political environments can diversify their approaches, with a mix of activities of varying political sensitivity. They may engage in political mobilization, while at the same time deliver less politically sensitive services such as health, livelihood trainings, and production inputs.

***Government should take initial steps to show its trust and willingness to engage constructively with CSOs.*** The country papers proposed some possible measures:

- ***Practice transparency through public information disclosure and by giving CSOs access to its regulatory bodies.*** For greater public scrutiny and transparency, the activities of CSOs should not be governed by administrative *circulars* but by laws already known, enforced, and welcomed by CSOs.
- ***Stop the unlawful harassment of individuals and organizations.*** Lawmakers and officials need should desist from making baseless statements or insinuations

that NGO activities need to be monitored on the grounds of “national security,” “fraud,” or “money laundering.” If authorities have the necessary evidence, then they should prosecute the cases according to the law, instead of using accusations to destroy, malign, and insult the organizations and individuals.

- ***Educate the police force and enforcement agencies to respect civil and political rights.*** There should be no repression of demonstrations and peaceful civil activities.
- ***Improve the quality of participatory planning and budgeting through the involvement of NGOs in different levels of State administration.***

***Finally, both government and CSOs should comprehend the broader contexts and issues that compel them to collaborate as “development partners.”*** To cite an example: Sri Lanka is currently engulfed in a phenomenal economic crisis that has driven 9.6 million people below the poverty line in 2022, compared to three million people who lived below the poverty line in 2019. This means that 43.63 percent of the total population live 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 (Marasinghe, 2022).

## **Uphold and protect human rights**

***Ensure the human rights of “development partners.”*** By ratifying the *Universal Declaration of Human Rights (UDHR)* and other international human rights conventions, governments have taken on a legal responsibility that should extend to all employed personnel and volunteers in the CSO sector. If CSOs are to contribute to the country as “development partners,” then government needs to uphold the human rights and freedoms of people working in the sector by adopting measures to support and encourage their work and by abstaining from violating the rights of CSO workers.

***Use the UDHR as the basis for framing the legal environment for CSOs.*** The task of framing a legal and regulatory environment for CSOs and the voluntary sector must be seen within the broader context of a set of principles – the *Universal Declaration of Human Rights (UDHR)*. The UDHR upholds, among others, the right to freedom of association and expression, and due process (Articles 19, 20, and 11, respectively). The UDHR further states that “The will of the people shall be the basis of the authority of the government” (Art 21). It also states that “Everyone has duties to the community in which alone the free and full development of his personality is possible,” adding that “... in the exercise of rights and freedoms,

everyone shall be subject only to such limitation as are determined by law solely for the purpose of securing the recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Building on these principles, CSOs have put forward a set of propositions related to the legal rights and obligations of persons and organizations engaged in voluntary action.<sup>9</sup>

- **Voluntary action as a human right.** It is an expression of a right and a civic responsibility to participate in a community, whether done individually or collectively. CSOs are organizational expressions of voluntary action.
- **Right to association.** Formation of a voluntary association or group requires no permission from any government; nor does the intention or act of exercising such right require public notification. It should not be subject to government review or approval – so long as no grant of special privilege is requested from and granted by the government.
- **Government authority and will of the people.** The authority of government derives from the will of the people (UDHR, Section 21). Discussions about what constitutes the “public good” should be in the realm of public discussion and review.
- **Minimum use of coercive powers of the State.** The best governments are those that maintain public order essential to the exercise of the full range of basic human rights with the least use of coercive powers of the State.
- **Regulatory concerns not specific to CSOs.** The use of government authority to restrict CSOs or other voluntary sector activity should be limited to very specific and clearly identified public concerns related to the infringement of the rights of others. Concerns about “money laundering,” “terrorist activity,” protecting the public from fraudulent fund-raising practices, preventing dangers to public safety and health, and infringements on people’s sovereignty by foreign and economic interests – though valid, are concerns that are not specific to CSOs or voluntary associations. These are covered by other laws of the land – Civil Code, Criminal Code, Tax Code and others. The laws relating to such practices should apply equally to NGOs as to other organizations. Consequently, there should be few, if ever, regulations that are specific to NGOs, including “Special Laws on NGOs.”
- **Distinguishing rights and privileges.** The formation of a voluntary organization is a right, not a privilege granted by government. However, when the entity is given special privileges (e.g., right to raise public funds, collect fees, seek tax

<sup>9</sup> Based on “Appendix 1: Legal Framework for NGOs and the Voluntary Sector: Recommended Principles” in *Government-NGO Relations in Asia: Prospects and Challenges for People-Centred Development* (1995). Heyzer, N., Riker, J.V. and Quizon, A.B., eds. Appendix 1, pages 209-213. These recommended principles were drawn up by participants of the “APDC-ANGOC Regional Dialogue on Government-NGO Relations in Asia” held in Chiangmai, Thailand on 12 March 1991.

exemption, etc.) which are not inherent rights, there are certain obligations that CSOs should fulfill, such as a board, internal rules, audit, and reporting requirements.

- **Accountability and trusteeship.** The accountability of a legally incorporated CSO (i.e., NGO, non-profit) is held by its board of directors or trustees. Members of the board act in a position of a public trust. If the CSO is a membership organization, then the directors manage the organization and its assets in behalf of members by whom they are elected and to whom they are accountable. If it is not a membership organization, the board is generally “self-perpetuating.”<sup>10</sup> It is fully appropriate for the government (especially in the case of non-profits or tax-exempt organization) to specify that directors or trustees should have no personal financial stake in the organization. Also, government may examine obligations of the trustees in relation to public interest. Examples:
  - *To supporters:* A legal obligation which may be legally enforced to assure that the organization’s purposes are fully and accurately disclosed, that the funding it receives have been used for the purposes for which these were provided, and that all these have been fully disclosed.
  - *To beneficiaries:* An ethical obligation which may have legally enforceable elements, that the CSO presents itself accurately and that its services meet standards of quality.
  - *To the law:* A legal obligation to oversee the CSO’s observance of applicable laws that apply to organizations and individuals. These include laws on fraud and embezzlement, laws on contracts, foreign exchange transactions, zoning regulations, labor laws, and others.
- Given the above, it is important that governmental policies and regulations related to the formation and function of CSOs be re-examined and revised within the framework of universally accepted human rights principles.

***There should be a safe and enabling environment for civil society work – supported by a robust national legal framework and grounded in international human rights law.*** Freedoms of expression, association, peaceful assembly, and the right to participate in public affairs, are rights that enable people to mobilize for positive change. Everyone, individually or in association with others, should enjoy these rights. They are central to civic activity (UNOHCHR, 2014).

***There should be no Special Laws on NGOs.*** Over the past decades, a number of governments in Asia have contemplated on enacting Special Laws on NGOs. Currently, there are at least three such laws. In Cambodia, the Law on Associations and Non-Governmental Organizations (LANGO) was enacted in 2015, and in Sri Lanka, the Voluntary Social Services Organizations Act (VSSO) legislated in 1980 has undergone amendments on several provisions. Rather than being enabling

<sup>10</sup> A self-perpetuating board means that the board manages its membership subject to its own regulations. It can set terms dictating how long a director can serve, and can elect and re-elect directors itself without input from external members of the organization.

legislations, these special laws have only served to curtail the political space for CSOs, and to tighten government control and supervision over CSO operations. Moreover, in Nepal, the Association Registration Act of 1977, promulgated during the authoritarian Panchayat Regime, remains in full force and effect as the primary legal framework for CSOs.

It should be noted that there are other laws already in force in each country that are fully sufficient to regulate the activities of corporations, associations and CSOs. These other laws allow prosecution in cases *where criminal acts have been committed*, including cases of fraud, money laundering, public disturbance, insurgency, and others. These cases are already covered by other existing laws of the land such as the Civil Code, the Criminal Code, the Corporation Code, and others. Thus, *there is no need for Special Laws on NGOs*.

### **Institute reforms within the CSO sector**

***Engage in CSO collective self-reflection.*** The CSO sector in each country should engage in collective assessments of the changing socio-economic and political landscapes in which they now operate. CSOs need to forge new strategies and approaches for CSOs to remain relevant in light of their shrinking space and shifting development roles. These conversations should cut across sectors and among broad alliances and coalitions.

***Expand coalition-building with other sectors in civil society.*** Development NGOs can no longer afford to operate within their confined circles, networks, and silos of work. Social change is not achieved through “projects.” Instead, there must be greater effort at building conversation and engagement with other sectors of business, worker unions, professionals, the academe, and community associations – to build social movements, to protect democracy and to address people’s economic, social, and political rights.

***Develop and strengthen systems of self-regulation among CSOs and the voluntary sector in each country.*** Self-regulation has many motivations – as an educational tool to strengthen CSO quality and effectiveness; as a means to forestall even stricter government regulation; as a device to unify the voluntary sector; and, as a means for umbrella groups to extend their influence (Sidel and Moore, 2019).

It is unlikely for the government to cede regulatory authority to CSO self-regulatory initiatives; these exist alongside government-led regulations. In the Asian region, the sole exception to this is perhaps the Philippine Council for Nonprofit Certification (PCNC).

The PCNC is a registered private voluntary, non-stock, non-profit corporation whose main function has been to certify the qualification of non-stock, non-profit organizations for accreditation as qualified donee institutions. In 1998, a Memorandum of Agreement between the Department of Finance and the PCNC authorized the PCNC to accredit NGOs applying for donee institution status.<sup>11</sup>

***Develop a voluntary Code of Ethics and Conduct for CSOs.*** There have been various efforts at developing Codes of Conduct among CSOs in the Philippines and Cambodia.<sup>12</sup> One critique of this approach has been the lack of ability for CSOs to enforce these Codes.

In this regard, CSO associations and networks might consider these Codes of Conduct to serve as the basis for setting and adhering to membership certification standards. Membership meetings could be used as venues for peer reporting, questioning and mutual accountability. Standards of professionalism could be set in areas such as board membership, fund raising, public reporting and financial auditing. Strong coalitions of CSOs could help the sector build a stronger public representation.

As organizations that constructively challenge the actions and inactions of State power, authority and functions, ***CSOs should take steps to practice legally and ethically acceptable standards of governance that uphold transparency, accountability, organizational integrity and consensus-based decision-making.***

For instance, CSOs involved in the delivery of community services should explore ways to make themselves more accountable to the people they serve. This might be done, e.g., by inviting people's representatives to sit as CSO Board Members, by melding CSO professional staff services into people's organizations, or by transforming service delivery systems into some kind of fee-for-service arrangements where finances are linked to clientele satisfaction. Moreover, CSOs should practice systems of public accounting, especially in cases where volunteer work and donations are sought from the wider public.

Moreover, there must be robust internal systems of evaluation and audit. The individuals who govern and manage CSOs must exhibit integrity in both their work and private lives; they must strive to personify the ideals for which their organization was created.

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<sup>11</sup> As this certification is used as a basis by the Bureau of Internal Revenue, this means that contributions or gifts actually made to such accredited donee institutions become tax deductible in computing taxable income. This is in accordance with the Philippine Tax Reform Act of 1997. See <https://www.pcnc.com.ph/about-us/>

<sup>12</sup> In Cambodia, the Cooperation Committee for Cambodia (CCC) introduced the NGO Governance and Professional Practice (NGO GPP) in 2004 as an independent voluntary-based certification system. Also, the Code of Ethical Principles and Minimum Standards for NGOs in Cambodia was developed in 2005. In the Philippines, the Caucus of Development NGOs (CODE-NGO) ratified a Code of Conduct for Development NGOs in 1991.

**Improve public visibility and discourse.** The legitimacy of CSOs precisely lies in public trust (Harja, 2022). Hence, CSOs should inform the wider public about their work and of the problems they face, as the perils of shrinking space for CSOs needs to be placed in the public discourse. This should involve not just sporadic self-promotion, but rather, reporting on inclusive and regular basis (Islam, 2022).

Related to this, **explore and make better use of social media platforms.** The growing influence of social media provides both an opportunity and a challenge. For while social media will enable CSOs to reach a wider public, CSOs will have to contend for messaging in an arena that is also increasingly inhabited by troll armies, “buzzers” and conveyors of disinformation. CSOs must learn to be more effective in utilizing the internet and social media.

**Develop more robust networking and improved mutual assistance among CSOs.** In some countries (i.e., Bangladesh), small and medium-sized CSOs are likely to face more difficult internal challenges in terms of securing funding support or gaining public recognition for their work. In this context, the larger and more established CSOs should come forward to provide funding and assistance to smaller CSOs, and to pull their weight to bring greater attention to the work of smaller CSOs. This will not only give smaller CSOs more breathing room in which to operate, it would also help to build a more vibrant voluntary sector.

**Engage donors in dialogue, so that they understand and appreciate the regulatory and political environments in which CSOs operate within the country.** In this way, donors can become active partners in widening the space for CSOs. Suggested actions for donors include:

- Extending financial and other forms of support for rights-based work and peace initiatives that may be politically sensitive, rather than just focusing on “safe” development interventions;
- Honoring the autonomy of CSOs to identify on-the-ground needs that require CSO interventions, and developing the mandates and priorities of donors accordingly;
- Providing funds directly for community activities rather than for overheads of international organizations;
- Providing longer-term support for CSOs, including costs for administration and personnel;
- Support for capacity-building of CSOs; and,
- Ensuring equal opportunities for small CSOs, by providing CSOs support in those areas where skills and capacities may be lacking.

**Develop the next generation of CSO leaders and workers.** The existing practice of some CSO founders clinging on to positions of powers or passing them on to family members stunts the development of good institutional culture. Organizations need to evolve, and not rely merely on their founders' vision, skills, and goodwill (Islam, 2022).

The challenge is not just for the next generation of CSO leaders to "continue" the work that was started by the older generation; rather, it is about them re-imagining development work for the future. This requires capacity building programs on development theory, program management, leadership, and strategic planning and the core skills needed by the next generation to build the sector (Pagsanghan, 2022). ■

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## Citation

- Quizon, A. B. (2022). "Regional Overview: The Legal and Political Space for CSOs in Seven Asian Countries." In ANGOC (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. Quezon City: ANGOC.



# BANGLADESH<sup>1</sup>

Civil Society Organizations (CSOs) in Bangladesh have a long history. The country is endowed with a vibrant presence of many CSOs or NGOs (ADAB - Association of Development Agencies in Bangladesh, n.d.).<sup>2</sup>

Overall, the positive contribution of CSOs in the anti-poverty fight and development is well recognized (Bangladesh: Unlocking the Potential, National Strategy for Accelerated Poverty Reduction, 2005). In addition, CSOs in Bangladesh play an important role in generating employment for many that is crucial where unemployment is a severe challenge.

This study contributes to the understanding of the various operational challenges of CSOs in Bangladesh. It charts the development of the CSOs through a historical lens, their evolution, the legal and political milieu within which they operate: the process of registration, funding, accountability and sustainability. The recommendations should help the government and CSOs to bring about a more conducive environment for the CSOs to operate and work in furtherance of their mission.

## ***Methodology***

This study is primarily based on a desk review of existing literature on CSOs. It also analyzes the relevant statutory legal framework governing various aspects of the operation of CSOs in Bangladesh.

A validation workshop was also conducted on 9 September 2022, and participated in by 27 CSO representatives (20 females, 7 males) who contributed to the analysis and provided recommendations for the study.

The study attempts to focus on the developmental or rural developmental CSOs. However, as many CSOs in Bangladesh have a broad area of operation, to pinpoint developmental or rural developmental CSOs can be complicated.

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<sup>1</sup> Rizwanul, M. I. (2022). *CSO Assessment Study: Legal and Political Environment for Developmental NGOs in Bangladesh*. 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)].

<sup>2</sup> Throughout this study, the two terms have been used interchangeably. This is in line with what the UN website does when it comes to defining CSOs.

## History and evolution of CSOs in Bangladesh

The origin of CSOs in Bangladesh pre-dates the emergence of Bangladesh as an independent State. The earliest CSOs could be the international charities, few national voluntary initiatives, and some Christian missionaries who set up charitable institutions with the motive of charity, voluntary, and emergency relief works. Bangladesh Baptist Church *Sangha*, set up in 1796, appears to be the oldest such institution (Bangladesh Baptist Church Sangha, n.d.). Parallel to these, there were public charities run by local philanthropists operating as religious trust-based schools, hospitals, and orphanages, etc. (Haider, 2011). As early as 1947, the Kumudini Welfare Trust was set up, which is perhaps among the earliest secular CSOs by local initiative (Kumudini Welfare Trust of Bengal Ltd., n.d.). In 1959, the Bangladesh Academy for Rural Development (BARD) was established in Comilla and the so-called "Comilla Cooperative Model" - a distinct approach to rural development - was initially launched on an experimental basis. In the following two decades, it focused on various rural development programs based on funding from development partners from around the world.

During the Liberation War, a few million Bangladeshis had to take refuge in Bangladesh and in the years that followed, Bangladesh witnessed severe natural disasters and resource constraints. In 1972, Fazle Hasan Abed established Bangladesh Rural Advancement Committee (currently known as BRAC) to resettle refugees who took refuge in India.

Apart from relief and rehabilitation, CSO founders seem to have a vision for contributing to the empowerment of the masses as well. Agricultural cooperatives and agri-development organizations formed a consultative group called the Agricultural Development Association of Bangladesh, which subsequently changed into the Association of Development Agencies in Bangladesh/ADAB (ADAB, n.d.; Mohinuddin, 2017).

In the 1980s, moving beyond relief and rehabilitation, CSOs started to engage in the delivery of services, particularly, though not exclusively, in the fields of health and education. Factors that propelled this shift is not clear, but it would seem that a growing inclination of the international donor agencies in preferring CSOs in delivering certain services to the government could have been a crucial factor to the growth in the number and somewhat changed the *modus operandi* of CSOs (Sobhan and Bhattacharya, 1990).

As the flow of overseas development assistance to Bangladesh has shrunk, many CSOs appear to have focused their attention on income generating activities such as marketing commodities or offering various services on a competitive market basis.

One very significant activity of many rural CSOs has been offering micro-credit. Probably, the most well-known in this regard in Bangladesh is Grameen Bank. While micro-credit has opened the option of credit without collaterals to many who could not otherwise access formal financial institutions, the interest charged or broadened scope of the credit, even extending to consumer goods, has been criticized as too heavy by many (Finch and Kocieniewski, 2022). There is also *Palli Karma Sahayak* Foundation (PKSF) that was established in May 1990 as an apex financing institution for assisting NGOs in expanding their micro-credit to the underprivileged people.

Since the early 1990s, some CSOs have focused on the rights advocacy for the less privileged sections of the community. The rights-based NGOs (both at the national and local levels) have been operating quite actively in protecting and promoting human rights, land-water and indigenous rights, minority rights and in working emphatically on the issue of gender justice. They are the actors who can play a role in giving voice to the voiceless.

Activities of the CSOs have become diverse - focusing on, among others, the establishment of an effective democratic process at the grassroots; poverty alleviation; promoting child and women's rights; advancing education; health and sanitation; family planning; legal aid; and, protection of the environment (Mohinuddin, 2017).

## **Developmental NGOs**

Reliable data on the number of CSOs in Bangladesh is lacking. The estimates in secondary sources widely vary. By one estimate, Bangladesh has around 40,000 CSOs operating currently. As of June 2022, as per NGOAB (NGOAB, 2022), there are as many as 2,529 NGOs registered with it (2,268 national, 261 international). This dearth of data would imply several trends - primarily the lack of systemic, in-depth studies on developmental or rural development CSOs in Bangladesh.

However, CSOs seem to have a presence all over the country, including in the hinterlands where many essential government services are scant. The larger CSOs tend to have operations across the whole of Bangladesh. Small, rural CSOs generally operate within specific parts of the country. Some CSOs operate specifically within the three hill tracts districts. There are also many CSOs working for a specific segment of the community: children, women, elderly, persons with disability, etc.

*Association of Development Agencies in Bangladesh (ADAB)*, founded in 1974, is a network of general coordinating forum of many CSOs in Bangladesh. *Association for Land Reform and Development (ALRD)* is a network of rights-based advocacy forum for land rights of national and local NGOs/CSOs/CBOs. *Bangladesh Shishu Adhikar Forum (BSAF)* is a national network of CSOs actively engaged in the protection and promotion of child rights. *Campaign for Popular Education (CAMPE)* is a network of CSOs working on education for all. *Credit and Development Forum (CDF)* is the network of CSOs involved in offering micro-credit. *Federation of NGOs in Bangladesh (FNB)* is a generic platform of many CSOs in Bangladesh. *The National Forum of Organizations Working with the Disabled (NFOWD)* is a network of CSOs working on persons with disability. This list of CSO platforms is not exhaustive, but it more or less captures the key network of CSOs in the country.

A key function that many CSOs in rural areas perform is offering micro-credit facilities. While this has greatly ensured access to finance for many extremely poor people who could not otherwise access credit from regular financial institutions, some expressed trepidations about the high interest rate charged and the use of this scheme by some as a means of reducing dependence from donors for funding activities (Lewis, 2011, p.120). The CSOs involved in micro-credit defend the relatively high interest charge by referring to the high transactional cost of these programs (Lewis, 2011, p.120).

Some CSOs offer services in rural areas in addition to the ones offered by the government. Services of this kind would include primary education, family planning, sanitation, health care facilities, etc. Some CSOs also work to raise the awareness of various sections of the community on important socio-economic matters.

Another critical function that CSOs perform is rights advocacy and focusing on fostering an enabling environment to ensure pro-poor, inclusive policy changes that may be more empowering for the downtrodden section of the rural community than delivering specific services. The offering of legal aid to the rural poor is also an area that the CSOs may put more emphasis on.

## Legal environment for developmental NGOs

### ***Registration and reporting***

Although not legally mandatory, registration of NGOs is almost inevitable for various reasons. There are multiple avenues for registering as an NGO in Bangladesh. If an NGO wants to receive foreign donations, it has to be registered with the NGO Affairs Bureau (NGOAB) as per the *Foreign Donations (Voluntary Activities) Regulations Act, 2016*. Many NGOs register as societies or charities under the *Societies Registration Act, 1860*. Others are registered as non-profit associations under Section 28 of the *Companies Act, 1994*. An NGO may also be registered as a

voluntary social agency under the *Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961*. Some NGOs also register under the *Trusts Act, 1882*. Others choose to register under the *Waqf Ordinance, 1962*.

Any NGO engaging in offering micro-credit must be registered with the Microcredit Regulatory Authority under the *Microcredit Regulatory Act, 2006*. International NGOs operating in Bangladesh must also be registered under the NGOAB before functioning within Bangladesh.

For some sector-specific CSOs, such as the ones working for youth, women, or people living in the hill tract districts,<sup>3</sup> registration with the respective ministry of the government is required.

While some critique these disparate regimes as creating an undesirable maze, the various options offer CSOs flexibility to suit their specific mission. In essence, the registration process entails three things: (a) filling out the necessary forms along with the particulars needed, (b) payment of fees, and (c) the clearance from the relevant governmental authorities.

Periodic renewal is a prominent feature of the registration process for CSOs. Critics have recommended the abolition of the periodic renewal to ease burdens of CSOs as well as the registering authorities.

Most CSOs have to comply with the requirement of reporting to their donors and to the government. However, in almost all cases, there are questions about the capacity of the relevant regulatory bodies to meaningfully assess the annual reports submitted to them. These reports are apart from the project completion reports that CSOs may have to submit to their donors.

Another challenge for CSOs is the requirement of certification of the completion of their activities. During the focus group discussion (FGD) with CSO representatives, some expressed a frustration that due to the delay in certification on the completion of their project from the government authorities, their work often flounders.

### ***Financing NGO operations***

Many CSOs operate with the help of external funding. However, with the government's plea to prevent terrorist financing and money laundering, the rules on funding for CSOs in Bangladesh have been tightened. Official development assistance (ODA) or any other funding from foreign governments cannot be disbursed directly to CSOs in the country; the Government of Bangladesh acts as

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<sup>3</sup>The registering authority lies with the Chittagong Hill Tracts Regional Council Act set up under the Chittagong Hill Tracts Regional Council Act, 1998.

the conduit for such funds. The shrinking inclination in many donor countries stemming from the overall trend of somewhat reduced overseas development assistance from traditional OECD countries due partially to current economic uncertainties and changes in their policies and priorities by donor countries also seem to have diminished the access to foreign funding by CSOs. These make it more difficult for CSOs to access funding from overseas, and puts a strain on CSO activities. Access to funding seems to have become particularly challenging for CSOs focusing on human rights in recent years, following the global economic crisis of 2007 to 2008. On the other hand, the activities related to advocacy for State's accountability, transparency and responsiveness of these CSOs often go under close monitoring, questions and accusations by government agencies and officials.

The COVID-19 and Rohingya crises seem to have diverted funds from regular CSOs to these specialized areas of concern.

Other sources of CSO funding are part-time income-generating projects, member contributions, donations from INGOs or multilateral organizations, and small government grants.

Under the Ministry of Finance, the Bangladesh NGO Foundation also provides financial grants for NGOs to implement socioeconomic development and poverty alleviation projects. The Foundation is required to spend some 80 percent of its funding on grants and capacity-building of the partner NGOs or community-based organizations. As the government is encumbered by the cost of mega projects and an increasingly bigger volume of loan repayment, it seems likely that the funding of CSOs from the government would flounder in coming years. To prevent this, the government is recommended to include CSO financing in its national budget. Doing so would help them implement some priority developmental or rural developmental works.

While adequate and smooth funding appears to be an issue for most CSOs in Bangladesh, the smaller ones face this more acutely. A July 2020 survey by the Citizen's Platform for SDGs reported that 90 percent of NGOs at the district level did not have adequate resources (USAID et al., 2021, p.11-12). Many smaller CSOs often struggle to tap available funding either because of the lack of information or because of lack of adequate experts to prepare the proposals (USAID et al., 2021, p.12). Many CSO representatives report that some donors impose a requirement that the auditing would have to be done by only a small number of auditing firms and bearing the service charge of those firms are challenging for some CSOs.

With the dwindling flow of ODAs to Bangladesh, one less explored funding source for the CSOs could be the corporate social responsibility (CSR) spending of various corporate actors, particularly but not exclusively, banks and financial institutions, and other large companies listed in the stock exchanges. Policy interventions in this arena would not only be beneficial for CSOs but may also make the CSR spending regime in Bangladesh more transparent (Mahmud et al., 2019; Belal and Cooper, 2011).

The diversity of funding sources for CSOs seems to have widened. However, the competition for funds and the often-shrinking volume of the funding are making it harder for CSOs to financially sustain themselves. The potential progression of Bangladesh to a full-fledged developed status may make this even harder as the ODA may potentially be on an even shorter supply. Delays in clearing the funds obtained by NGOs is also a challenge to civil society operations.

### ***Tax exemptions***

NGOs that are not income-generating are exempted from paying tax. NGOs that are registered with NGOAB are also not required to pay any tax on funds received from donors.

Taxes are however required to be deducted from employee salaries. When CSOs procure any products or services, the law also requires them to deduct applicable taxes and VAT appropriate to the nature of the respective products or services.

Generally, donors are not entitled to any blanket tax exemptions. Having blanket exemptions may open the door for unscrupulous and fraudulent practices and such donation between related parties may occur simply as a means for the evasion of tax payments. However, corporations and individuals may “claim a tax deduction for donations made for certain designated public benefit purposes, e.g. donations for old age homes, forestation, waste treatment plants, care for the disabled, education for orphans and street children,” etc. (ADAB, n.d.) (ICNL, 2020).

### ***Challenges to NGO accountability***

Unfortunately, many CSOs lack internal accountability mechanisms that may in turn corrode the public confidence in the sector. This exists due to several reasons. For one, the culture of deference to authority may mean accountability of higher-ups is generally rare in Bangladesh. The founders of many CSOs cling to management positions or appoint their family members as their successors. This culture of nepotism becomes an anathema to the institutionalization of CSOs. This is also likely to discourage the career progression of promising and talented personnel working in the CSOs.

The eminent professionals working in internal governing bodies of many CSOs often do not devote enough time to their role and this also is a hurdle for ensuring the proper adherence to accountability mechanisms. Due to the lack of availability of steady funding, the appointment of staff on an ad hoc project basis may further exacerbate this problem.

The lack of unity and effective coordination among CSOs at a broader level may also undermine their strength as a group. Despite the diversity in CSOs' structures, capacities and functions, their unity and joint actions were evident on common issues in the late eighties and nineties in the last century. At present, there are formal and informal cooperations among CSOs working at either at the national or grassroot level but functional cooperation is not the case at a broad level.

## **Government-CSO relations**

There seems to have no strong empirical basis to draw a comparative conclusion on the space for the civil society of Bangladesh in the last few years. The civil society in Bangladesh seems to have struggled for free space since the birth of the country. However, it appears that the civil society feels that they operate within a restrained framework that could limit the scope and outcome of their actions.

### ***Rights to freedom of expression and CSOs***

Article 39 of the Constitution guarantees freedom of expression subject to interests of the security of the State, friendly relations with foreign States, public order, decency or morality, defamation or incitement to an offence. However, interestingly, the constitutional scheme, by using the words "citizen" and "the press" in Article 39(2), seems to envision its scope only to natural persons and the press, and may not apply to all CSOs per se. More importantly, the constitutional guarantee does not and cannot operate in a vacuum; it is how this freedom operates for people working for the CSOs that is crucial. It appears that in Bangladesh, an overarching problem is the narrative of democracy versus development as if there is an inverse relationship or wedge between the two. It seems that a rather weak presence of the opposition political parties for the last decade or so has not only made the political environment more dominated by the governing political party but also has somehow provoked a perception of somewhat more constrained space for the expression of the civil society. To what degree that perception applies to individual CSOs depends on their respective mission and persons running them.

A challenge for CSOs in Bangladesh appears to be the indirect use of the law to curtail their activities or expression. A case in point would be the rejection of renewal of Odhikar's registration allegedly for "engaging in activities that tarnish

the image of the country in the international arena” (The Business Standard, 2022). Without taking any stance on the merits or demerits of the activities of Odhikar, it can be said that if there is any violation of law, that should be acted upon, not resorting to the non-renewal of registration. It appears that when it comes to putting curbs on the activities of a CSO, there is some disparate plight of INGOs and national ones. For example, Transparency International Bangladesh (TIB) has faced stern critique from the government, it does not appear to have faced challenges what Odhikar or the likes have. Indeed, literature suggests that INGOs generally work more like foreign private consulting firms with little regulatory control of the government (Islam, 2021, p.401). The underlying rationale for this disparate attitude is unclear and arguably, this is discriminatory. The plight of small local or regional CSOs seems to be worse which is paradoxical in that those with capacity constraints are subject to more regulatory oversight and control than their larger counterparts. Considering their capacity constraint, the attitude of regulators and governmental bodies may ideally be more relaxed to smaller CSOs.

Again, it appears that a bigger challenge exists for the media and human rights CSOs, particularly those working on civil and political rights than purely developmental CSOs working on service deliveries (USAID et al., 2021, p.8). Although, this generalization needs to be viewed with some degree of caution as the theoretically clear demarcation line between the two may sometimes be blurred in practice. CSOs operating in sensitive areas such as working for gender equality or working on transgender rights have been subject to attacks by radical forces. Thus, many CSOs seem to indulge in self-censorship (USAID et al., 2021, p.3). The same concern exists among many CSOs who work for the right and welfare of small indigenous groups.

### ***Right to assembly and unrestricted mobility***

There are legal restrictions or special rules on visiting Chittagong Hill Tract. Restrictions on CSOs exist from both State and non-State actors on their right to peacefully gather and work. While the government claims that it gives full access to all international partners and CSOs to work in Cox’s Bazar and support the Rohingyas (National Report Submitted in Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: [Universal Periodic Review]: Bangladesh, 2018, para.126), there are reports of some CSOs feeling constrained in working there (The Economist, 2022). Restrictions tend to occur from direct threat, harassment through legal proceedings, and self-imposed restraint out of fear (USAID et al., 2021, p.12). From the side of CSOs, some of them being aligned with political parties may have done a disservice to their neutral role and indirectly curbed their own space to act as a force distinct from the political parties vying for

the right to govern the country (Tasnim, 2017). Of course, this scenario is as much attributable to the centrist political party culture in Bangladesh as it is to the CSOs (Tasnim, 2017). Overall, for developmental CSOs, the right to assembly does not seem to be a big challenge in Bangladesh.

### ***Rights to information and participation***

CSOs are exerting or seeking to exert their influence as a pressure group. The passing of the *Right to Information Act, 2009* is a step in the right direction. It seems to have some modicum of success. There is also the *Public-interest Information Disclosure (Provide Protection) Act, 2011* that does not seem to be used at all. A significant problem is that government information sharing exercises with CSOs is often only promotional with few details. Increasingly, CSOs are formally invited to some law and policy-making exercises by government bodies. There is also sometimes option to make submissions on draft policies or laws. However, there does not appear to be enough reflection of the inputs of CSOs in the law and policy. When the government submits its report in compliance with its international treaty obligations such as in the process of Universal Periodic Review of Human Rights, it does invite CSOs in formal meetings. Thus, generally, the participation of CSOs seems to be formalistic as the government agencies feel the need for the participation for compliance with the requirements of the treaty or the demand of foreign donors.

While the government seems to acknowledge the positive role of CSOs in developmental activities and services deliveries, the government's overall outlook towards the CSOs seems to be somewhat ambivalent. The impact of CSOs on the macro-level largely depends on the government apparatus' willingness to perceive the CSOs as a complimentary force. Should the government want to foster an enabling environment for the non-government sector, it needs to show more confidence in the ability of the CSOs to take steps to ensure development and equity.

### ***Other rights and CSOs***

One neglected avenue for CSOs to contribute to rural development could be to ensure their greater access to the parliamentary standing committee debates (Islam, 2021). As these debates may be the precursor to law-making, the participation of CSOs may be more meaningful than mere formalistic participation just before the passing of a bill by the Parliament. In a similar vein, the various government ministries and departments do not regularly present any policy or position papers and therefore, there may be a disconnect between the developmental or rural developmental vision of the government and CSOs.

When it comes to the rights of CSOs, apparently, a less talked about aspect of some CSOs in Bangladesh is their internal governance mechanism that would appear to have a bearing on the rights of CSOs themselves. Almost the entire discourse seems to focus on the governmental law and policies and other exogenous factors undermining the space for the CSOs, with very little focus on the internal constraints in many CSOs that can be limiting them in several ways. In some of them, a lack of good internal practice within some CSOs in Bangladesh may inhibit the rights of CSOs, albeit indirectly. Also, founders of some CSOs clinging on to positions of powers forever would appear to stunt the prospect of good institutional culture. Moreover, family successions to the position of power and policymaking in some CSOs with little discernible difference with private business and CSOs, may well be a fundamental internal constraint (Khatun, 2021).

Even when a formal transfer of authority may take place within a CSO, there may be shadow leadership exerting influence. Some CSOs running with disinterested persons in the top management or in various oversight bodies also does not help CSOs to flourish. Within such institutional milieu, it may be difficult to attract and retain bright individuals to choose this field as a career path. This may in turn hurt the quality of the work of CSOs. And from the viewpoint of CSOs' legitimacy, it is imperative that they are perceived as responsible actors where transparency and accountability receive high priority. More than a question of theoretical legitimacy, the improvement of internal institutional culture may increase their internal resilience and enhance the public image of CSOs that may help them to be more independent. Moreover, unlike the exogenous factors such as the access to funding or governmental law and policies, this is something that is within the control of the leadership of the CSOs (Khatun, 2021).

### ***Partnership and coordination mechanisms***

The formal mechanism for partnership and coordination among rural CSOs themselves and between them and the government are scant in Bangladesh. The CSOs sometimes cooperate with each other on special occasions by taking up collaborative activities or implementing joint projects. In some multi-sectoral government agencies, such as the Counter Trafficking Committee (CTC) at district levels, representatives of CSOs are included. However, these bodies with limited funding and consisting of various professionals with many shades of responsibilities do not seem to have any meaningful impact. When it comes to the more powerful bodies, such as those with the power to allocate various social security benefits to be rendered by the government or allocation of government-owned resources for the less privileged sections of the community, the representation of CSOs is less prominent. A true spirit of partnership between the

government and CSOs should mean that it would forge an effective collaboration towards meaningful change.

## Conclusions and recommendations

This study finds that there is a dearth of research on CSOs in Bangladesh. It also finds that the CSOs and those who work for them perceive threats from different actors, which make them feel constrained in taking up and effectively implementing their activities. The COVID-19 and global economic uncertainty pose further challenges to the sustainability of many CSOs, particularly the smaller ones. Bangladesh's impending graduation to a developing country status may also make it challenging for many of them to secure foreign funding for their activities.

A striking challenge is the bureaucracy's view of CSOs not as partners in development, but as subsidiary actors that should behoove to the government for its activities. The lack of regular dialogue between CSOs and the government is a problem not just for the CSOs to make a more meaningful contribution to the policy making on rural development, but it may also mean the government's policies do not always get the benefit of the input of all relevant stakeholders.

It also seems to be a cause of concern that for some larger CSOs, the focus seems to be somewhat shifting away from rural development.

Given this context, the following are recommended to ensure that CSOs are enabled to be effective agents of governance and democracy:

- To the extent possible, donors and government agencies should tailor their regulations and various project-related requirements accordingly to accommodate the special circumstances of smaller CSOs.
- Activities of CSOs should be governed by laws already enforced and welcomed by CSOs, not by government circulars. For these changes to occur, a strong political commitment would be a prerequisite.
- For long-term sustenance, CSOs must also undergo endogenous reforms. A more robust networking and a coalition of CSOs within and beyond the country can help them pull more weight. CSOs, particularly the larger ones, would benefit from instilling institutional values within their own structure. This is important for both their greater public legitimacy and more efficacy of CSOs.
- Larger CSOs should come forward to provide funding to smaller CSOs. While this may not be possible for many donor-funded activities, a portion of the income-generating activities of larger CSOs should be channeled to smaller CSOs to give the latter more breathing space and create a conducive atmosphere for the overall CSO sector. The nimble structure and familiarity with the situation of local CSOs may help larger CSOs make low-cost interventions at the grassroots level.

Overall, an enabling environment for the CSOs to perform their complementary role within the society is an important ingredient not only for rural or economic development but also for a functioning democracy. Moreover, a robust presence of CSOs is an important element in ensuring smooth work for rural development and poverty alleviation (Bangladesh: Unlocking the Potential, National Strategy for Accelerated Poverty Reduction, 2005). In an era when CSOs are playing an active role even in the domain of international law and policy-making, they cannot be an onlooker within Bangladesh. Their watchdog role in ensuring rural development needs to be sustained for society. ■

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## Acknowledgments

The author gratefully acknowledges the able research assistance of Sayere Nazabi Sayem and Sajid Hossain. Special thanks to Shamsul Huda, Rowshan Jahan Moni, Kishor Kumar Tanchangya, Rafiq Ahamed Sherajee and participants of the validation workshop organized by ALRD on 9 September 2022 for their suggestions and comments. All errors, of course, are the author's alone.

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## Citation

Islam, M. R. (2022). CSO Assessment Study on Legal and Political Environment for Developmental NGOs in Bangladesh. In ANGOC (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. ANGOC.

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# CAMBODIA<sup>1</sup>

In Cambodia, “civil society organization” (CSO) is an umbrella term that is used to refer to voluntary citizen’s groups, non-profit organizations, non-government organizations (NGOs), faith-based organizations, interest groups, labor and trade unions, community-based organizations, professional associations, student groups, and political parties. These organizations are heavily involved in national and international development efforts to address societal issues (UN-OHCHR Cambodia, 2015).

Civil society organizations play important roles in promoting and protecting human rights, monitoring government policies, influencing decision-making, assisting communities in expressing their concerns, and seeking government accountability. At times, CSOs also provide services for persons who are at risk or vulnerable on multiple fronts (UN-OHCHR Cambodia, 2015).

However, as in many other countries, authoritarian and populist regimes have led to the constricting of civic space in Cambodia, and have decreased the trust between CSOs and the Government (Min, et al., 2019). The performance of CSOs themselves, the lack of public awareness on CSOs, unharmonious relationships between organizations, and the lack of visibility of promotion of CSOs are among the other factors that contribute to the tightening of CSO space in Cambodia (Min, et al., 2019).

This paper was therefore prepared to: a) provide a description of civil society organizations in Cambodia, b) to assess the legal and political environment for NGOs, and c) to present recommendations on protecting and enhancing CSO space in the country.

## **Methodology**

This study was put together using secondary and primary sources. Desk review was conducted on the topic and was supplemented with inputs from civil society workers gathered during a focus group discussion on 17 August 2022 and a key informant interview with Mr. Chea Vibol, staff of the Cooperation Committee for Cambodia (CCC) on 29 August 2022. The draft of this report was then presented to civil society organizations during a validation workshop conducted by STAR

<sup>1</sup>Nhek, S. 2022. *CSO Assessment Study: Legal and Political Environment for Developmental NGOs in Cambodia*. 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 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)].

Kampuchea on 17 August 2022. Due to funding constraints, the study could not visibly conduct a broader interview with a large sample of the civil society and NGOs in Cambodia.

## History and evolution of NGOs

During the pre- and post-Khmer regime, social groups created were religious-based associations focused on volunteerism and social services (ADB, 2011).

Following the Paris Peace Accords in 1991, a peace-keeping operation - called the United Nations Transitional Authority in Cambodia (UNCTAC) - was formed to restore peace and civil government in a country ruined by decades of civil war and cold war. It is in the same year that the first NGO was established.

During the UNCTAC period in 1992 to 1993, many more NGOs emerged, mostly focusing on human rights and voters' education activities. From 12 in 1992, the number of registered local NGOs in Cambodia increased to 595 in 1995 (Khus, n.d.). Many Cambodian organizations and institutions then were still at an extremely nascent level. Due, in part, to the availability of external funding, many of these NGOs switched their focus to development activities (ADB, 2011).

The violence of the 1997 Cambodian coup d'état, as a result of long tensions between the then two governing parties, compelled Cambodia's emerging civil society (religious leaders and NGOs) to once again visibly work towards national reconciliation, increasing tolerance and peace. Meanwhile, the international donors were shocked at the violent authoritarian behavior of Cambodia's ruling elite, thus limiting their financial assistance to Cambodia for humanitarian purposes.

In 2009, there was emergence of CSO roles in democratic, social, economic, and political affairs of the country. It is in the same year that the Law on Peaceful Demonstration was implemented which provided that "anyone wishing to organize a peaceful assembly at any public place must notify the local authorities in writing at least five working days before the planned date of the assembly" - which widely denied civil society demonstrations in practice (The Right of Peaceful Assembly Worldwide, 2021).

Various CSOs working at the national and provincial levels have also focused their actions towards health, education, land, forestry, water and indigenous peoples' rights as well.

In late 2017, the Supreme Court dissolved the main opposition party, the Cambodia National Rescue Party, in accusations of plotting strategies with the United States

to topple the Cambodian Government. The Government has since then “cracked down on independent media; arrested trade union leaders and environmental activists; and, silenced any oppositional voices” (Sok, 2021).

Today, the number of active CSOs in Cambodia are not clearly recorded within the database of government institutions and CSOs. Reported figures for registered CSOs working across all provinces and cities and levels of government range from 4,378 to 6,268 (Neb, S., et al., 2017). A study on the *Image of Civil Society Organizations perceived by Cambodia Public* (2019) reported a figure of 5,523 CSOs in Cambodia (Min, et al., 2019).

### **Typology of CSOs**

Several types of CSOs exist in Cambodia today. Among these are:

- **International NGOs**, which are organizations operating in Cambodia but whose headquarters are in other countries. These organizations provide humanitarian and basic services, at times in conjunction with government institutions, while also advocating for reforms in the fields of health, rule of law, and economics. International NGOs also carry out advocacy research. Some of these organizations provide support to local NGOs and Community-Based Organizations, through direct funding and capacity-building (ADB, n.d.; Khus, n.d.).
- **Local NGOs** are organizations that have originated in and whose headquarters are in Cambodia. Majority of the members of these organizations are Khmer (Khus, n. d.). These local NGOs come in the form of: (a) democracy and human rights organizations, (b) development organizations that are involved in education, health, and other activities, (c) support organizations that conduct capacity-building and organizational development training, (d) community-based organizations, and (e) organizations that conduct analytical work and advocacy research on various topics (ADB, n.d.; Khus, n.d.).

These local organizations may be based at the national or provincial levels. Most of these local organizations are funded by international organizations, with a portion of their funding coming from multilateral or bilateral agencies and from income-generating activities. Community-based organizations (CBOs) at the grassroots level receive sporadic support from international donors, and operate nation-wide or at provincial levels. Some of these CBOs are not registered with any ministry.

- **Associations** are private non-government organizations (Khus, n.d.)
- **Networks or Federations** are composed of groups of people or organizations that come together to jointly work on specific causes or issues.

These may be formal organizations or informal alliances with varied activities (Khus, n.d.).

- **Membership organizations** originate and operate in Cambodia, and are composed of members that may be Cambodian or international organizations (Khus, n.d.).

The CSO network covers all provinces and cities of Cambodia with activities focused on issues related to human rights, land, natural resource, health education, and indigenous peoples' rights.

## Legal environment for developmental NGOs

In 2015, the Royal Government of Cambodia (RGC) enacted the controversial Law on Associations and Non-Governmental Organizations (No. 0415/010) or LANGO, which today governs the registration and operations of CSOs in the country.

In order to be allowed to operate, all associations or NGOs must register with the Ministry of Interior (Mol), who possesses absolute discretion in approving or rejecting registration applications. Registration also allows CSOs to avail of tax exemptions. An organization will only become a legal entity on the date of its registration with the Ministry. Operating without official registration documents may lead to criminal charges and fines.

The LANGO also requires domestic NGOs to annually submit activity reports and financial reports to the Mol and Ministry of Commerce. For foreign NGOs, activity and financial reports must also be submitted to the Ministry of Foreign Affairs and International Cooperation and Ministry of Economy and Finance.

These registration and operational requirements restrict the freedom of small groups and grassroots organizations, who are also subject to the same tedious and resource-consuming bureaucratic requirements (FIDH, 2015).

Using the LANGO as their reference, government offices have implemented stricter controls on the activities of CSOs, effectively limiting their freedom of movement. According to participants of the validation workshop conducted by STAR Kampuchea, local authorities would inspect and take photographs of CSO activities without informing the organization. They also require CSOs to submit activity and financial reports to local government offices.

CSOs may also choose to be certified by the Cooperation Committee for Cambodia (CCC), for being compliant with the standards of NGO Governance and Professional Practice (NGO GPP). From 2007 to 2019, CCC received 230 applications for NGO GPP certification, and released 60 GPP certificates. In 2021, CCC processed 14

applications, and released five (5) NGO GPP certificates (source: interview with CCC, 29 August 2022). It suffices to say that receiving this certification is no easy feat.

While this additional layer of legitimization may be useful for showing the organizational robustness of some CSOs, it also pits small CSOs against larger ones, especially in relation to accessing donor grants. Organizations based at provincial or community levels may not have the resources to undergo the accreditation process, but the lack of certification may provide the impression that these organizations are not competent enough to manage grants. On the contrary, even small CSOs have financial management policies and regulations that are required to be in place prior to their registration with the Mol (source: FGDs).

Overall, due to NGOs' critical views on and recommendations for government policies and actions, these organizations have received a negative reputation from public officials. In 2008, the Prime Minister even stated that the government would legally limit the activities of NGOs to allegedly prevent the infiltration of terrorists in Cambodia who might arrive under the guise of NGOs (Ke, 2011). Civil society organizations in Cambodia therefore face regulative policies that impact their work and operations.

## **The relationship between Government and CSOs**

For the next two decades following the United Nations Transitional Authority in Cambodia (UNCTAC) period in Cambodia, the RGC recognized the roles of CSOs in national reforms on health, education, human rights, the legal system, social services, the environment, and women and children's rights. However, there was a breakdown in the relationship between the RGC and the CSOs during the time when the Cambodian People Party (CCP) won an election majority in 2008 (Ke, 2011) – which paved the way to the enactment of the LANGO in 2015 led by then Prime Minister to control NGO activities (Ke, 2011).

Another law seen restrictive by the CSO sector is the Law on Access to Information taking particular issue with an article (in the draft version) that says that confidential information can be withheld in certain unspecified cases. While the said concern was called on the government by CSOs, the Ministry of Information has maintained the draft and moved ahead without further revision.

These laws have increased government interference in the works of CSOs and thus presented challenges particularly in promoting and protecting human rights – subjecting human rights defenders, activists, independent media outlets, and opposition politicians to criminal charges and imprisonment (CCHR, 2017).

## Conclusion and recommendations

Civil society organizations in Cambodia have flourished after the country's democratization in the 1990s. However, in recent years, CSOs have been battling the shrinking of democratic space caused by restrictive laws, decrease in funding, and heightened government interference. The issues brought out in this paper are intended to stimulate discussions on the future of NGOs in Cambodia.

Since NGOs are not-for-profit entities operating on limited resources, donor support sustains their activities. Donors play a crucial role in expanding the civic space, especially in a country like Cambodia where NGOs operate with restrictive policies. International organizations and donors must: (a) invest in the capacity-building of local NGOs, (b) provide core and not just project-based support to local NGOs, and (c) provide resources for supporting staff remuneration and not just project activities. Organizations that provide funding should also recognize the comparative advantage of smaller CSOs, being careful not to pit them against large organizations in funding opportunities, and remaining aware of their operational limitations. Donors must also engage in frequent and productive dialogues with NGOs and government, supporting as well existing donor-NGO-Government platforms, to assess NGO needs and enhance working-relations among the three sectors.

It is crucial that the distrust between the government and NGOs be mended by engaging in meaningful dialogue, restructuring existing working relationships, and looking for ways to collaborate with one another. Instead of viewing NGOs negatively, the government must also recognize the good work and positive effect that NGOs have on society. Further, the government and NGOs must review the LANGO together, as well as other policies on regulating CSOs, towards amending or striking out provisions that unnecessarily restrict operations of civil society organizations. ■

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## Acknowledgments

I would like to thank the 34 NGO representatives who participated in the validation workshop and focus group discussions on 7 August 2022. Great appreciation is given to Ms. Chea Chey Sovanna, GBPS Coordinator, and Mr. Te Sokhoeun, SNC Coordinator, who assisted me in the conduct of such workshop. Special thanks to Mr. Chea Vibol, staff of CCC, who provided necessary information on NGO GPP in a key informant interview.

Also, I would like to thank Mr. Nathaniel Don Marquez, Executive Director of ANGOC and his colleagues for the strong encouragement, sound advice, and support to me in the process of designing this study.

Finally, I would like to express our deep gratitude to the NGO authors who made the documents available for my study.

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## Citation

Nhek, S. (2022). CSO Assessment Study on Legal and Political Environment for Developmental NGOs in Cambodia. In ANGOC (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. ANGOC.

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# INDIA<sup>1</sup>



Civil society organizations (CSOs)/Non-Governmental Organizations (NGOs), play an important role in the betterment of lives of the people, particularly those belonging to distressed and disadvantaged categories. Their official initiatives include organizing people for self-development and self-dependence. They also play a significant role in awareness generation, education, as well as advocacy for claiming citizens' rights.

While it is the primary responsibility of the government to look after the development and welfare of the people, due to resource constraints (particularly in developing countries), much is left to be desired and done. Hence, the role of CSOs/NGOs as complementary and supplementary agencies becomes very important in tackling the left-out issues and areas of immediate intervention such as relief measures during natural disasters. Since CSOs/NGOs are free of red tape culture and more flexible in decision-making, they are able to plunge into action immediately.

With their significant role in nation building and human welfare, it becomes all the more important to study the impact of the legal and political environment on their functions. There is a need to uncover the constraints and challenges they are facing in implementing their projects/plans for the development of the communities they serve, and to suggest measures to improve their performance.

Another important aspect is that there are cases where the integrity of CSOs is suspected and are questioned for involving in unlawful activities and anti-national agitations by misappropriation of funds, as a result more stringent laws are introduced in the name of checking malpractices which adversely affects the flow of funds for activities. Thus, the present study is needed, timely, and fully justified.

The main objectives of the study are:

- to provide a brief description of the civil society organizations in India;
- to assess the legal and political environment for developmental NGOs; and,
- to present recommendations on protecting and enhancing CSO space in the country.

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<sup>1</sup>Mishra, B. 2022. *CSO Assessment Study: Legal and Political Environment for Developmental NGOs in India*. 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 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)].

## **Methodology**

Considering the constraints of resources and timeframe, data and information required for the study have been collected from secondary sources including government reports and websites, review of relevant literature/studies, and consultations with knowledgeable organizations and individuals. A validation workshop was conducted on 20 September 2022 to enhance the findings and recommendations as presented in this study.

The study covers the entire country because the national level policies and regulations with regard to CSOs/NGOs come under the purview of Ministry of Home Affairs, Government of India. The main focus of the study is the legal and political environment affecting the functioning of CSOs.

## **History and evolution**

India has a long and healthy tradition of voluntary action. Since times immemorial the service and care of the poor, sick, weak, disable, destitute, and disadvantaged were accepted as social and moral obligations on the part of society as well as individuals towards their lesser fortunate brethren. The acts of benevolence, selfless service, and sacrifice for the good of others were considered to be righteous acts. Religious considerations motivated acts of charity and service to acquire *punya* (sacred), and in the process, an honest desire for the service of the needy was generated.

In the long historical process through the ages, the Indian social system also developed certain customs and practices deemed unhealthy and undesirable – i.e., *sati* (a custom of cremation of wife along with her husband after his death), child marriage, and the caste system. Reacting sharply to such unhealthy trends, various social reform movements focused on women's, children's, and widows' welfare, and education rights emerged at the dawn of the nineteenth century.

The focus of social work during the early twentieth century extended to strengthening nationalism and sense of brotherhood among the people. The Servants of India Society marked the beginning of an organized effort for enlisting the cooperation of a group of dedicated volunteers recruited and trained for specific purposes.

It is also in the same period that Mahatma Gandhi emerged in the Indian political scene as the undisputed leader of the freedom movement. His vision of voluntary action was to strengthen people's power at the grassroots level. He conceived constructive programs aiming to convert the Indian National Congress into Lok Seva Sangh (Association for People's Service).

Many dedicated followers of Gandhiji joined voluntary action to realize Gandhiji's vision, and some even started *vidyapeeths* (indigenous universities). These initiatives in the Gandhian era strengthened the spirit of patriotism, nationalism, *swadeshi* (indigenous), and engendered a deep faith in people's power. Gandhiji strongly advocated equal status for women in the social, economic, and political fields. Consequently, many voluntary bodies like the All India Women's Conference, Indian Adult Education Association and Bhartiya Depressed Classes League came into existence.

In the post-independence era (1947), some organizations of Gandhian stream began to receive financial assistance from the government while others became organs of the government.

Some of the senior Gandhians resisted institutionalization of voluntary action and preferred individual and group action. Acharya Vinoba Bhave, acclaimed as spiritual successor of Gandhi, started the *Bhoodan* (Land gift) movement in 1951 due to the then growing violence in the countryside on the issue of unequal distribution of land.

Jaya Prakash Narayan, looked upon as a natural successor to the first Prime Minister of India (Jawahar Lal Nehru), strongly promoted that Gandhism should be fully utilized in order to develop a sound ideology for socialism in India. He realized that Vinoba's efforts and the people's response to it is not merely a movement of redistribution of land but the beginning of a great social revolution. After the elections in 1952, he plunged whole-heartedly into the Bhoodan movement as he moved from village to village securing donations of thousands of hectares of land for the rural people. Here, he thought, was "revolution by non-violent mass action" taking place before his eyes. Gradually, he became so deeply committed to the movement that he decided to devote all his time and energy to it.

Jaya Prakash Narayan, decided not to join the cabinet. He believed that mere governmental efforts are not enough to achieve the goals of equality, freedom, brotherhood, and peace; and, that a successful democracy "people's power" at par with "State power" is a pre-requisite. He realized that there is no organized mechanism or effort to organize civil societies to protect the people's interest and prepare them to participate in the process of their self-development.

After experiencing the slow pace of development, deteriorating situation of law and order due to poverty and hunger, and the apathy of the local government officials towards the problems of the people, he decided to establish Sokhodeora Ashram in Gaya district of Bihar on 5 May 1954. It is a non-governmental effort empowering people with various programs of constructive works leading to income/employment generation.

While working along these lines, Jaya Prakash Narayan realized that many voluntary organizations working in different parts of the country in isolation on various issues had a lot to share for strengthening one another. There was also no national-level platform where they could meet and discuss common problems of the voluntary sector and take decisions for collective efforts on issues of common concern. He felt the need to set up a national-level team of experts in different disciplines of development to: (a) help small voluntary organizations in developing meaningful participatory programs, (b) micro-level planning, (c) mobilization of resources, (d) implementation of small development programs, (e) monitoring and evaluation, and (f) fostering new voluntary organizations in areas where they do not exist to tap the skills of the people and meaningful utilization of local resources for transforming their lives.

The above idea was discussed in a seminar organized by Indian Cooperative Union in 1958 and a decision was taken to establish a national-level network of NGOs or voluntary organizations (VOs), and that is how Association of Voluntary Agencies for Rural Development (AVARD) came into existence in 1958 with the following objectives:

- to promote cooperation and understanding among voluntary agencies working for the rural communities;
- to strengthen existing agencies and foster new ones;
- to act as a clearing house of information and knowledge on voluntary action and rural development;
- to facilitate interchange of ideas and experiences;
- to provide training and research support as well as mobilize resources; and,
- to serve as a link with like-minded national and international organizations.

In 1963 to 1964, the Gandhi Peace Foundation (GPF) was established to spread the thoughts and philosophy of Mahatma Gandhi with its chapters in many States. Many other organizations like Gandhi Nidhi, Gandhi Darshan, Gandhi Smriti, etc. were established for the same purpose.

In June 1975, another twist in voluntary action is noted when Mrs. Indira Gandhi, the Prime Minister of India, falsely accused AVARD, as well as the other Gandhian organizations, for acting against the national interest and misappropriation of foreign funds for political purposes. A Commission of Enquiry was set up to probe the role of these organizations. Despite of the four years of serious inquiry, the Central Bureau of Investigation (CBI) could not prove even a single charge against these organizations.

Another important development and milestone was the introduction of the Foreign Contribution Regulation Act (FCRA), 1976 to monitor and control receipt as well as utilization of foreign funds. This regulation has since then adversely affected the pace of voluntary action.

## **Overview of the CSOs in the country**

### ***Definition and characteristics***

CSOs in India are commonly known as NGOs/VOs. However, those with Gandhian background and traditional constructive workers prefer to be called voluntary organization because NGO is a negative term and reflects opposition to the government. NGOs or non-profit institutions may be defined as:

“Non-profit institutions are legal or social entities created for the purpose of producing goods and services whose status does not permit them to be a source of income, profit or other financial gains for the unit that establish, control or finance them. In practice, their productive activities are bound to generate either surpluses or deficits, but any surpluses they happen to make cannot be appropriated by other institutional units” (OECD, 2021).

The main characteristics of NGOs/non-profit institutions are:

- They are formed voluntarily;
- These are legal entities registered under the law of the land;
- They are independent by nature and are controlled by those who have formed them or by the Board of Management to which such people have delegated, or are required by law to delegate responsibility for control and management;
- They are not for personal private profit or gain; and,
- They have to comply with the provisions of the laws under which they are registered.

### ***Coverage and types of organizations***

There is no apparent segregation of organizations in India. However, those registered under NGO DARPAN of NITI Aayog are developmental NGOs while those registered under FCRA are a mix of organizations. As far as the types of organizations are concerned, these could be divided as under:

- Grassroots NGOs;
- State/district level organizations;
- Charitable trusts and NGOs (running hospitals, schools, orphanages, relief and rehabilitation works during calamities, etc.);
- Rights-based organizations (e.g., Ekta Parishad);

- National level NGOs and networks (e.g., AVARD, VANI); and,
- Donor/funding agencies.

### **Number**

There is no centralized system of registration for NGOs and it varies widely in the country from State to State. In their first initiative to map out the NGOs in India as directed by the Supreme Court in 2015, the CBI released a figure of 3.1 million NGOs.

Per the statement of the State Minister of Home Affairs in Parliament on 24 November 2020, about 49,859 NGOs are registered under FCRA. On the other hand, 143,196 NGOs have signed up on NGO DARPAN of NITI Aayog, which is mandatory for accessing government funds.

### **Areas/Sectors where CSOs have significant presence in the country**

Majority of NGOs work in multiple sectors depending upon the need of the people of the area they operate. However, NGOs have strong presence in sectors like rural development, agriculture, irrigation, education and research, health, women and child welfare, welfare and development of Scheduled Caste/Scheduled Tribe communities, income/employment generation for women and marginalized communities, *khadi* (hand-made goods particularly hand-spun and woven coarse clothes) and village industries, development of traditional artisans, culture, social welfare, empowerment of the disabled, and a host of welfare as well as relief and rehabilitation works.

Further, NGOs play a vital role in persuading and/or pressuring the State to do its duty to people and desist from abusing its authority, generating replicable/sustainable alternatives of development, facilitating participatory process through awareness building, conducting training courses, advocating causes, monitoring the effects of development actions and highlighting their contradictions, strengthening democratic institutions, and filling in the gaps in development.

As far as geographical coverage is concerned, larger States have a greater number of NGOs. Economically better-off States like Punjab and Haryana have lesser number of NGOs. Similarly, disturbed areas like Jammu and Kashmir and far-flung smaller States/union territories like Ladakh, Andaman, Arunachal, and Pradesh have lesser number of NGOs.

### **Reach and major NGO networks**

The reach of NGOs differs widely – some work at the national scope while others are focused at the regional, State or district levels.

At the country level, there are the Association of Voluntary Agencies for Rural Development (AVARD) and Voluntary Action Network-India (VANI). Both of these networks of NGOs are Delhi-based. Networks in this context are associations of autonomous NGO members along the lines of a bottom-up federal structure.

On the other hand, there are some NGOs operating all over India with their State chapters but these are limited to their operational partners hence they may not be treated as networks. Such organizations include Voluntary Health Association of India (VHAI), Gandhi Peace Foundation (GPF), Gandhi Nidhi, Ekta Parishad, Adult Education Association of India, etc. There are some State level/regional networks, particularly SATHI (Friends) needs special mention, which works in Central and Eastern Uttar Pradesh.

## Legal environment for developmental NGOs

### *Registration of NGOs/VOs*

The registration system of NGOs/VOs was introduced during British regime in the year 1860. As of now, there are nine different laws that govern NGO registration:

- Indian Trust Act, 1882;
- The Societies Registration Act, 1860;
- Companies Act, 1956 under section 25;
- Charitable and Religious Trusts Act, 1920;
- Sikh Gurudwara Act, 1925;
- Trustees and Mortgagees Power Act, 1866;
- Waif Act, 1995;
- Indian Trustees Act, 1866; and,
- Religious Endowment Act, 1863.

NGOs must also register under the FCRA to access foreign funds. In order to avail of tax exemptions and to provide tax rebates to donors, NGOs should register under the Income Tax Act.

On the other hand, NGOs need to register under the CSR of Ministry of Corporate Affairs, Government of India, to be able to access their grants. Similarly, for accessing government funds, the NGO has to sign up with NITI Aayog DARPAN portal.

Those working for *khadi* and village industries are required to get a certification from Khadi and Village Industries Commission (KVIC) for getting financial support either in form of project or loan. The service providers to government departments must get registered as vendors with the ministry/department concerned.

To register a Society, one has to approach the Registrar of Societies or the designated office with the: (a) organization's by-laws, and (b) the personal information and designation of the persons involved in the Society. The application is submitted with a modest fee and is processed in due course.

In case of registration of Trusts, one has to go to any court with the deed of the Trust and documents of the persons involved as Settler and Trustees. A registration fee is also paid.

For registration under FCRA, Income Tax Acts, CSR, and NGO DARPAN, the NGO has to apply online. Prior to approval of registration under FCRA, an inquiry on the track record and members of the organization is done by the Intelligence Department of the Home Ministry. The officers of Intelligence Department physically make visits, check documents, and file their reports to the FCRA Division. All registered organizations must inform the relevant authorities about any changes in the composition of their board of officers. They must also submit audited statements of accounts to the Income Tax Department and to the FCRA division, if registered under FCRA.

The main problem that NGOs are facing is related with the renewal of FCRA Registration. There are many NGOs, while the staff with intelligence agencies for verification are limited, so the government continues to extend the investigation dates. Moreover, some cases of corruption in the department have also come to light. The licenses of some NGOs have been cancelled for not following the proper procedures while others have taken their cases to court.

### ***Funding for NGOs***

Availability of funds is a very crucial element for the continuity of activities of NGOs and the sources of funding are continuously decreasing over time. The main sources of funding of NGOs are:

- **Membership fees** which are very nominal and limited;
- **International donor agencies** – Access to foreign funding is permitted for those registered under FCRA. However, after the implementation of amended FCRA 2010, the access of NGOs to foreign funds has decreased because of the decline in the number of donor agencies based in the country. Many of them have closed their offices either due to shortage of funds or complex regulations;
- **National Trusts** – Donor agencies like Tata Trusts, Azim Premji Foundation, Ambani Foundation, etc;
- **Individual donations** for which income tax rebate is admissible;
- **Corporate Social Responsibility (CSR)** – Corporations are required to donate at least two percent of their profit to NGOs;

- **Central and State governments** seeking assistance for the implementation of projects or activities;
- **Income generating activities** – from NGO-managed hospitals, sale of goods, operation of schools, etc.; and,
- **Crowd funding** for any particular cause/issue.

NGOs have to get all their accounts audited by an accredited chartered accountant and the balance sheets have to be submitted to the income tax department within the stipulated period.

The legal framework for utilization of indigenous funds is supportive but as far as foreign funds are concerned it is bit regulative. For receiving foreign funds, the NGOs should have a bank account with State Bank of India, Main Branch, New Delhi and their FCRA registration should be renewed as provided under the amended Act.

Those receiving foreign funds must report the amount received every quarter and submit the audited statement of accounts every financial year. If they are late, they are penalized with fines as decided by the government.

## **Government-CSO relations**

It is vital and essential in public interest that the relationship between government and civil society organizations is constructive, collaborative, and rational in a democratic country like India. Together, they can share responsibilities for improving the socio-economic conditions of the people. NGOs can play a role in filling-in the gaps of national development by enhancing people’s participation and implementing innovative schemes through mobilizing resources from local and international funding agencies/individual donors. The status of Government-NGO relations in India is discussed below.

### ***Right to freedom of expression, assembly and unrestricted mobility***

The Constitution of India under Article 19 guarantees the right to freedom of speech and expression; to assemble peacefully and without arms; to form associations and unions; to move freely throughout the territory of India; and, to practice any profession or carry on any occupation, trade or business. All of these are listed as Fundamental Rights to Freedom.

However, the State can make laws to impose “reasonable restrictions” on the exercise of above rights in the interest of the sovereignty and integrity of India; the

security of the State; friendly relations with foreign States; public order; decency or morality; or, in relation to contempt of court, defamation, or incitement of an offence.

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

The Right to Information Act of 2005 provides that any citizen of India can seek information from public authorities per the prescribed procedure at a nominal fee. However, this right is not unlimited. The authorities cannot share sensitive and classified information pertaining to the security of the country and the Ministry of Defense.

As far as participation is concerned, it is not a right but a desirable element in government initiatives. The government appoints members of the NGO sector in its various committees at central, State, and district levels that play an important role in decision-making and implementation of various policies and programs of the government.

Suggestions of NGOs are heard to some extent and incorporated in government policies and programs such as watershed management, Clean India Campaign, promotion of literacy, etc.

### ***Partnership and coordination mechanism***

The first ever “National Policy on Voluntary Sector 2007” jointly formulated by the Central Government and Voluntary Sector provides a framework to begin a process to evolve a new working relationship between government and voluntary sector without affecting the autonomy and identity of voluntary organizations.

This policy is a commitment to encourage, enable, and empower the voluntary sector to contribute to the social, cultural, and economic advancement of the people of India. It recognizes that the voluntary sector has contributed significantly in finding innovative solutions to poverty, deprivation, discrimination, and exclusion, through means such as awareness raising, social mobilization, service delivery, training, research, and advocacy.

Also, the policy deals with partnership in development relating to various vital issues such as the imperative of working together with mutual trust and respect, and with shared responsibility and authority, multi-level consultation, collaboration and funding. The policy promotes as well as joint consultative mechanisms, utilization of expertise of voluntary sector, national collaborative programs to address complex problems, need-based decentralization, and acceptable accreditation of VOs for better funding decisions.

In essence, this policy recognizes three instruments of partnership:

- Consultation through formal processes of interaction at the central, State, and district levels;
- Strategic collaboration to tackle complex interventions where sustained social mobilization is critical over the long term; and,
- Project funding through standard schemes.

While the policy is comprehensive and constructive, the current government, the National Democratic Alliance (NDA) has paid little attention to it since its assumption to power on 26 May 2014

The current regime is seen supportive to the NGO activities implemented through indigenous funding. However, in the case of foreign-funded activities, the government is cautious and regulative in the name of protecting integrity and security of the country. In fact, some communal tensions indicate that foreign funds are being diverted to spoil the communal harmony and promote illegal religious conversions in the shadow of NGOs.

## **Conclusion and recommendations**

### ***Conclusion***

India has a long and healthy tradition of philanthropy and social service since times immemorial and it was accepted as a moral obligation on part of the society as well as individuals to help the needy. At present, CSOs, NGOs, or VOs are spread all over the country but they are more in number in larger States. NGOs are engaged in almost all sorts of developmental activities but they have significant presence in areas of education, research and training, health care, environment, income/employment generation activities, welfare of women/children and marginalized communities, advocacy, in addition to relief and rehabilitation works.

The overall legal and political environment of NGOs in India is strict with regard to accessing foreign funds to stop misuse of funds for anti-national purposes but supportive for activities implemented with indigenous funds. The roots of democracy are quite deep and strong so there are no major challenges.

### ***Recommendations***

To strengthen the role of NGOs as agents of change, the following policy and program actions are recommended for the government:

- A system with information about the NGO sector at State and national level should be in place. NITI Aayog and the Department of Statistics may be involved in this undertaking.

- The restriction of sharing foreign funds with other NGOs needs to be relaxed particularly in case of networks of NGOs.
- The provisions of renewal of registration every five years under FCRA should be extended to 10 years.
- Corporations should be barred from forming their own NGOs for CSR funding.
- There should be some platform at the national level where government entities and NGOs can meet and discuss matters pertaining to the NGO sector. NITI Aayog may be entrusted with this responsibility.
- NGOs should be sought out to be more involved in tackling problems of population explosion, environmental degradation, empowerment of marginalized communities, popularization of government schemes, among other contemporary issues. ■

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## Acknowledgments

The Association of Voluntary Agencies for Rural Development (AVARD) is thankful to all the authors, organizations and departments whose studies have been referred in the present study.

Our appreciation to ANGOC for organizing discussions from time to time with partners from seven Asian countries whose inputs helped greatly in enriching the study.

Last but not the least, we thank the staff members of AVARD who assisted in completion of this study.

Dr. B Mishra

## Citation

Mishra, B. (2022). CSO Assessment Study on Legal and Political Environment for Developmental NGOs in India. Association of Voluntary Agencies for Rural Development (AVARD). In ANGOC (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. ANGOC.

## Disclaimer

The views contained in this document are those of the author, and do not necessarily reflect those of IDEALS and FFA.

# INDONESIA<sup>1</sup>



## *Rationale and Research Objectives*

There is no consensus regarding the standard definition of *civil society organization/CSO* (Muukkonen, 2009). Smismans (2008) defines CSOs as important actors who can realize participatory and responsive research dedicated to the real world. While Malena (2010) mentions CSOs, in a broader context, are defined as all non-profit organizations that are not related to government.

In Indonesia, the term CSO is generally associated with Non-Governmental Organizations (NGOs). As mentioned in Standard Norms and Regulations Number 3 concerning the Right to Freedom of Association and Organization of National Commission of Human Rights, from the legal entity aspect, CSOs can include associations, unions, clubs, cooperatives, NGOs, foundations, associations, including organizations that have no legal entities.

CSOs are generally value-based organizations that rely, in whole or in part, on charitable donations and voluntary services. CSOs represent a wide range of interests and relationships.

CSOs are an important pillar of democracy. CSOs participate in development, both in cities and in villages, especially in terms of community empowerment. There are at least three aspects of empowerment: (a) *enabling* (creating an atmosphere that develops community potential), (b) *empowering* (strengthening potential through concrete steps), and (c) *protecting* (protecting the weak) (Noor, 2021). In addition, CSOs play a role in securing independence and become a highly important national asset in the journey as a nation and State.

The existence of CSOs in Indonesia can be traced back to the colonial period of the Dutch East Indies. (One of the CSOs that took part in the dynamics of the national movement at that time was the *Sarekat Islam*. Until entering the gate of independence, various CSOs participated in realizing the ideals of national independence as enshrined in the 1945 Constitution).

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<sup>1</sup>Harja, I.T. (2022). *CSO Assessment Study on Legal and Political Environment for Developmental NGOs in Indonesia*. 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)].

At least three approaches can be implemented to understand the position of NGOs in Indonesia's socio-political formation. The first approach looks at NGOs from a vertical perspective. The vertical approach defines NGOs as independent, autonomous entities, not co-opted by the State; instead they tend to play a role as a means of controlling power outside the *trias politica*<sup>2</sup> institution. The vertical approach frames NGOs as organizations that contribute to the agenda of democracy, democratization, and democratic struggle.

The second approach views NGOs from a horizontal perspective. This approach defines NGOs as components of civil society that contribute to social harmony, such as aspects of tolerance and pluralism. According to Madjid, civil society means a just, open, and democratic society based on piety to God Almighty.<sup>3</sup> This approach means that NGOs are supplements to the State, with the main agenda being to build a harmonious national culture through community work.

The third approach comes from Sujatmiko (2001). Applying Sujatmiko's approach means that to observe NGOs from two sides, vertically, and horizontally. The vertical side represents the relationship with the State, while the horizontal side looks at the relationship between NGOs and the democratization process in society. Sujatmiko's opinion is contextual with the contemporary era. In a democracy, public involvement in policy making and State oversight is necessary, and NGOs can play a role as a connector between the interests of civil society and the political community.

The collapse of the New Order (*Orba*) marked a new chapter in the dynamics of NGOs. The New Order regime co-opted almost all political and social institutions, including NGOs. Only a few NGOs were able to accommodate public aspirations during the New Order era. After such period, the space for NGOs has been expanding, along with political liberalization with the theme of "good governance" (good governance). The theme of good governance is based on the principles of participation, accountability and transparency. The political nature of good governance also supports a more dynamic NGO movement.

The presence of NGOs is increasingly relevant in the reform era. The relevance of the existence of NGOs is also supported by their capabilities in empowering and advocating for the community. NGO activists tend to be in direct contact with grassroots communities intensively.

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<sup>2</sup> Further information concerning this matter, see: Sujatmiko, I. G. (2001). Wacana "Civil Society" di Indonesia. *Jurnal Masyarakat*, 9.

<sup>3</sup> Further information concerning Civil Society, see: Bakti, A. F. (2005). Islam and Modernity: Nurcholish Madjid's Interpretation of Civil Society, Pluralism, Secularization, and Democracy. *Asian Journal of Social Science*, 33(3), 486-505. <http://www.jstor.org/stable/23654384>

In its development, the work carried out by NGOs was not without obstacles. Indeed, good governance requires a participatory policy-making process. However, there are many cases where NGO inputs are not heard in the policy-making process. On the other hand, some parties feel that the political and legal environment has not supported the contribution of CSOs in development.

There have been many studies that describe the history and development of NGOs in Indonesia. However, there are still few studies assessing the legal and political environment for developmental NGOs in the country. Therefore, this research aims to:

- provide a brief description of civil society organizations in Indonesia;
- assess the legal and political environment for developmental NGOs; and,
- present recommendations to empower and increase NGO participation in development in the country.

### **Methodology**

This study was conducted to provide an overview and assess the legal and political environment for developmental NGOs in Indonesia. It employed descriptive research using the following data collection methods.

- *Desktop Research*. Researchers undertook literature review by utilizing all available channels (online and offline) to obtain legal documents, regulations, policies, and other relevant information related to the legal and political environment for NGOs in Indonesia.
- *In-depth Interview (IDI)*. The researcher conducted an IDI with the Ministry of National Development Planning/National Development Planning Agency (PPN/Bappenas) as well as with three NGO leaders and an academic. Unfortunately, the intended IDI with the Ministry of Home Affairs (Kemendagri) and the Ministry of Law and Human Rights (Kemenkumham) did not materialize.
- *Focus Group Discussions (FGDs)*. FGDs with first (age 40 years and above) and second (39 years and below) generation of CSO workers were conducted to identify the challenges that emerged and were faced by the sector. Each FGD was attended by eight participants with CSO activist backgrounds.
- *Weighting*. The weighting was carried out as a way to assess the opinion of the 16 NGO activists on the legal and political environment for developmental NGOs in Indonesia. The said instrument employed a questionnaire<sup>4</sup> containing inquiries that represent all dimensions along with the assessment indicators. Respondents were asked to give a score for each of the existing assessment indicators. All scores on the indicators were then calculated on average as the final result that represented the general opinion of all respondents. The average

<sup>4</sup> Refer to the full paper at [https://angoc.org/wp-content/uploads/2022/11/Legal\\_and\\_-political\\_Indonesia\\_final\\_upload.pdf](https://angoc.org/wp-content/uploads/2022/11/Legal_and_-political_Indonesia_final_upload.pdf)

score of all indicators was then added up to determine the weight of each dimension and theme. For the efficiency of the data collection process, the weighting was carried out after the completion of each FGD process. Thus, an assessment of the legal and political environment for developmental NGOs in Indonesia was carried out constructively.

The weighting consisted two domains: the legal framework and the political environment. Within the legal framework domain, there were three dimensions: (a) registration, (b) funding, and (c) accountability mechanisms. On the other hand, the domain of the political environment had four dimensions: (a) freedom, (b) information, (c) partnership, and (d) participation. Each domain had a maximum score of 100. To assess whether the domain of the legal environment and the domain of the political environment were supportive, regulatory, or closed, the researchers divided the rankings as follows:

- Score >70-100: supportive/open
- Score >40-70: regulative
- Score <40: restrictive/closed

### ***Research Scope and Limitation***

This research focused on describing the legal and political environment for developmental NGOs in Indonesia using selected indicators.

This study had limitation in terms of the number of in-depth interview sources: only one government representative, an academician, and three NGO leaders, all of which were conducted in DKI Jakarta. In addition, the respondents involved in the weighting were sixteen NGO activists, not involving other stakeholders such as government officials, academics and beneficiaries of social services.

### **History and evolution of civil society in Indonesia**

In Indonesia, the development of NGOs began at least in the late 1960s and early 1970s when the New Order began its reign. Although the New Order was able to maintain the stability of economic growth, the general condition of the community was shackled by poverty and restricted participation – which made the NGOs in the country to take part in the process of social and economic development.

In the 1970s, NGOs focused on problematic development programs. According to Fakih (1996), in the 1970s, NGOs were considered unable to offer alternative development paradigms but tended only to try to “update” and propose reactions to development methodologies and practices, without questioning the basic assumptions of modernization (Fakih, 1996).

Groups from the academe (students and intellectuals who understood the then socio-economic problems) were the first to drive the formation of NGOs. In the 1980s, NGOs began to grow and carried out empowerment and advocacy work – which brought transformative ideas for alternative development from developmentalism implemented by the New Order (Fakih, 1996). This was considered an initial milestone for the independence of NGOs as non-State actors.

Entering the 1990s, NGOs in Indonesia began to face the issue of human rights – as a consequence of the advocacy work carried out both for the addressing of environmental issues and agrarian conflicts. The emergence of human rights issues is in line with the increasingly authoritarian and repressive character of the New Order regime. This then contributed to the birth of the pro-democracy movement.

In the 1990s, NGOs started working on the defense and protection of socio-economic rights such as land rights, the right to decent work, gender equality, among others. NGOs have emerged as one of the actors fighting for the reform agenda.

In 1997, Indonesia was hit by economic and political crises that triggered massive student demonstrations in major cities in the country. Majority of NGOs supported student demonstrations and the ongoing reform agenda. Eventually, President Suharto of the New Order resigned in May 1998, after 32 years in power.

The fall of the New Order has fostered the freedom of association, assembly, and expression among citizens, marking the emergence of new NGOs in Indonesia.

In order to ensure the success of the reform agenda, NGOs have reaffirmed their alignment with civil society. NGOs realized that the interests of the people cannot be accommodated in an authoritarian State order. Hence, NGOs went beyond the work of a casuistic nature. NGOs played the role of guarding the interests of the civil society in the process of policy formulation and implementation.

In the post-New Order development, NGOs have developed rapidly, both in terms of number and variety of issues that became the focus of their work. In addition, the NGO work has extended to other various interventions – i.e. among others capacity building of communities, participation in policy-making and evaluation, defending civil rights, social and economic empowerment for the communities, and educating the public regarding public issues through campaigns.

## Definitions and characteristics of NGOs in Indonesia

In Indonesia, NGOs are known by various names. However, they are generally known as *Organisasi Non-Pemerintah (Ornop)* or *Lembaga Swadaya Masyarakat (LSM)*. NGO is defined as a group or organization in which the individuals in it have a common interest that is non-profit, voluntary, and works with a variety of scopes of work at the local, national, or international levels.

For the government, NGOs are defined as community organizations (*Ormas*) in general. Through Law Number 16 of 2017 (UU 16/17), Community Organizations, hereinafter referred to as *Ormas*, are organizations established and voluntarily formed by the community based on common aspirations, desires, needs, interests, activities, and goals to participate in development for the sake of achieving the goals of the Unitary State of the Republic of Indonesia based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia (Article 1 of Law 16/17).

The various definitions of NGOs make the identification of characteristics and categorization of NGOs in Indonesia increasingly diverse. To understand the characteristics of NGOs in relation to the relationship between NGOs and the government and society, Philip Eldridge (1995) divides NGOs into three categories: (a) CSOs that are oriented towards high-level cooperation [high level partnership: grassroots development], (b) CSOs that are oriented to high-level politics: high level politics [grassroots mobilization], and (c) CSOs that are oriented to strengthening grassroots [empowerment at the grassroots].

- *High Level Partnership: Grassroots Development.* NGOs in this category are organizations that have a tendency to implement a collaborative agenda on government development programs and policies to ensure that these programs and policies run in a participatory manner.
- *High Level Politics: Grassroots Mobilization.* In this category, NGOs are seen as organizations that are active in political activities. This type of NGO restricts itself from being directly involved in the implementation of development policy programs carried out by the government. The cooperation with the government is usually only in the form of research, training, and community empowerment.
- *Grassroots Strengthening: Empowerment at the Grassroots.* This type of NGO usually focuses on raising awareness and empowering grassroots communities, which is a combination of the previous two types. Such group of NGOs is not always interested in collaborating with the government.

## Developmental NGOs

As of January 2022, the number of registered CSOs in Indonesia is 512,997 (Ministry of Home Affairs, 2022) – of which, 202,903 are associations; 307,434 are foundations; and, 56 are foreign CSOs. Meanwhile, the number of non-legal organizations<sup>5</sup> registered with the Ministry of Home Affairs as of 2 June 2022 is 2,322.

In general, the Ministry of Home Affairs divides CSOs into two categories, namely Legal Entity Organizations and Non-Legal Organizations. In contrast to the Ministry of Home Affairs, to be more specific, through Standard Norms and Regulation No. 3 concerning the Right to Freedom of Association and Organization, the National Human Rights Commission divides CSOs into several types, namely:

- Religious organizations function as channels to manifest the fundamental right to freedom of religion or belief.
- Political parties are associations whose one purpose is to participate in the management of public affairs, including through the presentation of candidates for free and democratic elections.
- Labor union is an organization in which workers seek to promote and defend their common interests.
- Human rights defenders are people who act individually or in association with others to promote and seek the protection and realization of human rights and fundamental freedoms at the local, national and international levels.
- Non-governmental organizations are established to achieve certain goals, especially social, with various types and forms, including various legal entities.

## Legal environment for the registration and operation of developmental NGOs

### *Registration and reporting*

Article 28 of the 1945 Constitution states that freedom of association, assembly, and expression is part of human rights in the life of the nation and State. The formation of NGOs is allowed as long as it does not conflict with *Pancasila* and the 1945 Constitution of the Republic of Indonesia. In its implementation, NGOs, which are then called CSOs, are regulated by Law Number 16 of 2017 (UU 16/17), Law Number 2 of 2017 (PERPPU 2/17), and Law Number 17 of 2013 (UU 17/13).

CSOs can take the form of legal entities and can be member based or non-member based (Article 10 of Law 17/13). CSOs with legal entities can take the form of

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<sup>5</sup>Non-legal organization is an unregistered organization in the Ministry of Home Affairs and Ministry of Justice and Human Rights.

associations or foundations. Associations are established on a member basis, while foundations are established on a non-member basis (Article 11 of Law 17/13). The legal entity of an association is established by fulfilling the requirements as stipulated in Article 12 of Law 17/13 as follows:

- Deed of establishment issued by a notary containing AD and ART (Memorandum of Association and Articles of Association);
- Work program;
- Sources of funding;
- Certificate of domicile;
- Taxpayer identification number on behalf of the association; and,
- A letter stating that the organization is not facing a management dispute or having a case in court.

In contrast to associations, legal foundation entities are regulated in Law Number 28 of 2004, amending Law Number 16 of 2001.

In relation to registration, CSOs are declared registered after obtaining legal entity approval. After obtaining legal entity status, CSOs do not require a Registration Certificate or SKT (Article 15 of Law 17/13).

If CSOs are not registered as legal entities, they may be given an SKT which is given by the Minister for CSOs that have a national scope, by the Governor for CSOs that have a provincial scope, or by the Regent/Mayor for CSOs that have district/city scope (Article 16 Paragraph (3) of Law 17/13).

For foreign CSOs, they are required to have a principle permit and an operational permit. Principle permits are granted by the Minister of Foreign Affairs, while operational permits are granted by the Government and Regional Governments.

Local NGOs that are not registered still have the right to exist as long as their activities do not conflict with *Pancasila*, the 1945 Constitution, laws and regulations, do not interfere with security; do not disturb public order; do not violate the rights of freedom of others; and, do not conflict with moral and religious values. This is in accordance with the *a quo* law.

Article 40 of Law 17/13 mandates that government must empower CSOs to improve performance and maintain the survival of CSOs. Empowerment of CSOs is carried out through policy facilitation; strengthening institutional capacity; and, improving the quality of human resources.

## **Financing NGO operations**

There are several sources of funds for CSOs:

- *Grants* are project funds or core funds, sourced from domestic and international institutions, for example: international NGOs, international donor agencies, domestic donor agencies, and the government;
- *Donations*, which are endowments, given once or regularly, and can come from fundraising (usually from individuals, companies, or foundations);
- *Voluntary funds*, which are funds from service activities carried out by NGOs, including sales of products and training services; as well as sales and technical assistance from the government, community, and interest groups both domestically and internationally; and,
- *In-kind (non-monetary) contributions*, such as free work and office space.

Referring to *The 2016 CSO Sustainability Index for Asia*, almost all CSOs in Indonesia rely on international donor funding. Domestic sources of funding account for only about 20 percent of the overall budget for CSOs in Indonesia (USAID, n.d.).

Funding from foreign institutions must be managed transparently and accountably using accounts at national banks. Foreign assistance can also be in the form of money, goods, expert services, grants, and/or loans that are not binding. To be able to access foreign aid, NGOs must be registered with the Ministry of Home Affairs.

Presidential Regulation No. 18 of 2017 states that NGOs are required to identify the terms of donations received from countries that are declared inadequate in implementing international standards in the field of prevention and eradication of money laundering and terrorism funding. In *Perpres* (Presidential Regulation) 18/17, it is stated that CSOs must refuse to accept donations and cooperate if the donor, Individual or corporation refuses to provide information, or if their identity is included in the person or corporation included in the list of suspected terrorists issued by the National Police of the Republic of Indonesia.

NGOs may also be recipients of Official Development Assistance (ODA), often not directly, but through government intermediaries, international organizations, or the private sector.

Article 37 of Law 17/13 states that finances of CSOs can come from one of the sources of the State budget and/or regional revenue expenditure budget. This means that NGOs have the opportunity to access APBN/APBD (State budget/regional budget) funds.

CSOs may also receive funds from government in implementing certain services. Presidential Regulation 16/18 concerning Government Procurement of Goods/

Services regulates the existence of a new type of self-management between the government and CSOs and special procurement in the field of research. CSOs are selected based on their competitive advantage in the self-managed field.

In addition, the State through the Supreme Court includes civil society organizations providing legal advocacy as the *Posbakum Court Posbakum* (Legal Aid Post) Service Provider.

### ***Tax exemptions***

In Indonesia, regulations governing the provision of tax incentives for philanthropic activities are regulated in Law No. 7 of 2021. This law mentions that “donated assets received by blood relatives in a straight line of one-degree, religious bodies, educational bodies, social institutions including foundations, cooperatives, or private individuals who run micro and small businesses, are excluded from the object of income tax as long as there is no relationship with the business, occupation, ownership, or control between the parties concerned.” This means that grants received by NGOs functioning as research or educational bodies, social institutions, including foundations and cooperatives, are free from income tax.

For NGOs incorporated as cooperatives, partnerships, and associations, the share of profits or the remainder of the operating results received or obtained by members from cooperatives, limited partnerships whose capital is not divided into shares, partnerships, associations, firms, and shares, including unit holders of collective investment contracts, are exempt from income tax objects.

Any excess received or obtained by a registered non-profit agency or institution engaged in education and/or research is exempt from income tax, as long as it is reinvested in the form of facilities and infrastructure for education or research within a maximum period of four years from the acquisition of the excess. Similarly, excesses received by registered social and/or religious entities are exempt from income tax so long as the excess is reinvested in social and religious facilities and infrastructure within four years since the excess is obtained, or placed as an endowment fund.

### ***NGO accountability***

NGO accountability in general can be seen from two sides. The internal side (how the NGO is able to fulfil the mission and goals of the organization) and the external side (the need to meet certain standards such as donors).

The government requires NGOs to make financial accountability reports in accordance with general accounting standards based on AD/ART. This is intended for NGOs that collect and manage funds from member fees (Article 38 of Law 17/13). Article 38 of Law 17/13 also states that CSOs are required to periodically publish financial reports to the public. For NGOs established by foreigners, they are required to make periodic reports to the Government or Regional Government, and to publish to the public through the Indonesian language mass media (Article 51 of Law 17/13).

Baswir (2004) assesses that transparency and accountability are not solely focused on financial issues, what is more important is program transparency and accountability as an integral part of the mission of the organization or NGO itself. For this reason, in addition to financial audits, performance audits also need to be emphasized.

Nurbatin (2015) mentions several parameters that are used as a reference in measuring the degree of accountability and transparency of NGOs:

- There is evidence of reporting to the public regarding information related to organizational performance (financial and performance reports, organizational activities) in an accurate, measurable, timely, clear, and consistent manner through the national mass media.
- In accessing this information, the public is given convenience.
- The application of accounting principles and internal and external audits as commonly used widely.
- There is clarity of functions, rights, obligations, authorities, and responsibilities in the basic agreement between the organs of the institution.
- Have guidelines and systems to ensure implementation, including the obligation to obey the law.
- There is a system of upholding honesty (integrity) in discipline, sanctions, and personal performance appraisals.
- There is a standard setting and due diligence mechanism in staff recruitment and fundraising that ensures the independence of the organization in relation to the government and the private sector.

### ***Assessment of the legal framework***

Of the 16 NGO activists who conducted the assessment, it was found that the average score for the legal framework theme was 54 – “regulative” (See Table 1).

**Table 1. Results of the legal framework assessment**

Indicator	Score
Tax exemption for donors and recipients	64
Accountability to the public	60
Requirements and registration process	59
Access to foreign funding	58
<b>Average score</b>	<b>54</b>
Participation in the use of ODA	53
Accountability to the government	52
Registration obligations and the right to organize	48
Access to government funding	38

Source: processed in research

The highest score was obtained by the tax exemption indicator for donors and grantees (64), followed by public accountability (60), and requirements and the registration process (59).

Indicators with scores below the average legal framework index are participation in the use of ODA (53), accountability to the government (52), registration obligations and organizational rights (48), and access to government funds (38).

The only indicator within the legal framework that is *restrictive/closed* is the indicator of access to government funds (38). It is known that some NGOs have obstacles in relation to organizational finance. The presence of the government in providing programmatic-based funding support to NGOs is actually fundamental, especially for NGOs that have good performance in social development, but are hampered by funding problems.

The current NGO legal framework index is predicted to be regulative in the next five years. NGO activists assess that there are aspects of the legal framework that tend to support the development of NGOs, on the other hand there are also aspects that tend to limit the work of NGOs.

There are also NGO activists who think there are too many regulations in the legal framework for NGOs in Indonesia. An example is when accessing foreign funds requires a verification and "screening" process by a Ministry/Institution before NGOs can carry out activities funded by foreign NGOs.

While the regulation of access to foreign funding is strict, NGOs feel that the government does not provide funding support for the progress of NGOs. In addition to Self-Management Procurement Type III which has not been implemented by all K/L and OPD, and the close bidding mechanism in government technocratic projects, NGOs have observed that Law No. 16 of 2011 concerning

Legal Aid has not been implemented effectively by the government to support the operational needs of legal aid organization in conducting litigation and non-litigation activities.

## **Government-CSO relations**

### ***The right to expression, assembly, and expressing opinion***

The 1945 Constitution Article 28E paragraph (3) states, "Everyone has the right to freedom of association, assembly, and expressing opinions." This democratic right is also in line with Article 9 of the Universal Declaration of Human Rights, "Everyone has the right to freedom of opinion and expression, in this case including freedom to hold opinions without interference and to seek, receive and impart information and opinions through anything and regardless of frontiers."

In addition, Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005. The ICCPR stipulates the right of people to hold opinions without interference from other parties and the right to freedom of expression (Article 19). Furthermore, the Covenant also stipulates the recognition of the right to peaceful assembly (Article 21); and, the right of everyone to freedom of association (Article 22).

Law No. 9 of 1998 concerning Freedom of Expressing Opinions in Public lays down five principles that form the basis for expressing opinions in public, namely:

- The principle of balance between rights and obligations;
- The principle of deliberation and consensus;
- The principle of certainty of rights and obligations;
- The principle of proportionality; and,
- The principle of consensus.

In practice, the ways of conveying expressions in public are quite diverse. As something universal, freedom of expression can include the expression of political or cultural ideas through oral, print, audio, visual, audio-visual media, including painting or literary works. Through Law No. 9/1998, freedom of speech in public is the delivery of opinions which may include speeches, dialogues, discussions, written petitions, pictures, pamphlets, posters, brochures, leaflets, banners, silent act, or hunger strikes.

While people can now use the social media to express their criticisms about the government, the State regulates the online social platforms through the Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 regarding Information and Electronic Transactions or the ITE Law.

The ITE Law strictly controls the circulation of information in cyberspace by "everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have insulting and/or defamatory content" (Article 27, paragraph 3) and by those who "intentionally and without rights disseminates information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and intergroup" (Article 28, paragraph 2).

The Head of the Freedom of Expression Division of the Southeast Asia Freedom of Expression Network (SAFENet) interprets Article 27, paragraph 3 as most often used to ensnare legitimate freedom of expression and repress citizens, activists, journalists, or the media. Meanwhile, Article 28, paragraph 2 can repress the minority of citizens who criticize the police and the government (Katadata.co.id, 2021).

### ***The right to information***

The right to information (*right to know*) is one of the fundamental rights recognized by the world. In Indonesia, the right to information is regulated under Law No. of 2008 concerning Public Information Disclosure (UU KIP). The UU KIP aims that every citizen has the right to obtain public information in accordance with the applicable legal basis.

The definition of information can be referred to in Article 1, paragraph 1 of the UU KIP which states, "information is description, statements, ideas, and signs that contain values, meanings, and messages, both data, facts, and explanations that can be heard and read presented in various packaging and formats according to the times, both electronic and non-electronic."

Meanwhile, Article 1, paragraph 2 of the same Law states that public information is information that is produced, stored, managed, sent, and/or received by a public agency related to administration and State administration and/or other public agency administrators and administration according to the law as well as other information relating to the public interest.

In general, UU KIP contains: (a) the right of everyone to obtain information, (b) public bodies are obliged to provide and serve requests for information in a fast, punctual, low/proportional cost, and simple way, (c) exceptions are strict and limited, and, (d) public bodies are obliged to fix the system of documentation and information services (Fauzin, 2011).

In addition to the UU KIP, there are a number of regulations that normatively guarantee the right to public information in certain sectors, such as in Spatial

Planning (Law No. 24 of 1992), Environmental Management (Law No. 23 of 1997), Implementation of a State that is Clean and Free from Corruption, Collusion, and Nepotism (Law No. 28 of 1999), Eradication of Criminal Acts of Corruption (Law No. 31 of 1999), Human Rights (Law No. 39 of 1999), and the Press (Law No. 40 of 1999).

On the other hand, there is public information that is excluded. Based on Article 17 of UU KIP, information that is exempted from being disclosed in public should meet the following provisions: (a) hindering the law enforcement process; (b) interfering with the interests of protecting intellectual property rights and protection from unfair business competition; (c) may endanger the defense and security of the State; (d) disclose Indonesia's natural wealth; detrimental to national economic resilience; (e) detrimental to the interests of foreign relations; (f) disclosing the contents of the authentic deed which is personal and the final will or will of a person; and, (g) disclosing personal secrets.

### ***Government-NGO partnership***

In the dynamic development of NGOs in Indonesia, many NGOs have demonstrated their skills in providing social services, which can contribute to social and national development. Especially after the reform, many NGOs are able to work professionally together with government agencies and international institutions. Therefore, opening the door to a wider partnership between the government and NGOs has the opportunity to maximize national development work in a participatory and inclusive manner.

One form of Government-NGO partnership is the existence of Self-Management Procurement Type III. Such partnership is planned and supervised by the Ministry/Institution/Regional Apparatus (K/L/PD) responsible for the budget and is implemented by the CSO. Self-Management Procurement Type III is considered a new dimension of partnership between the government and NGOs for development innovation in the procurement of government goods/services (Efendi et al, 2019). Self-Management Procurement Type III is implemented to meet the needs of government goods/services whose competence is demonstrated by NGOs, such as community assistance programs, education and health services, to research in encouraging policy strengthening.

Self-Management Procurement Type III is a derivative of Presidential Regulation No. 12 of 2021 concerning Amendments to Presidential Regulation No. 16 of 2018 concerning Procurement of Government Goods/Services. The Presidential Regulation was drafted to accelerate and facilitate the implementation of government procurement of goods/services, simplify, provide value, to ease in controlling and supervising hence as to improve the quality of public services, as well as, to increase national development and economic equity.

The significance of Presidential Regulation 16/18 is as a legal umbrella to involve NGOs in providing goods/services needed by the government through Self-Management Procurement Type III. This modality is planned and supervised by the K/L/PD responsible for the budget and is implemented by an NGO, which is referred to as the Self-Management Implementing CSO.

The involvement of NGOs in Self-Management Procurement Type III provides an opportunity for the community to not only be the object of development, but also to be involved in the procurement process that supports development. The main objectives of Self-Management Procurement Type III are: (a) assisting the government in improving the quality and range of services, (b) increasing community participation in the development process, (c) increasing the effectiveness and efficiency of CSO performance, and, (d) improving the technical capabilities of human resources.

Wibawa (2020) states the existence and dynamics of the development of community organizations and changes in the government system have created a new paradigm for regulating CSOs in the life of society, nation and State, especially in terms of procurement of goods/services. This policy is the legal basis for the government to provide space for the community and for the NGOs to be actively involved in the national development (Wibawa, 2020).

### ***Policy participation***

In the midst of decentralized development, NGOs can position themselves as a forum for civil society participation in development. This has even been acknowledged in writing since the New Order through the Instruction of the Minister of Home Affairs (Inmendagri) No. 8 of 1990 concerning the Development of Non-Governmental Organizations. The said policy states that NGOs are a forum for community participation in development to improve the standard of living and welfare of the community.

Participatory development can be interpreted as having space for the community to provide input and participate in deciding a policy, regulation, product, and the budget allocation.

In the era of regional autonomy, the opportunities for community participation in development are also influenced by the role of a local government. In Law No. 32 of 2004 concerning Regional Government, it is stated that local governments have the right to regulate and manage their own government affairs according to the principles of autonomy and co-administration. Local governments are directed to accelerate the realization of community welfare through improvement, service, empowerment, and community participation.

In the context of the formation of laws and regulations, community participation is mentioned in Law No. 13 of 2022 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Legislative Regulation (UU PPP). In the elucidation of the UU PPP, it is stated that "Strengthening meaningful community involvement and participation is carried out in an orderly and responsible manner by fulfilling three prerequisites: the right to be heard; the right to be considered; and, the right to obtain an explanation or answer to the opinion given (right to be explained)."

## **Engagement in public consultation**

Environmental policies such as the Law No. 32 of 2009 concerning Environmental Protection and Management Law (UU PPLH) require public consultation. Article 1 of the Law mandates for the conduct of *"a study of the significant impact on the environment from a planned business and/or activity, to be used as a prerequisite for making decisions regarding the implementation of a business and/or activity and contained in a business permit or approval from the central government or the regional government."*

Furthermore, the involvement of environmental NGO activists in the Environmental Impact Assessment (EIA) can be referred to in Article 26, paragraph 3 of the UU PPLH which states that the EIA document is prepared by the community who have a direct impact, environmentalists, and/or who are affected by all forms of decisions in the EIA process."

However, the Job Creation Law makes the involvement of NGO activists in the environmental sector as a representation of "environmental observers" in the UU PPLH unclear. Article 26, paragraph 2 of the Job Creation Law only states, "The preparation of the EIA document is carried out by involving the community who are directly affected by the planned business and/or activity." In the article, the phrase "environmental observer" is not found as stated in the UU PPLH.

In addition, through the Minister of Home Affairs Regulation No. 80 of 2015 concerning the Establishment of Regional Legal Products, NGOs have the opportunity to be involved in the preparation of academic texts as the basis for the Regional Regulation Draft.

Another form of democratic participation that can be carried out by NGOs in the context of monitoring local governments is the supervision of Provincial/Regional Legislative Council members. The Minister of Home Affairs Regulation 80/2015 Article 50 states that any person, group, or organization may submit a complaint to the honorary body of the Provincial Legislative Council if there is sufficient evidence that there is a member of the Provincial Legislative Council who does not

carry out one or more obligations and/or violates the provisions of prohibitions and sanctions in accordance with the provisions of the legislation.

More broadly, the monitoring of the State is conducted by NGOs through the media.

### ***Engagement in budgeting***

In the last two decades, Indonesia has attempted to implement budget reforms. Budget reform is a government policy that is linear with efforts to eradicate corruption in Indonesia. The budget decentralization carried out through fiscal decentralization has been implemented since 1999, diverting approximately 40 percent of the State budget to the regional level through balancing funds. Sourced from the problem of autocracy, there is a need for reform through budget democratization. Pratiwi (2012) stated that democratization in the budget sector includes participation of the people, accountability and transparency by the people, and responsiveness to the people.

Participatory budgeting consists of a series of planning processes through the Development Planning Conference (*Musrenbang*). Based on the budget cycle contained in each district/city budget, NGOs can participate in four stages of the process (Pratiwi, 2012, p. 30):

- ***Budgeting***. The determination of the budget ceiling starts from the five-year plan in the form of the Regional Medium-Term Development Plan (RPJMD) and the Regional Government Work Units Strategic Plan, as well as the annual plan in the form of the Regional Government Work Plan (RKPD) and the Regional Government Work Unit (SKPD) Work Plan.
- ***Analysis***. It begins when the budget is presented in front of the council which allows for an in-depth review of the budget by the Provincial/Regional Legislative Council. This stage is highly dependent on the political situation and institutional environment. Here, NGOs can play a role in analyzing the Regional Budget.
- ***Identifying whether the allocation of funds is really effective, efficient, punctual, and on target*** after the council approves the Regional Budget.
- The final stage in the budget cycle involves *reviewing the indicators of success*. Indicators should already be contained in the planning document, be it RPJMD, RKPD, or SKPD Work Plan.

The participation of NGOs in budgeting is necessary because the preparation of the Regional Budget is not enough just to be carried out by formal institutions from the executive or legislative elements. According to Pratiwi (2012), NGO participation in

the budgeting process can encourage the use of a budget that is more in line with the interests of the community.

A study conducted by Pratiwi (2012) related to the experience of NGO “participatory budgeting” advocacy in Yogyakarta found that development success can be realized by involving community members from the beginning of the activity process in the preparation of development plans. The involvement of community members in Development Planning Conference in their respective regions cannot be separated from the assistance provided by NGOs.

### **Assessment of the political environment**

The political environment of developmental NGOs in Indonesia had an average score of 47, which means it was regulative. The indicator with the highest score was freedom of assembly (71), which meant that the political environment was open to freedom of assembly or organization. The indicator with the second highest score was freedom of expression (63), followed by freedom of opinion (61), involvement as an expert (53), and involvement in public consultations (50), all of which showed a regulatory nature.

Regarding freedom of assembly (71), NGO activists considered the political environment to be quite supportive. The legal framework of NGOs (CSOs) also did not limit citizens to establish organizations and/or be involved in an organization, as long as the organization did not conflict with *Pancasila* and the 1945 Constitution. Thus, it can be understood why this indicator had the highest score and was deemed as supportive in the political environment index.

The next indicators that achieved the second and third highest scores were freedom of expression (63) and freedom of opinion (61), both of which were considered as regulative. NGO activists assessed that the overall political environment for freedom of expression and opinion was regulative, on the one hand, there were few of the many policies that seemed to limit freedom of expression and opinion; there were cases of violations of the right to freedom of expression and opinion that can be categorized on a minor scale, which occurred in certain cases. Strict policies governing freedom of expression and opinion that were of concern to NGO activists included the ITE Law.

Another challenge for NGO activists in enjoying freedom of expression and opinion no longer only comes from State actors, but also from non-State actors, who are familiarly known as “buzzers” who support the government.

*“Now it is not only the State that monitors it, but the State buzzer is also carrying out what is called restrictions on freedom of expression, (and) assembly.” (Iwan Nurdin, Director of the LOKATARU Foundation)*

Apart from monitoring the freedom of expression and opinion in the digital world, another challenge in the right to freedom of expression and opinion lies in the area of conflict advocacy, especially agrarian conflicts. It is experienced by Dwi Astuti, Director of the Bina Desa Foundation, that freedom of expression and opinion in Indonesia is not constant.

*"The main problem is agrarian injustice in the countryside. Now, when they move, they often experience repression from the police and even use "organization of violence" in quotation marks in the regions. In my opinion, this is not in line with the freedom promoted by the government itself, which is said to be committed and respects it." (Dwi Astuti, Director of the Bina Desa Foundation)*

Despite frequent buzzer attacks and repression by security forces in advocating for conflict, in general, freedom of expression and opinion in Indonesia has not yet been categorized as an "emergency." Ah Maftuchan, the Executive Director of PRAKARSA Association, said that although there are problems in the ITE Law, at a macro level, freedom of expression in Indonesia is maintained. When compared to the New Order era, freedom of expression and opinion is now much better. Moreover, when compared to several other developing and neighboring countries, democracy in Indonesia is relatively better.

Two other indicators that fall into the regulatory category were the indicator for involvement as an expert (53) and the indicator for involvement in public consultations (50). Even though they were in the regulatory category, both indicators were close to the restrictive/closed category. Several NGO activists admitted that they had been involved as experts in a Ministry/Institution (K/L), and their institutions were involved in public consultations. However, not all K/L had engaged NGO activists as experts. Among the ministries/agencies that were rated to be quite good at regularly involving NGO activists was the Ministry of National Development Planning.

The observation for indicators of involvement in public consultations (50) was that these activities had not been carried out by K/L and local governments in a meaningful way, or in other words, more of a mere "formality."

*"Actually, participation in Indonesia is not what many CSOs idealize. Participation carried out by the government is simply aborting obligations. As basically what should be called participation is not socialization, and often the government does what is called public participation when plans and drafts of the plan have entered a phase called 'final', not far from the definition of socialization, but using the 'term' "participation." (Iwan Nurdin, Director of the LOKATARU Foundation)*

**Table 2. Political Environment Assessment Results**

Indicator	Score
Freedom of expression	63
Freedom of assembly	71
Freedom of opinion	61
Information: Data Disclosure	33
Information: Access to Data	34
Partnership: Involvement in the provision of public services	35
Partnership: Involvement as an expert	53
Participation: Involvement in public consultation	50
Participation: Involvement in public budgeting	26
Average score	47

Source: processed in research

In the political environment index, there are four indicators that score below the average political environment index score, which is also considered by NGO activists to be restrictive/closed. These indicators are: involvement in the provision of public services (35), access to data (34), data disclosure (33), and involvement in budgeting (26).

The low score on the indicator on public services correlates with the indicator on access to government funding (38) in the legal framework domain. Weak government funding to NGOs has resulted to limited space for NGOs to partner with the government in providing public services. The existence of a Government-NGO partnership scheme through Type III Self-Management is also not optimal, because not many ministries/agencies and Regional Apparatus Organizations have implemented Type III Self-Management. On the other hand, the technocratic projects offered by ministries/agencies to NGOs, in practice, are mostly still through a close-bidding scheme. From the point of view of NS, an official at the Ministry of National Development Planning, in order to increase NGO participation in the provision of public services, NGOs also need to improve their ability to provide public services and increase their accountability to the public. It is recognized that progress has been made in the involvement of NGO activists as experts and the involvement of NGOs in public consultations in several K/L or OPD in certain areas, but this has not been carried out simultaneously and regularly in all K/L and in all local governments.

The next indicators that are closed are access to data (34) and data disclosure (33). NGO activists assess the difficulty of finding the data needed for NGO work such as research and advocacy, while accessing it is often not provided by certain government agencies.

*"We have never asked for a chronology of Indonesian State Forest Company land. The case (agrarian conflict) in West Java, the agricultural land owned by farmers was taken over by Indonesian State Forest Company. When farmers tried to claim it, the land was not returned (Indonesian State Forest Company)."* (Dwi Astuti, Director of the Bina Desa Foundation)

Difficult access to unpublished data is exacerbated by the government's lack of transparency in providing public information. For example, if there are international trade negotiations conducted by the government, the public rarely obtains information about the course of the negotiations and suddenly an international trade negotiation has been agreed without any consultation to the public, (Dwi Astuti, Director of the Bina Desa Foundation). Even though there is a UU KIP, in practice the government is considered less transparent.

The indicator of the political environment index with the lowest score is the indicator of involvement in budgeting (26) which is closed. Ideally, good governance contains elements of participatory budgeting. However, NGO activists assess that such process in Indonesia is still far from ideal.

The current NGO political environment in Indonesia is generally regulative with a score of 47. However, the score is near to 40, which means that the political environment is closed and restricts the dynamics of NGOs. Based on the opinion analysis of the NGO activists involved in this research, the political environment for Developmental NGOs in Indonesia in the future has a closed/restrictive tendency if there is no improvement in the area of participatory public policy, increased transparency in governance and, guarantees for other civil freedom.

The main thing that needs to be strengthened by the government is to recognize the role of NGOs in development by opening wider doors for NGOs to engage in budgeting, engage in more qualified and meaningful public consultations, and engage in public service delivery.

In order to build a political environment that strengthens the contribution of NGOs in development, both NGOs and the government must understand each other that the two sectors are development actors. Thus, the government together with NGOs can work together to maximize national development programs and social development.

WS, an official within the Ministry of National Development Planning admitted that the public services provided by NGOs were outstanding. Therefore, if it is increased, the participation of NGOs in the provision of public services by partnering with the government can be more open.

*"In the field of 'public services', community empowerment, I believe my friends (NGOs) have a lot of creativity, for instance in the world of agriculture, etc. I see many (NGOs) building communities, mobilizing community potential, driving production from regions and I applaud that." (WS, Official within the Ministry of National Planning Development)*

## Conclusions and recommendations

The legal and political environment for developmental NGOs in Indonesia as a whole is *regulative*.

An assessment of the legal framework and political environment has provided an overview of the main challenges faced by developmental NGOs in carrying out national/social development work. Within the legal framework, the main challenge for NGOs is access to government funds to support social service activities of NGOs.

Another major challenge stems from the theme of the political environment. The government, both central and local, is considered to have almost never or rarely involved NGOs in the provision of public services.

Second, in relation to transparency, NGOs consider that the government is restricting public information. NGOs observe, overall, that it is very difficult to access data that is not published by the government. In addition, public information issued by the government is still very far from being open, because there is still a lot of information that is excluded.

Another challenge is the issue of budgetary involvement. Participatory budgeting as an element of democratic participation is considered far from ideal.

Based on the findings that have been put forward, this study recommends:

- The President of the Republic of Indonesia must establish an NGO Endowment Fund. Such facility is intended for NGOs to support social development work such as community empowerment, advocacy and research, and many more.
- State Ministries and Institutions should implement Self-Management Procurement Type III in their internal agencies. In addition, the Ministry of Home Affairs must issue regulations regarding the obligation to implement Self-Management Procurement Type III in local government circles.
- State Ministries and Institutions, and Regional Government Organizations should make it easier for NGOs to access the data and/or information needed. As long as the data and/or information are needed for the purposes of empowerment, advocacy, research, and other productive matters and do not interfere with national security, the government must provide the requested data and/or information.
- The President of the Republic of Indonesia, the House of Representatives, State

Ministries and Institutions, and Regional Government Organizations must increase the transparency of public information disclosure.

- The President of the Republic of Indonesia, the House of Representatives, State Ministries and Institutions, Regional Government Organizations, and Village Governments should improve the quality of participatory budgeting. Such condition can be achieved through the involvement of NGOs in Development Planning Conference at every level of State administration to ensure the accuracy of development programs and budget allocations are on target, while ensuring that the aspirations of civil society are accommodated in development programs.
- The President of the Republic of Indonesia, the House of Representatives, State Ministries and Institutions, Regional Government Organizations, and Village Governments should build a tradition of social dialogue with relevant civil society representatives. Social dialogue is needed as a common forum to formulate a solution to a developing public problem.
- The Indonesian National Police must be reformed. It is hoped that there will be no more repression from the police in regulating the course of demonstrations as a form of civil society's freedom of expression and opinion.
- NGOs should strengthen their capacity to produce evidence-based policy recommendations in policy advocacy work to strengthen the position of NGOs in lobbying with policymakers and support public opinion building.
- NGOs must establish social enterprises as a source of organizational financing. The existence of a social enterprise unit can reduce dependence of NGOs on external financing sources while at the same time strengthen the autonomous position of NGOs.
- NGO activists should build strategic communication forums to discuss matters related to the work of NGOs, open up opportunities for collaboration, and to build political power in terms of influencing public policies for social change. ■

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### Acknowledgments

The Bina Desa Foundation would like to express our gratitude to all participants of the focus group discussions and interviews. Special thanks to Irvan Tengku Harja who generously provided knowledge and expertise in this endeavor. Finally, this research would not have been possible without the support from the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).

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### Citation

Harja, I. T. (2022). CSO Assessment Study on Legal and Political Environment for Developmental NGOs in Indonesia. In ANGOC (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. ANGOC.

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After the restoration of democracy and enactment of a multi-party system in 1990, civil society organizations (CSOs) have seen rapid growth contributing for polity change in Nepal. CSOs are interchangeably referred to as non-government organizations (NGOs), and include professional associations, academics, social movements, and campaign-based organizations. These organizations have contributed to strengthening Nepal's democracy and public interest (Talcott, Khanal, and Bhattarai, 2019). Through the years, they “have made a significant contribution to social welfare, community development, environmental sustainability, skills and livelihood development, micro-credit, health and sanitation, gender and minority human rights and inclusion, citizen empowerment and public awareness” (Talcott, Khanal, and Bhattarai, 2019).

As CSOs evolved, so did the challenges they faced and continue to face. Among the major challenges confronting CSOs is the shrinking space for civic participation that has likewise occurred in many countries across the world.

This study was therefore undertaken to:

- provide a brief description of civil society organizations in Nepal;
- assess the policy and legal environment for CSOs; and,
- present recommendations on protecting and enhancing CSO space in the country.

## **Methodology**

Both primary and secondary data were collected for this study. For primary data collection, interviews with five CSO leaders ranging from different age groups were conducted in Kathmandu, capital city of Nepal. In the same way, three focal group discussions (FGDs) were conducted to collect data: (a) with the youths [below 40 years of age], (b) with senior CSO leaders [above 40 years of age], and (c) with both youths and senior leaders [mixed age group]. The researchers reviewed 11 different reports, articles, and journals to validate the data obtained from primary sources.

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<sup>1</sup>Gautam, B. (2022). *CSO Assessment Study: Legal and Political Environment for Developmental NGOs in Nepal*. 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).

This report follows the framework prepared by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), and agreed upon by the country writers. This paper does not claim to capture all perspectives on this topic. Further, this study does not include any information on cooperatives, labor unions, and faith-based groups. Although the religious organizations, women's groups and youth clubs are considered as CSOs in Nepal, the study team could not reach out to them to collect data.

## History and evolution of CSOs in Nepal

Before the 1950s, faith-based organizations were the main groups contributing to Nepal's social and humanitarian needs. There was no opportunity for any formation of CSOs during the said period as the then prevailing government (the Rana regime) controlled any associations, assemblies, and critical mass formations which may have contributed to the growth of independent civil societies (Bhatta, 2016).

While the Association Registration Act of 1977 paved the way to open up new organizations in the name of social and economic development of Nepal, the repressive move of the Panchayat regime in 1960 to 1990 did not allow CSOs to flourish. From the mere number of ten NGOs in 1960s, only 27 were added by 1987.

CSOs continued to face several transformations in enjoying their rights as well as in advocating for the people's rights. While they have contributed significantly to the restoration of democracy by overthrowing the Panchayat regime, they are taken only as a safe shelter by the political parties. For example, the political parties introduced some repressive policies to control CSOs when they took power after the restoration of democracy in 1990. This was quite undemocratic practices performed by the democratic government even in the multiparty system of Nepal.

Even at present, CSOs are not recognized as a development actor although they played crucial roles in policy change including the promulgation of the Constitution in 2015.<sup>2</sup> CSOs are tagged as anti-State bodies without any evidences. Significant number of political leaders associated with NGOs are also criticized.<sup>3</sup>

### Developmental NGOs

#### *Number, composition, typologies*

After the restoration of democracy, the country witnessed a high number of registration of NGOs as the Constitution and laws (particularly the Social Welfare Act 1992) allowed the citizens of Nepal to establish NGOs for the promotion and protection of people's rights.

<sup>2</sup> Based on the FGD with CSO leaders (18 August 2022)

<sup>3</sup> Ibid.

As of June 2021, data from the Social Welfare Council (SWC) data showed that there were 51,513 registered NGOs. Of which, only 6,259 NGOs renewed their registration in 2020/2021 (SWC, 2022). Out of the total number of registered NGOs, about 6,000 remained active by performing several activities through the foreign aid (since annual renewal of registration is a requirement for granting foreign aid from SWC).

There is wide gap in the numbers of registered and renewed NGOs in Nepal because of several reasons. First is the counting of religious associations, trust, mothers' groups, community based organizations, consumers groups as NGOs. Another reason is the counting of both social and faith-based organizations as NGOs.

According to Upreti (2021), the several types of CSOs in Nepal are:

- NGOs;
- Religious organizations;
- Trade unions;
- Social and cultural groups;
- Identity-based associations;
- Professional associations;
- Networks;
- Federations; and,
- Trusts (Upreti, 2011).

### ***Roles and services of CSOs***

The role of CSOs in Nepal are more facilitative for national development as well as democracy strengthening. CSOs not only provide independent centers of power to check abuse of federal and local authority but also empower people of different corners of the State together with political watchdogs (Bhandari, 2014). "Many NGOs have included income generation or savings and credit components in their programs to promote community participation and sustainability" (ADB, 2005).

### ***Sources of funding***

The main source of funding for Nepali CSOs is international donors, including multinational and bilateral organizations. Some INGOs, including charitable organizations, also donated for certain cause such as poverty alleviation, child education, disaster response, gender equality, health and sanitation in different parts of Nepal. The government, on the other hand, is not interested in donating fund for NGOs or CSOs but they want collaboration activities with them to implement their policies and programs in communities.

The data of SWC depict that out of total NRs 14,626,271,265.35 (more than 112.5 million USD) approved budget from different NGOs in Nepal, the total amount received from international organizations was NRs 14,289,416,949.98 (more than 109.9 million USD) whereas NRs 336,854,315.37 (more than 2.5 million USD) were managed from internal sources for the fiscal year of 2021/2022 (Social Welfare Council, 2021).

## Legal environment for developmental NGOs

While the contribution of CSOs is recognized by the Constitution, unfortunately the laws legislated after the promulgation of the Constitution attempted to control CSO movement, including freedom of expression, assembly, and association. Restrictions on criticism against government's actions and limitation to rights to information are some of the examples that showcase that there is a growing sense of fear that the legal environment for civil society is becoming restrictive.

The following are the major policies governing the rights and responsibilities of CSOs in Nepal:

- Constitution of Nepal;
- Association Registration Act, 1977;
- National Directive Act, 1961;
- Social Welfare Act, 1992;
- Local Self-Governance Act, 1999;
- Local Government Operation Act, 2017;
- Company Act, 2006; and,
- International Development Cooperation Policy, 2019.

### **Registration and reporting**

The Association Registration Act of 1977 is the primary legal framework for CSOs in Nepal. Registration of an organization has been criticized by NGO leaders in Nepal for being overly-complicated and costly, and is made more difficult by the multi-level government system of Nepal. The myriad processes include: (a) securing recommendation letters from multiple local government offices, (b) submitting notarized copies of the citizenship certificates of the executive committee members, (c) submitting the same documents (such as those related to the organizational structure and personal information of the executive committee) to different government agencies, (d) seeking a clearance report from the Nepal police, and (e) application for affiliation to the SWC. Further, the Association Registration Act provides arguably *arbitrary* power to the local authority to determine if an association may be registered.

NGOs are also bound with different requirements, forms, and fees among district offices. After the Annual General Meetings (AGMs) of NGOs, they are required to submit all documents such as: (a) AGM report, (b) audit report, (c) recommendation of local governments, (d) tax clearance certificates, (e) tax renewal certificates, and (f) organizational annual report to renew their registration from the District Administrative Office (DAO). In the same way, they should also ensure annual renewal from SWC with the above-mentioned documents.

The size, donor fund and income generation of each CSO differ, thus, the process and requirements are not fair for all.

These complications indicate that the government is more regulative than supportive of CSOs operating in Nepal.

Political parties in the name of social development register many NGOs. However, they are registered only once and not renewed by the SWC. This is one of the reasons why there are more than 50 thousand registered NGOs in Nepal.

### ***Taxation***

Upon registration with relevant line ministries and after securing final approval from cabinet, some organizations are eligible to be exempted from paying certain taxes. For organizations that have received a tax-exemption certificate from the Department of Internal Revenue, income from grants, donations, and investments are not taxed. The certificate remains valid as long as the organization carries out the public benefit purposes mentioned in the organization's by-laws and does not carry out income generating activities. The Income Tax Act 2058 (2002) recognizes a category of tax-exempt organization which include organization of social, religious, educational, or benevolent organization of public nature established with non-profit motive.

However, as with registration, the primary criticism against the taxation scheme is that it is lengthy, complicated, and may be influenced by public officials and personal connections of CSOs.

### ***Financing NGO operations***

Most NGOs are dependent on funding agencies, especially INGOs and foreign donors. CSOs are required to get approval from the government in order to receive any funds from foreign agencies, and funds received must pass through the Ministry of Finance and the SWC. Government has a mixed feeling towards access to foreign funding. While at times it believes that CSOs seek funds for development and social work, there is a perception that CSOs/NGOs are damaging the country's reputation internationally.

CSOs do not limit their source of funds to foreign aid but also engage in income generating activities. This self-reliant approach has considerably increased participation and capacity building of the CSO leaders and the public. Fundraising and the use of local resources are allowed with the permission of the Home Ministry and line agencies.

There are also funding sources from the government, although the opportunities are few and only a small number of NGOs are able to benefit from these. If there are certain projects that are being implemented by the government in collaboration with local NGOs, the political parties may provide funds to accomplish the projects.

### ***Challenges to NGO accountability***

CSOs have self-assessment and self-regulation mechanisms in place that are results-oriented and responsive towards their own projects or programs. CSOs/NGOs believe in transparency and also submit themselves to the mandatory external regulation procedures set in place by the government. CSOs/NGOs are accountable in case of annual audit, disclosure of the publications of their findings, and other reporting activities that will allow them to be as transparent as possible.

Legitimacy is important for CSOs/NGOs but it is highly influenced by external forces. The complex multi-level federal governmental system of Nepal causes complications for CSOs who wish to comply with the various government regulatory and administrative requirements.

Public trust and perception determine the effectiveness of the CSOs/NGOs. However, there is a lack of mutual understanding among CSOs/NGOs, government and other authorities regarding responsibilities, rights, and the scope of NGOs' work. In addition, bureaucracy and political hurdles have influenced CSOs' capacities, building, inclusiveness, and participation.

### **Government-CSO relations**

After the restoration of the country's democracy in 1990, the CSO movement increased rapidly for the promotion of protection of human rights as well ensuring sustainable livelihood of people. From 1990 to 1997, the roles of NGOs were highly recognized by the democratic government.

In 1996, the Communist Party of Nepal (Maoist) initiated an insurgency to overthrow the Nepalese monarchy and establish a people's republic. As a result, the Comprehensive Peace Accord was signed between then Maoist group and the government in 2006. The CSO movement flourished with strong recognition of political change in Nepal.

In 2007, CSOs started to raise the issues of the marginalized and indigenous communities respecting their rights and duties. The women, *Madheshi* (the southern backward community of Nepal), Dalit, and other marginalized communities were taken in central position in designing CSO programs in Nepal. However, governmental action were unpleasant and blamed CSOs as capital-oriented rather than a development mechanism. Soon after that, it became difficult for CSOs to lobby campaigns and programs to government agencies (Talcott, Khanal, and Bhattarai, 2019).

The relation between CSOs and government could be characterized by both adjustment and cooperation. Their relationship varies based on the issues. Sometimes it seems disturbed due to trust and understanding of each other's role in the society. Both feel like they compete for development and funding (ADB, 2005). Despite of all, the Government of Nepal (GoN) could not contradict the truth that CSOs had put up immense effort in the development of Nepalese society. GoN had acknowledged the contribution of CSOs in achieving the goals of the prolonged transition period to democracy. There was coordination between CSOs and government in some cases to implement government's policies and programs. The 15th periodic plan of Nepal has encouraged private sectors to acquire long-term goals for rapid economic growth and prosperity. The plan aims to enhance public-private partnership to encourage and facilitate private sector to produce goods and services by increasing investment and creating productive and dignified employment opportunities. During the period, 55.6 percent of the investment is expected to come from private sectors that is to be used in wide and diverse range of social, physical, and environmental developments.<sup>4</sup>

### ***Rights to freedom of expression, assembly, and unrestricted mobility of CSOs***

It was notable that the CSO movement succeeded to enshrine the provision of rights to freedom of expression, assembly, and unrestricted mobility in the constitution.

In terms of the **national legal frameworks**, the following have specific articles as regards to the rights of CSOs and other social organizations in Nepal:

- The **Constitution of Nepal**, under Article 17 (2), guarantees the freedom of expression and opinion, among other rights and freedoms, in line with the International Covenant on Civil and Political Rights. It also states that every citizen has the freedom to assemble peaceably and without arms and ammunition.

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<sup>4</sup>Based on interview with National Planning Commission Member

- The **Local Government Operation Act of 2017** requires community and social organizations to work in coordination with local government.
- The **National Directorate Act of 1961** allows professional organizations such as Nepal Bar Association, NGO Federation of Nepal, National Land Rights Forum, and Federation of Nepalese Journalist Association to act without any restriction. Such organizations can also criticize the government's undemocratic move.
- The **Association Registration Act of 1997** "is the primary legal framework for CSOs in Nepal. Most of the CSOs are registered under this Act" (Upreti, 2011). Under this Act, any seven or more persons willing to establish an association must comply with the rules fulfilling the documentary requirements. An association can be registered with the permission of local authority.
- Under the **Social Welfare Act of 2007**, any organization affiliated to SWC is eligible to proceed for foreign assistance.
- The **Right to Information Act of 2007** has clear provisions on the freedom of expression, association, and assembly to individual and organization. It mandates the government to form the National Information Commission where government agencies and offices, as well as NGOs, are mandated to submit periodic reports.

In terms of **international legal frameworks**, Nepal is a party to the Charter of the United Nations and the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR) and its optional protocol, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Similarly, the country is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its optional protocol, the Convention on the Rights of Persons with Disabilities (CRPD). These international instruments have the provisions of freedom of expression, assembly and association.

However, there appears to be a double standard of political parties and State's authorities in the perception towards CSOs in Nepal. While the government participates in several events organized by NGOs and applauds their contributions, the government still tries to control the formulation of policies for CSOs/NGOs by putting several restrictive provisions in the policy documents.<sup>5</sup> The absence of consistency, practical rules and regulations, and other policy documents that conform to the Constitution are the reasons for CSOs/NGOs to accuse government of formulating regulative policies (Upreti, 2011).

<sup>5</sup>Based on FGD with CSO leaders (24 August 2022)

Changing the government structure has affected the CSO/NGO sector in various ways. Political interference, unclear policies, complex legal instructions, and institutional mechanisms, are the barriers to enjoy freedom and operate organizations soundly. The mandatory requirement and re-registration of CSOs/NGOs violate the right provided by the Constitution.

It is pitiable that the space of CSOs/NGOs is continuously being limited, interfered, and their operations are controlled by the government. Government prefers to collaborate with NGOs for so-called “hardware” type of work such as construction, disaster management, publication of government's books, and resources, rather than affairs of human rights, research, and community awareness. Government is reportedly distrustful of the rights-based advocacy CSOs/NGOs.

### ***Rights to information and participation***

In Nepal, the right to information has been in a place as fundamental right since 1990. A separate Act has been enacted to implement right to information effectively. Article 27 of the Constitution enshrines, “every citizen shall have the right to demand and receive information on any matter of his or her interest or of public interest.”

Right to participation is linked to other rights to peaceful assembly and association, freedom of opinion and expression, and right to education and information. It describes the person as having equal right to participate on their own or through their related unions or organizations in the process of development of important policies that may affect them.

However, there are still significant challenges in the access to information and in participation among CSOs/NGOs. A large proportion of public bodies have failed to appoint information officers as required under the law. Coordination, communication, and political interferences are at peak. Moreover, receiving information is a long and difficult process. Nepal is restrictive towards the freedom of information and does not line up with international laws. The right to freedom is curtailed, and CSOs/NGOs are less able to intervene effectively in the policy-making processes.

### ***Partnership and coordination mechanisms***

NGOs and government cooperate in various ways, from joint policy development to funding agreements. Government tends to be dismissive of and its legitimate role in a society. Government perceives CSOs as personal projects and all about training and workshops, not addressing actual need of the society. The Government of Nepal views the civil society ineffective but also a potential threat.

## Conclusions and recommendations

CSOs/NGOs act as a bridge and lobbying body between communities and international and governmental agencies. The perception of the government towards CSOs/NGOs varies from time to time. There is no equal treatment of all CSOs/NGOs. The individual perception, availability of resources, and nature of work are some of the key factors that directly and indirectly affect the CSOs/NGOs and government relations in Nepal.

CSOs/NGOs have been facing a variety of challenges from the program design to implementation. Lack of independence, their opacity, politically divided ideologies and government-formed CSOs/NGOs are some of these internal challenges. On the other hand, repressive and regulative activities of the government, complex registration and renewal procedures, and lack of one door policy for registration, and negative political and bureaucratic biases, are some of the external challenges encountered by CSOs/NGOs in Nepal. Hence, this paper has outlined the following recommendations:

### ***To Government***

- In order to create a harmonious working environment, the government needs to create a one-door policy for mobilization of CSOs/NGOs as per the constitutional mandate.
- Multi-level registration provision should be abolished for NGOs to manage and operate activities smoothly.
- The SWC should regularly update the list of NGOs.
- Government should delegate authorities to provincial and local governments for the mobilization of NGOs. It would possibly ease the distribution of work, and allocation of human and financial resources.

### ***To CSOs***

- CSOs need to increase their coordination and cooperation among development partners, including national and international NGOs, to eradicate the duplication of the same types of programs in the same areas.
- Foreign aid and funds are not always adequate for operating all the activities of the project/program. To combat insufficiency, CSOs must find alternative sources of resource generation.
- The present scenario of the country and the organization needs the involvement of youth in development. CSOs must increase youth leadership and capacity-building in marginalized communities.

- CSOs need to be transparent and accountable while implementing their programs and the resources obtained from different sources. Events (such as social audits, public hearings) must regularly be organized to publicize activities and advocacies among beneficiaries and stakeholders.
- Ensure the sustainability of funds with proper utilization of money for the benefit of community members.

### ***To Private Sector***

- The private sector must respect and must seek collaborations with NGOs as development partners.
- To decrease the dependency of CSOs on external sources of funding, the private sector must implement Corporate Social Responsibility and support NGOs that are not from their own foundations.

### ***To Funding Agencies***

- To utilize the resources effectively and efficiently, funding agencies should directly provide funds to NGOs (without INGOs serving as intermediaries), so that larger amounts of funds would reach the communities.
- Understanding and cooperation is vital for the success of a project. Donors should create discussion platforms to resolve the issues between NGOs and INGOs.
- Donors must focus on sustainability of a program rather than changing policies. Priorities and mechanisms should be developed so that the funds go directly to the community. ■

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## Acknowledgments

The Community Self Reliance Center (CSRC) would like to express its gratitude to many institutions and individuals who contributed to accomplish this report. We would like to thank the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) for the technical and financial support. We are more than glad and feel privileged to work with the NGO Federation of Nepal (NFN), Government of Nepal (GoN), and Social Welfare Council (SWC).

We would also like to thank the CSO leaders, youths, and members of several organizations for sharing their ideas, thoughts, and information related to the issues, challenges, opportunities and learning of CSOs that have been working for safeguarding people's rights. We are also thankful to different media houses in Nepal, government agencies, NGOs, Land Rights Forum, and other CSOs for providing relevant information of the report.

I would also like to thank Mr. Jagat Basnet, Research and Policy Analyst and Mrs. Usha Kumal, intern of CSRC for their contribution to collect data and prepare the report in this shape. Finally, Mr. Binod Gautam, Accountability and Governance Coordinator of CSRC deserves special thanks for preparing this assessment report.

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## Citation

Gautan, B. (2022). CSO Assessment Study on Legal and Political Environment for Developmental NGOs in Nepal. Community Self Reliance Centre (CSRC). In ANGOC (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. ANGOC.

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# PHILIPPINES<sup>1</sup>

Civil society is an essential component of any functioning democracy, as it seeks to make government accountable, articulate concerns of citizens, and undertake targeted development and humanitarian work. A sub-sector of civil society, developmental non-government organizations are non-profit social development agencies established to promote socio-economic development, particularly among marginalized sectors of society.

In the Philippines, the terms “development NGO” and “NGO” have been used interchangeably, particularly in more recent literature.<sup>2</sup>

NGOs engage in a wide range of social services. Majorities of NGOs deliver “multi-sectoral programs” (i.e. health, livelihood, social services, etc.), indicating a belief that problem such as poverty at the grassroots level is best addressed through integrated approaches (Cariño, 2002). Another study found that NGOs are primarily involved in education, training, human resource development, and community development (Association of Foundations, 2001). NGOs are also involved in networking, coalition-building, and policy advocacy (Yu-Jose, 2011).

Perhaps the greatest achievement of CSOs is the advocacy role it played in the passage of the country’s foundational social justice legislation for specific vulnerable sectors in the country, during the democratic restoration which began in 1986. Through social mobilizations, research work, and lobbying, CSOs were the catalysts in the passage of the Comprehensive Agrarian Reform Law, the Urban Development and Housing Act, Fisheries Code, Magna Carta for Women, and the Indigenous Peoples’ Rights Act. Alongside these major policy triumphs, several key CSO leaders also assumed high government posts in successive government administrations – a validation of the sector’s major contributions to national policymaking.

However, even as these major strides were being made, worrying trends were also beginning to manifest themselves, such as declines in CSO funding and erosion of some of the sector’s credibility.

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<sup>1</sup>Pagsanghan, J. (2022). *CSO Assessment Study: Legal and Political Environment for Developmental NGOs in the Philippines*. 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)].

<sup>2</sup> See for instance, Gonzalez, 2005 and Tuaño in Yu-Jose, 2011.

The past several years have also seen a steep decline in democracy worldwide and with it, a corresponding constriction in the civic space needed by civil society to operate.

It is therefore imperative for CSOs to better understand the dynamics and drivers of the deteriorating civic environment, and design innovative responses to address the various issues and challenges presented. Thus, this study was conducted with the following objectives:

- to provide a brief description of civil society organizations in the Philippines;
- to assess the legal and political environment for developmental NGOs; and,
- to present recommendations on protecting and enhancing CSO space in the country.

### ***Methodology, scope, and limitations***

This study was based on an extensive review of books, journal articles, and news reports on Philippine civil society, as well as the larger domestic political situation. The paper also benefited from two focus group discussions (FGDs) with Philippine CSO leaders on “Emerging Challenges and Responses of CSOs,” conducted in July 2022. One FGD brought together CSO workers from the so-called “first generation” (senior leaders of the sector), while the other convened members of the “second generation” (middle managers aged 35 years old and below). Highlights of the study were presented then for validation to a group of CSO leaders in August 2022.

While effort was exerted to ensure that wide ranges of perspectives within the CSO community were considered during the research process, the study cannot claim to represent all the views within the sector. The author, with over 30 years of experience in civil society, also shaped the narrative in this paper.

A major limitation of the study was the lack of current published research on Philippine civil society, particularly after the 2010s. Perhaps an indication of the significant downtrend in CSO funding over the past decade or so. Be that as it may, the participants in the FGDs did converge around some common ideas, and these were major inputs in the study.

### **History and evolution**

The evolution of CSOs in the Philippines can be understood within the context of six major periods of the country’s history: colonial, post-independence, period of social ferment, authoritarianism period, the democratic restoration, and the current democratic decline.

## **Colonial period (1521 to 1946)**

The Philippines was a colony of Spain (1521 to 1898), and then the United States (1899 to 1945) until the latter recognized the country's independence in 1946.

Private welfare agencies established during the American colonial period may be considered the first NGOs in the country, although charitable work by the church and private individuals date back to the Spanish period. Welfare agencies were very much needed after World War II, as the need for relief, rehabilitation and reconstruction work was great (Alegre, 1996).

In 1906, the first Philippine Corporation Law was legislated, and it governed not just business firms but also nonstock corporations. The first nonstock corporations were Catholic hospitals and schools that were holdovers from the Spanish regime (Cariño, 2002).

The communist insurgency in the country had its roots in the opposition to American rule and the poverty in the rural areas, which led to restive labor and peasant sectors. More radical labor leaders formed the *Katipunan ng mga Anak Papis ng Pilipinas* that would later organize the Communist Party of the Philippines in 1930 (Cariño, 2002).

## **Post-Independence period (1946 to 1965)**

In 1952, a group of social work leaders established the Philippine National Committee of the International Council on Social Welfare (ICSW), which eventually evolved into the National Council of Social Development (NCSO).

In response to the growing communist threat in the rural areas, some major NGOs were established. These included the Institute for Social Order (ISO) in 1947 and the Philippine Rural Reconstruction Movement (PRRM) in 1952. ISO was instrumental in organizing the Federation of Free Workers (FFW) and the Federation of Free Farmers (FFF) (Alegre, 1996).

## **Social ferment (1965 to 1972)**

This period was characterized by heightened social restiveness and activism, as there was a convergence of key global processes and events such as growing resistance against the Vietnam War and colonialism, the convening of the Second Vatican Council and the rise of Liberation Theology, and the questioning of old development paradigms. This mood was reflected in the Philippines, as student activism and the leftist underground movement expanded rapidly in response to worsening poverty, graft, and corruption in the country. Community organizing

among basic sectors was the main strategy for educating and mobilizing the Filipino people against the structures of oppression (Cariño, 2002).

The Catholic Church established the National Secretariat for Social Action (NASSA) in 1967 as a coordination mechanism for its expanding social work, and conducted its own community organizing strategy. Even the business community was responding to the social problems, forming the Philippine Business for Social Progress (PBSP) as a structure for coordinated social concern initiatives of the sector (Alegre, 1996).

### **Authoritarian period (1972 to 1986)**

President Ferdinand Marcos assumed the Presidency in 1965, and most of the protest movement during that time was directed at his mismanagement of the country's problems. In 1972, Marcos declared Martial Law, and, through the military and police, clamped down on protests. Student activists, sectoral leaders, journalists and others were arrested and many were tortured or even killed. Some progressive leaders were forced to go into hiding, as freedom of assembly and other constitutional rights were severely curtailed. According to Amnesty International, about 70,000 people were imprisoned, 34,000 tortured and 3,240 killed from 1972 to 1981. Estimates of how much public money the Marcoses plundered are between \$5 billion to \$10 billion. From \$8.2 billion in 1977, the country's debt ballooned to \$24.4 billion in 1982 (Francisco, 2016).

Even during this dark period, many progressive NGOs emerged, continuing to use community organizing as the major strategy for empowerment of the poor.

The international community, including donor agencies, began to channel more support to NGOs during this period. Community development work, sectoral organizing, and coalition-building across sectors began to expand and become more assertive.

The nonviolent 1986 People Power Revolution was successful in ousting Marcos from power because most of society was united and organized against the dictator. This broad, multi-sectoral opposition could be seen in the wide range of organizations and formations that composed the people power movement.

### **Democratic restoration (1986 to 2016)**

The two decades following the People Power Revolution can be considered as the "golden age" of NGOs in the Philippines. In terms of the legal environment, the 1987 Constitution recognized the role of NGOs and People's Organization (POs) in national development. Various spaces for CSO participation in governance

were also opened (e.g., CSO representation in local development councils, representation of basic sectors in national and local legislative bodies, and the establishment of CSO desks in major government departments to attend to the concerns of the sector). This period also witnessed the expansion of CSO work and the formation of large CSO coalitions including Caucus of Development NGO Network (CODE-NGO) Convergence and Green Forum.

This period saw the enactment of many progressive legislations that stemmed from the advocacy work of CSOs. However, significant declines in funding began in the late 1990s onward, as the country rose to middle-income status and foreign aid began shifting to other less developed regions.

Further, the proliferation of fly-by-night NGOs and NGOs established and managed by politicians for their own vested interests caused the erosion of CSO credibility. Major scandals involving CSOs, such as the PDAF scam<sup>3</sup> and the PEACe Bonds issue<sup>4</sup> also hurt the sector's reputation (Gonzalez, 2005).

### **Authoritarian resurgence (2016 to present)**

Many of the democratic advances achieved during the previous two decades were rolled-back with the assumption of the Presidency by Rodrigo Duterte. Its greatest impacts are the further erosion of so-called "checks and balances" in the country's democratic system, more restrictive laws on national security and the re-introduction of a more arbitrary and coercive form of governance – which the public apparently seems to have accepted.

It is important to highlight the elements or "building blocks" of the authoritarianism of the Duterte administration because these have profoundly influenced the country's institutions and governance.

The first element is Duterte's own "force of personality" and governance style, which is intolerant, paternalistic, and coercive. This governance style is in tune with the populist-authoritarian brand of leadership spreading across the globe over the last several years.

Duterte also relied on a cadre of loyal supporters in various government positions of power. Most of these supporters were his key allies in Davao City when he was

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<sup>3</sup> The Priority Development Assistance Fund (PDAF) is a discretionary, lump sum fund allocated to legislators for pet projects. In 2013, a scam was uncovered by authorities, wherein a businesswoman with ties to legislators embezzled P10 billion in PDAF funds using ghost projects given to fake NGOs, with scores of government officials, legislators and their staff in connivance. The businesswoman-mastermind and many conspirators have been convicted and jailed, but three Senators have eluded justice thus far. One has been acquitted, while two are out on bail awaiting the court's decision.

<sup>4</sup> The Poverty Alleviation and Eradication Certificates (PEACe bonds) were bought and sold on the capital market by CODE-NGO, in partnership with a major commercial bank. CODE-NGO netted P1.4 billion from the transaction, and out of that money, created a fund facility to provide soft loans and grants to NGOs and POs. However, the transaction was criticized by some as a landmark case of civil society leveraging its influence with government for material gain.

mayor, and others were military and ex-military men appointed to high government posts. In 2018, one-third of the Duterte Cabinet consisted of ex-military and police officials (Ranada, 2018).

The former President's supposed mass popularity has been documented extensively in perception surveys (Panti, 2022), but this "popularity" must be analyzed within the context of the rise of social media, which has bred a toxic, polarized, and ill-informed public discourse.

Contextual factors even before the rise of Duterte played a role in facilitating his tight grip on power. For instance, the executive branch of the Philippine government has traditionally been very powerful, rendering the other branches of government unable to check the former's excesses (Guce and Galindez, 2018). Congress has always been composed of elite local families that rely on national government budgetary transfers to govern their localities and are thus extremely hesitant to antagonize the chief executive. The Supreme Court members are appointed by the President, and the country has experiences where sitting Presidents have been able to force incumbent Chief Justices out of office.

In May 2022, the nation elected Ferdinand "Bongbong" Marcos, Jr. as President and Sara Duterte as Vice-President. Bongbong Marcos is the son of the former dictator Ferdinand Marcos, while Sara Duterte is the daughter of outgoing President Rodrigo Duterte. Many CSOs see this new administration as a continuation of the resurgence of authoritarian rule.

## **Overview of CSOs in the country**

### ***Definition and Characteristics***

Over the years, CSOs in the Philippines have been defined in different ways. In Article II, Sec 23, the Philippine Constitution declares that "The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation." In Philippine usage, the term "NGO" refers to "private, nonprofit, voluntary organizations engaged in development activities for society's disadvantaged sectors" (Aldaba, 1993).

NGOs are often mentioned alongside Peoples Organizations (POs), which are primary organizations mostly of the poor in the basic sectors of society (Alegre, 1996). The Constitution defines POs as "bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure" (Sec 15, Art XII).

According to Serrano (2003), the term “civil society” entered Philippine development language in the early 1990s, after the political upheaval in Eastern Europe in the late 1980s. The term was initially equated with NGOs. However, the term has evolved to include NGOs as well as other types of organizations and institutions which do not belong to the State or business sector.

### ***Number and reach of CSOs in the country***

The number of CSOs in the country is difficult to determine, and different studies use different methodologies and different definitions. Estimates during the early 1990s (Brillantes, 1992; Aldaba, 1993) indicate that there were 15,000 to 30,000 NGOs. In a study over a decade later (Cariño, 2002), this number grew to 34,000 to 68,000. The absence of recent surveys and studies (circa 2010s onwards) on the current number of CSOs is a major gap in the literature.

There is no authoritative data on the reach of NGOs. While there are NGOs involved in the more isolated and impoverished areas of the country, most NGOs are concentrated in urban centers (Clarke, 2008; Association of Foundations, 2001; Yu-Jose, 2011).

NGOs in the Philippines have formed networks for various purposes, involving different sub-categories within the sector. These include national networks, provincial networks, and thematic or issue-based movements.

## **Legal environment for developmental NGOs**

### ***Registration and Accreditation***

NGOs that want legal personality should register with the Securities and Exchange Commission (SEC) as non-stock, non-profit corporations. Legal personality is needed to open bank accounts, enter into contracts and raise public funds. The main requirements for registration are the organization’s articles of incorporation, by-laws, and payment of a registration fee. These requirements are not considered burdensome (CODE-NGO and Alternative Law Groups, 2016).

Other types of CSOs register with the appropriate government agency. For instance, labor unions and workers associations register with the Department of Labor and Employment (DOLE) while cooperatives register with the Cooperative Development Authority (CDA).

In 2018, the SEC issued Memorandum Circular (MC) No. 15, ostensibly “to protect non-profit organizations from money laundering and terrorist financing abuse.” The MC requires NGOs who are deemed “at risk” to provide additional documents

and undergo, among others, background checks of all its officers and trustees, and an audit by the commission. NGOs that are “blacklisted” (the highest risk classification in the MC) will have their registration application denied or revoked in the case of previously registered NGOs.

While the State has the duty to guard against terrorist financing, this MC is troubling when viewed within the context of the over-all erosion of democracy and civil liberties during the past several years. Some NGOs involved in issue advocacy and basic sector organizing have reported difficulties in registration due to this MC.

Some form of accreditation is required for CSOs to participate in government programs and processes, or to be eligible to receive funding from these government agencies. For instance, to operate as social welfare agencies, CSOs must undergo a tedious process of registration, accreditation and licensing with the Department of Social Welfare and Development (DSWD).

Accreditation is also required for NGOs wishing to participate in local special bodies (LSBs) in local government units (LGUs) (Lerma and Los Baños in Cariño, 2002). The most important LSBs in the provinces, cities, and municipalities are the development councils, health boards, and school boards. While the accreditation process has, for the most part, been smooth in a majority of LGUs, there are still reports of the process being politicized. Some NGOs critical of the local chief executive have reported being denied accreditation (DILG, Urban Resources and Evelio B. Javier Foundation, 2001).

NGOs may enjoy tax deductions upon appropriate registration with the Bureau of Internal Revenue (BIR). In particular, donations made to qualified donor institutions are tax-deductible. The Philippine Council for NGO Certification (PCNC), a self-regulatory body of the NGO sector, provides a certification which serves as the prerequisite for BIR registration. The certification is provided if NGOs meet the PCNC’s established good governance standards (PCNC, 2022).

### **Funding**

Operational funds are key to CSO operations. Many NGOs receive funds from foreign sources, corporate donations, CSO-managed funding facilities, and governments.

It is estimated that CSOs obtain 60 percent of their funding from foreign donors and corporate donors (Yu-Jose, 2011). However, foreign funding for NGOs has decreased significantly in the last decade or more, partly because the Philippines has become a middle-income country.

In February 2021, Department of Foreign Affairs (DFA) Note Verbale No. 2021-0592 was issued by the Duterte administration notifying all diplomatic missions that all foreign government funding for NGOs should be coursed through the DFA for “appropriate clearance.” According to then DFA Secretary Teodoro Locsin, this note verbale is part of “how responsible government monitors where money comes from and goes to in the face of insurgent and terrorist-secessionist threats” (Rocamora, 2021). Unfortunately, the note verbale effectively restricts CSO space, especially when viewed within the context of the many steps backward the Duterte administration has taken in terms of democracy and human rights.

When it comes to participation in Official Development Assistance (ODA) from foreign governments, NGO/PO engagement is very much limited to implementation and not in project design, monitoring and evaluation (Gonzalez, 2005).

In an attempt to mitigate dependence on foreign, project-based financing, CSOs developed CSO-managed fund facilities such as Foundation for the Philippine Environment (FPE) and the Foundation for Sustainable Society, Inc. (FSSI). The FPE was endowed through a debt-for-environment swap facilitated by USAID and other stakeholders from the United States and the Philippines to support biodiversity conservation and sustainable development (FPE, 2022). On the other hand, FSSI was established following a successful debt for development agreement between the Government of the Philippines and the Swiss Confederation to provide grants, loans and other assistance for social enterprises (FSSI, 2022).

Government provides only a small percentage of CSO funding. CSOs are generally averse to the rigorous requirements and tedious processes related to accessing and reporting on funds received. Some CSOs do not want to compromise their independence by accepting government funds (CODE-NGO, 2011).

### ***Accountability mechanisms***

Accountability measures ensure that CSOs continue to fulfill their functions while operating with integrity. Some of these mechanisms originate from the CSO sector itself. For example, a Code of Conduct for Development NGOs was ratified in 1991, consisting of the Covenant for Philippine Development (a development vision) and a code of ethics. To give flesh to the code of ethics, CODE-NGO convened a Committee on Internal Reform Initiatives. Only two NGOs have been sanctioned by the network for violations of the code of ethics (Aldaba, 2002).

CSOs are also able to report on their plans and achievements during the different administrations since 1986, through the various Government-CSO engagement

structures and platforms. Among the most significant of these initiatives was the Social Reform Agenda (SRA) of the administration of then President Fidel Ramos, launched in 1994. The SRA aimed to improve access of the basic sectors to social services and productive assets; incorporate sustainable development in the utilization of natural resources; and, increase participation of key stakeholders in governance (Raquiza, 1997). Towards the end of the Ramos term in 1997, the SRA was integrated into the country's governance framework through Republic Act No. 8425. Through this law, the SRC was institutionalized as the National Anti-Poverty Commission (NAPC) which serves as a body for promoting GO-NGO accountability.

Succeeding administrations though gave the SRA and NAPC varying degrees of priority, and during the Duterte administration it was not viewed by mainstream civil society as a viable mechanism for engaging government.

The local special bodies are also supposed to be mechanisms where government and CSOs discuss programs and report accomplishments. The local development councils (LDCs) are the development planning body of the LGU, and it also undertakes monitoring and evaluation functions. The Local School Boards (LSBs) and Local Health Boards (LHBs) also oversee activities in the education and health sectors.

Regrettably, various studies and informal surveys have indicated that the local special bodies are not as functional and effective as they should be. This is due to various challenges including lack of capacity and resources for participation on the part of CSOs, a sheer lack of CSOs in 4th to 6th class municipalities, and political interference on the part of local chief executives (LCEs). A 2010 study by the Philippine Partnership for the Development of Human Resources (PhilDHRRA) surveyed 91 CSO leaders on their perceptions on the functionality of the local boards. On a scale of 1 (not functional) to 5 (very functional), the respondents gave the local boards and development councils very modest ratings: 3.43 for the LDCs, 3.42 for the LSBs, and 3.40 for the LHBs (PhilDHRRA, 2010).

## **Government-CSO relations**

### ***Overview***

From 1986 to 2016, relations between CSOs and the government were generally positive. However, the Duterte administration (2016 until 2022) has set back the country's democratic journey. This contemporary period is characterized by the infamous war on drugs, the passage of more restrictive national security legislation, and toxic, intolerant public discourse, among other setbacks.

The passage of new, more restrictive national security legislation is one of the most pervasive and most damaging legacies of the Duterte regime. Laws such as the Anti-Terrorism Act 2020 and Executive Order (EO) 70 have significantly constricted civic space and altered the State's posture towards civil society – from one of encouragement to suspicion and over-reaction.

The Anti-Terrorism Act of 2020 dangerously widens the definition of “terrorism.” This definition was so vague that the Supreme Court declared as unconstitutional a provision that considered mass actions, protests, and advocacy as possible terrorism. The law also allows suspects to be detained without warrant for 14 days, with 10-day extension. An Anti-Terrorism Council composed mostly of appointees from the executive branch is tasked with interpreting which acts should be considered terrorism, prompting Human Rights Watch to brand the council as “judge, jury, and jailer” (Human Rights Watch, 2020).

EO 70 created an inter-agency body, the National Task Force to End the Local Communist Armed Conflict (NTF-ELCAC) which is supposed to lead a “whole-of-nation” approach to combating the communist insurgency in the country. The NTF-ELCAC has been accused by peace advocates of “...sowing hatred and violence instead of a culture of dialogue and peace to resolve the more than five decades of insurgency in the country” (Cantal-Albasin, 2021). The inter-agency body has also been flagged by the Commission on Audit for P33 million in unliquidated funds (Marcelo, 2022).

One positive development during the Duterte administration, however, is the passage of the Bangsamoro Organic Law and the establishment of the democratic-parliamentary Bangsamoro Autonomous Region of Muslim Mindanao (BARMM), which possess the potential to bring peace and development to a Muslim Mindanao plagued by conflict for decades (Marcelo, 2018). While the road to peace in Southern Mindanao is still delicate and complex, initial success in terms of reduction in armed confrontations and improvement in development indicators are already being felt.

Meanwhile, a new government has just been elected last May 2022. There is much pessimism surrounding it for obvious reasons: the current President is the son of the former dictator, Ferdinand Marcos Sr. while the new Vice President is the daughter of outgoing President Duterte.

The overall trend in Government-CSO relations can be analyzed through the developments and dynamics along major thematic areas such as the rights to freedom of expression, assembly and unrestricted mobility, the right to information and participation, various other rights, and partnership and coordination mechanisms.

### ***Right to freedom of expression***

The Philippines is known for a vibrant media and robust commentary culture, co-existing uncomfortably with being the deadliest peacetime country for journalists (Curato, 2022). Philippine media has a strong tradition of opposing the Marcos Sr. dictatorship in the early 1980s, and exposing corruption from the 1990s to the present, but it has come at a high price – the harassment and even killing of many journalists through the years.

During the Duterte administration, the President's intolerance and virulent rhetoric against critics created a climate of fear. The administration also mobilized a State-sponsored troll army that created a toxic online environment that punished dissenting voices (Curato, 2022). Online disinformation is also a strategy being employed by the current administration.

The Duterte administration's vindictiveness against critics was also demonstrated in two high-profile actions: the closure of the ABS-CBN TV network and the persecution of the Rappler news organization. The President, in collusion with a compliant Congress, succeeded in denying the company's franchise renewal because ABS-CBN had displeased Duterte during the presidential campaign period (People's Dispatch, 2022). With regards to Rappler, it had been a constant critic of the Duterte drug war and other perceived abuses. Suddenly, Rappler found itself dealing with a tax evasion case, and its registration with the SEC was revoked (the case is pending on appeal in the courts at this time).

### ***Right to freedom of assembly; unrestricted mobility***

The country has a rich tradition of protest and mass action, but also has a history of State suppression of such gatherings. Over the past three decades, different CSOs, movements and coalitions have staged various mass actions, and violent dispersals of some of these actions have occurred.

The COVID-19 lockdowns in the Philippines (also under the Duterte administration) have been described as one of the "longest and strictest in the world" and have been a source of numerous human rights violations. The amount of food or cash assistance provided to communities has been inadequate when compared to the length of the lockdowns, resulting in hunger for many. Organized mass protests against these lockdowns have been met with violent dispersal operations. The President himself gave controversial orders to "shoot quarantine violators" (BBC, 2021).

## ***Right to information***

The right to information is enshrined in the Constitution (Article III, Section 7); however, there is no freedom of information (FOI) law to operationalize it.

Former President Duterte passed a FOI Executive Order covering the executive branch of government only, but the 30-page Implementing Rules and Regulation includes 11 pages of information that cannot be requested, and the requesting party must provide detailed information (Canares, 2017). A study of the Philippine Center for Investigative Journalism (PCIJ) on FOI requests indicates that many are rejected due to procedural issues, the concerned agency not having the information requested, or the agency not considering the request as covered by FOI (Perez, 2020).

Both Duterte and Marcos, Jr. have not disclosed their statements of assets and liabilities (SALNs), despite the filing of a SALN being a basic requirement for holding public office in the Philippines.

## ***Right to participation***

The Constitution provides that “reasonable participation...at all levels of decision making shall not be abridged,” and the State must establish “adequate consultation mechanisms” (Art 13, Sec 16).

Institutionalized mechanisms for CSO participation exist, but there are questions as to their effectiveness. CSOs have mandatory representation in local special bodies, but studies indicate that CSOs lack the leverage and capacity to be effective (PhilDHRRA, 2010).

The basic sectors are supposed to be represented in Congress through the party-list system, but infirmities in the law and its implementation have led to a perverse situation where elite families have gained even more access to Congress by forming pseudo party-list organizations that are not linked to underprivileged sectors (Philippine Daily Inquirer, 2022). Given the top-down governance style of the Duterte administration, it had little interest in consultation. It remains to be seen if the Marcos, Jr. administration will be an improvement, though critics are far from optimistic.

## ***Attacks on leftist and progressive organizations***

A separate section on leftist and progressive organizations is necessary because these organizations have borne the brunt of the Duterte administration’s repression. This includes threats, “red-tagging,” surveillance, unlawful arrests,

illegal searches, abductions and even murders. These acts have been documented and commented upon extensively by various international human rights organizations including Human Rights Watch, Amnesty International, Global Witness, and many others.

It is not an exaggeration to say that when it comes to Government-CSO relations under the Duterte administration, there are two standards – one for “non-leftist” CSOs, and another for perceived leftist organizations. The standard for non-leftist groups is one of indifference or tolerance, while perceived leftist organizations are considered enemies of the State. In the same breath, it should be mentioned that even organizations that are not leftist but are somehow in conflict with the administration’s goals – such as NGOs and church groups working with drug addicts, victims of human rights abuses, or environmental defenders – have also received their share of bullying from the administration.

The broader context should also be kept in mind - the conflict between the Philippine government and the communist movement has gone on for decades, with periods of rapprochement at certain conjunctures. However, the Duterte administration has escalated the repression of the leftist movement to a level not seen since the dictatorship of Marcos, Sr. It should also be emphasized that the communist movement has also committed its share of atrocities, and the responsibility for paving an authentic path to peace falls on both sides.

Under the new regime of Marcos, Jr., the NTF-ELCAC has recommended amnesty for the rebel movement. It remains to be seen if this recommendation has deep roots within the incoming regime, or whether it is merely political posturing.

### ***Over-All assessment***

Since the Marcos, Sr. dictatorship was toppled in 1986, the environment of government-CSO relations may have been described as “supportive.” The Duterte administration however, plunged the country into a new era of populist-authoritarian rule, which has affected CSOs – especially perceived “leftist” organizations - severely. These developments are sufficient to downgrade government-CSO relations to “regulative”, meaning that the State is intrusive and sometimes coercive in its engagement with the CSO sector.

## **Conclusion and recommendations**

### ***Conclusion***

From 1986 to 2016, the legal and political environment for CSOs was generally positive. However, the decline of Philippine democracy since 2016 has been

significant – damaging institutions, culture, governance practice, as well as the GO-CSO relations.

May 2016 to April 2022 witnessed a major contraction of democratic space, affecting NGOs significantly. The period was characterized by the extrajudicial killings of thousands of drug suspects, heightened persecution of administration critics and progressive organizations, and the polarization of political discourse. A new President has been elected and it is too early to tell where the new administration will lead the nation. However, since the President is the son of the former dictator Ferdinand Marcos, Sr. and the Vice-President is Duterte's daughter, there is no optimism within civil society that the new administration will reverse the current authoritarian drift.

GO-NGO accountability mechanisms that were useful from 1986 to 2016, have become largely token structures since the 2016 to 2021 Duterte administration, and the current administration has not articulated interest in reinvigorating GO-NGO engagement.

The Anti-Terrorism Act of 2020 has widened and obfuscated the definition of terrorism. Unless repealed, the anti-terror law and EO 70 will continue to define how anti-insurgency operations will be conducted for years to come. In addition, the "mindset" underlying these laws will continue to influence the conduct of law enforcement and the military.

Perhaps the most significant challenge emerging from the two authoritarian traditions (Dutertes and Marcoses) is the erosion of the independence and integrity of foundational institutions designed to check abuses of executive power. The Legislature and the Supreme Court have already been compromised – the former by the pork barrel system and the latter by the fact that 13 of 15 sitting justices are Duterte appointees (Galvez and Torres-Tupas, 2022). Other government offices that are crucial to promoting accountability and rule of law are headed by persons known for partisanship. The new Chairperson of the Commission on Human Rights was appointed by Marcos Jr. (CNN Philippines Staff, 2022).

The misinformation, intimidation, and division being spread over the internet is the newest threat to democracy – an approach used by the former President Duterte, as well as the President-elect Marcos, Jr. to propel his successful candidacy. Social media has now become the arena where the battle for the truth must be fought. Coincidentally, CSOs also must be adept in the use of social media and the internet to be successful even in their own sectoral and thematic advocacy campaigns.

Threats and harassment experienced by the media, activists, so-called "leftist" organizations, and even the progressive CSOs not aligned with the Left,

became significantly worse under the Duterte administration due to the latter's confrontational governance style and "militarist" perspective on solving the nation's problems.

It must also be emphasized that authoritarianism is making a comeback amidst a very complex Philippine reality. The foundations of genuine democracy have been unstable for decades, given continued elite dominance, weak institutions, and persistent inequality. On the other hand, the gains of the past three decades must not be ignored – the achievement by the country of middle-income status and investment grade ratings, the passage of some of the most progressive social justice laws in the world, the attainment of a peace framework in long-troubled Mindanao, and the existence of one of the most vibrant civil societies in the world.

### ***Recommendations towards strengthening CSOs as change agents for democracy and good governance***

When thinking about how CSOs must respond to the current situation, it must first be acknowledged that the current conjuncture is a difficult one. There is currently a convergence between external threat and internal weakness. The external threat is the dominance of the Dutertes and Marcoses, coupled with the compromised state of other governmental institutions. The internal weakness is the diminished state of the CSO sector due to lack of funds, leading to reductions in CSO institutional capacity, geographic coverage, and advocacy influence. Thus, crafting viable responses is complex.

Responding to the current challenge is also determined by one's definition of the nature of the challenge. There are various ideological perspectives within the CSO sector which determines how each CSO views the current problems facing the nation. Broadly, CSOs may be described as either "reformist" or "revolutionary." (This paper does not include the CSOs and civil society individuals that support the administrations of Duterte and Marcos Jr.) Reformists believe that the current structures of society can be made to work better for the underprivileged majority. Revolutionaries believe that the current neo-liberal structure must be dismantled if the country is to achieve meaningful development and democratization. There are various strains within the reformist and revolutionary camps, and they have different strategies, organizational profiles, and alliances.

The following are possible responses of the CSO sector to the current environment. Some are more appealing/viable than others, depending on each CSO's development perspective.

**Further Reflection and Monitoring.** The experience of the 2022 election is too recent and too significant to be digested immediately. More time is needed for a full reflection and action planning. It is also too early to decipher the regime's full intentions since it has only been in office for a few months. An area of concern though is that initial reflection processes are occurring mostly in silos – among alliances within one sector, among CSOs within one network, etc. There is not enough NGO-initiated conversation across sectors and among broad alliances and coalitions.

**Challenge Marcos Jr. government to prosecute Duterte and reverse the country's authoritarian drift.** This was actually done by CSOs led by the Council for People's Development and Governance during the "CSO Consultation on the UN Universal Periodic Review (UPR) of the Philippines" on 22 to 23 June 2022. The recommendations of the groups included "ensuring an enabling and safe environment for democratic participation, stopping red-tagging and repealing laws that inhibit people's civil and political rights" as well as "rejecting the profit-biased and overly market-oriented neoliberal development framework" (Council for People's Development and Governance, 2022).

**Strengthen CSO security measures.** This course of action is currently being undertaken by "progressive" CSOs that have been under threat during the previous administration and continue to feel threatened under the new regime. A dimension of security that is being emphasized in recent years are online security (e.g. hacking and online surveillance) and physical security of NGO offices, files, and personnel. Harassment, surveillance, abductions and even murders are tactics that have been employed by the Philippine government in its campaign against insurgency and terrorism.

**Invest in the Youth and Social Media.** Social media as the new battleground of perception and reality. The battle against the disinformation and polarization in today's political discourse cannot be won with just the traditional tools such as mass mobilizations, press statements, and the like. CSOs must learn to be more effective in the internet and social media arena. Developing the younger generation of CSO leaders is aligned with building-up social media effectiveness, since young people are generally more adept at technology.

However, developing the younger CSO generation is not just about them "continuing" the work that was started by older generations – it is about them re-imagining development work for the future. Training on development theory, program management, leadership, strategic planning, and the like are needed to ensure that the younger CSO generation will have the core skills to build upon as they take the sector into the next decade and beyond.

**Work with credible officials within the new regime.** For some NGOs, development work goes on. In every government including the current one, there are always competent and well-meaning officials in certain offices who could be “champions” of reform efforts in various areas of governance or service delivery.

**Focus on Local Governance/Local Development.** The COVID-19 pandemic shined a light on many outstanding local chief executives (LCEs) and LGUs whose innovative response to the crisis indicates that there is much hope for good governance at the local level, where partnerships with LCEs may yield more significant results. A cadre of progressive LCEs is also a building block for alternative political forces.

**Expand coalition-building.** Perhaps the decline in funding within the sector has contributed to a reduction in networking and coalition-building efforts within and across sectors. However, there is a need to bridge the different silos within the CSO sector and re-engage in conversations with other sectors including business, academia, and professionals – to build a major political force.

The recent Leni Robredo presidential campaign (discussed below) clearly indicates that cross-sectoral civic energy is very much alive. The major question is whether the NGO/PO community today is still capable of playing a proactive, catalyst role in bringing the other sectors of society together.

There is also room for expanded coalition-building at the international level. Authoritarian populism is a global trend. Surely, there is much to be learned from comparative discussions on the dynamics of this global threat, and a coordinated international response may be able to provide support to individual countries dealing with this challenge.

**Translate Robredo Campaign to a Social Movement.** Though it did not result in electoral victory, the 2022 Leni Robredo presidential campaign was similar to the 1986 people power revolution because it was able to mobilize large-scale voluntary action from various sectors of society. The massive “social energy” created by the campaign should be sustained beyond elections. In addition, social change needs to become more of a mainstream undertaking, and generating this type of scale is well beyond the capacities of just the NGO sector. There is a need to harness the capacities of the other major sectors of society.

**Sustain and Expand Efforts to Strengthen/Build Alternative Political Parties/Formations.** Certain NGOs, basic sector groups, and even cooperatives, have been involved in building alternative political parties and movements for years. Some groups have been doing this to gain representation in Congress through the

party-list system. For others, the ultimate goal is to become major players in national politics. In whichever case, it is important that these be done more sustainably. There are many such efforts that have been met with initial success, but the CSO groups concerned are often unable to sustain or expand on this over the course of several elections. There needs to be greater analysis as to why this is the case (although availability of funds has probably been a factor).

In summary, Philippine NGOs face significant challenges in the coming years, as democracy goes down a slippery slope and funding for the non-government sector continues to decline. But the CSO sector is resilient, especially when faced with adversity. The nonviolent 1986 people power revolution that ended the dictatorship of Ferdinand Marcos Sr. is a reminder of what concerted civil society action can inspire. Today, though the political landscape may seem parched, the seeds of another bold and innovative CSO response may already be germinating. ■

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## Acknowledgments

The author wishes to thank Nathaniel Don Marquez, Tony Quizon, Denise Hyacinth Joy Musni and Marianne Jane Naungayan of ANGO for their editorial and administrative support. Thanks also to the following organizations for their participation in the various processes leading to the finalization of this study: Alyansa Tigil Mina, Association of Foundations, Caucus of Development NGO Networks, Center for Agrarian Reform and Rural Development, Global Organic and Wellness Corporation, Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc., Foundation of Media Alternatives, Jollibee Group Foundation, Konsyensya Dabaw, Philippine Business for Social Progress, Sorosoro Ibaba Development Cooperative, The Silent Majority - Silent No More Inc. (Youth), and Xavier Science Foundation, Inc.

## Citation

Pagsanghan, J. (2022). CSO Assessment Study on Legal and Political Environment for Developmental NGOs in the Philippines. In ANGO (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. ANGO.

## Disclaimer

The views contained in this document are those of the author, and do not necessarily reflect those of IDEALS and FFA.



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.

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<sup>1</sup>Marasinghe, 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 Movement<sup>2</sup> 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).

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<sup>2</sup>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.

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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## 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 Kiriwadeniya (Sanasa International Pvt Ltd), 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 Wellassa 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 Jayatilleke, and Mr. Udesh 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 (Uva Wellassa Women Famers' 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. In ANGOC (Ed.). (2022). *Shrinking Civic Space: The legal and political environment for CSOs in Seven Asian Countries*. ANGOC.

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Founded in 1979, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in 10 Asian countries together with some 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and diversity of CSOs highlight the need for a development leadership to service the poor of Asia – providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives. Thus, the ANGOC network promotes land and resource rights, smallholder agriculture, and human rights and civic participation, by serving as a platform for Asian CSOs to generate knowledge, share tools, and conduct constructive policy dialogues.

ANGOC is a member of the Global Land Tool Network (GLTN), Global Forum on Agricultural Research (GFAR), Indigenous Peoples' and Community Conserved Areas and Territories (ICCA) Consortium, the International Land Coalition (ILC), and Fair Finance Asia (FFA).

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The **Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS), Inc.** is a non-stock, non-profit legal focused advocacy and service institution organized to address the legal and technical needs of the marginalized, disempowered, and vulnerable groups, particularly the agrarian reform beneficiaries, farmer-traders, migrant sectors, persons and communities affected by disasters, and victims of human rights violations. IDEALS is dedicated to develop and facilitate partners' initiatives for empowerment and sustainability as well as assisting disadvantaged and marginalized sectors in gaining improved access to justice and equity.

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**Fair Finance Philippines (FFP)** is a national network of CSOs committed to ensuring financial institutions fund businesses that respect communities' social and environmental well-being. FFP is also part of a regional and global network of CSOs advocating for sustainable finance policies and practices known as Fair Finance Asia, and Fair Finance International, respectively.

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**Fair Finance Asia (FFA)** is a regional network of over 80 CSOs through national coalitions in Cambodia, India, Indonesia, Japan, Pakistan, Philippines, Thailand, and Vietnam working with national and regional stakeholders in the public and private sector to facilitate the development of appropriate ESG policies and regulations.

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People are sovereign over institutions. Institutions are responsible and accountable to the people on whose behalf they exercise public power. An important dimension of civic space is “civil society organization space” - the nature and dynamics of the environment under which civil society organizations operate in a country. Civil society organizations (CSOs) represent the organized sectors of civil society, and as such, serve as one of the core foundations of an active democracy.

This publication “*Shrinking Civic Space: The legal and political environment for CSOs in seven Asian countries*” is a compendium of CSO perspective papers that assess the legal, regulatory, policy, financial and political environment affecting civil society and CSOs in Bangladesh, Cambodia, India, Indonesia, Nepal, Philippines, and Sri Lanka. A regional overview highlights the similarities and nuances of the country papers, and synthesizes the recommendations to broaden civic space for CSOs in the region.

