

Preliminary Commentary on the Non-Governmental Organizations (Registration And Supervision) Act, of 2024 proposed to repeal and replace the Voluntary Social Services Act of 1980

Ermiza Tegal, Attorney at Law & Ruki Fernando
8th February 2024

A. INTRODUCTION

The draft legislation analyzed below was shared with 12 Core Group members from 6 Districts of the CSO – NGO Collective at the Office of Non-Governmental Organizations (NGO) Secretariat, Battaramulla on 30th January 2024. The Core Group attended the meeting regardless of the NGO Secretariat having refused a request to share the draft in advance. The NGO Secretariat had repeatedly failed to respond to requests to make drafts public. The CSO-NGO Collective has made unofficial translations and circulated the draft widely having informed the NGO Secretariat that it would do so at the above-mentioned meeting.

The below observations are only preliminary observations and legal analysis of the document shared, and further discussion and analysis with stakeholders is required to better understand the likely impact of these proposed amendments on the diverse institutions and civic space itself that are sought to be regulated.

B. CONTEXT

1. There is a well-documented history of over three decades of politically motivated state antagonism towards NGOs, community-based organizations, civil society groups and human rights activities under authoritarian governments, which have often framed NGOs and their activities as a threat to national security and sovereignty;
2. The subject of voluntary social service and non-governmental organizations continuing to be under the purview of the Minister of Public Security instead of the Ministry of Social Services, is in itself, without any justification and casts a shadow of security objectives on the legislative reform process;
3. There has been a complete lack of a meaningful consultative process. When the present President was the Prime Minister in 2018, he requested civil society groups to submit their proposals on amendments to the Voluntary Social Service Organizations Act of 1980 (VSSO). The CSO-NGO collective formed in response to to ensure that due consideration is given to issues faced by the sector and also that reform does not result in arbitrary or oppressive amendments. However, since the beginning no draft has been provided for review;
4. Civil society groups previously made several formal and informal requests to be permitted to review draft amendments and/or legislation without receiving any working draft even though for nearly two years there have been indications from the Ministry and the Director General of the NGO Secretariat that such reforms were in the works. The Legal Draftsman had confirmed that a draft was submitted on 4th December 2023 to the Ministry of Public Security (under which the Secretariat functions);
5. The CSO-NGO Collective having made submissions to the NGO Secretariat and the Minister of Public Security on the nature of the issues faced by various non-governmental organizations and groups in Sri Lanka with regard to onerous and prohibitive regulations being imposed, unjustified surveillance and arbitrary interference with plans, activities and obtaining funds; and
6. the CSO-NGO Collective has submitted proposals for a draft law and guidelines to the Minister and the Director General of the NGO Secretariat in January 2023 without any response of feedback todate; and
7. The meeting convened on 30th January 2024, is reflective of the failure to engage stakeholders - only a hardcopy of the draft was shared, no Sinhalese and Tamil translations were made available, refusal to make the draft publicly available online and the Secretariat insisted that feedback be provided within three weeks regardless of the fact that civil society representatives requested three months, without any explanation of why consultations had to be rushed. It was evident that the meeting was not a genuine consultation but a narrow, tokenistic measure designed to prevent broad, comprehensive and meaningful consultation.

C. GENERAL OBSERVATIONS ON THE DRAFT BILL

1. **The Preamble states that objectives of the bill is to efficiently regulate activities of all Voluntary Social Service organizations including NGOs.** This is distinct from supporting, facilitating and promoting the work of such groups.
2. **The Bill casts a wide net** over all non-governmental groups and activities including development organizations, educational institutions, charities, corporate social responsibility foundations, human rights organizations, research institutes, political think tanks etc. It seeks to control, to restrain and interfere and in some instances prohibit selected activities and organizations. In a **context of several repressive laws** recently proposed (and enacted) under the present government, it is of serious concern that the **reform of the present law (VSSO Act) has failed to address any of the concerns raised for years by civil society groups** regarding the workings of the NGO Secretariat and the oppressive surveillance and interference of the security agencies, especially in relation to human rights, political reform, transitional justice and accountability work.
3. **Mandatory registration shuts out informal, voluntary collectives from legal recognition.** International human rights standards and the Sri Lankan constitution guarantees freedom of association and expression. Citizens should be free to associate in any form and restrictions may only apply once an activity is suspected or found to be illegal. The proposed Bill is seeks to regulate ALL non-governmental activity which encompasses a broad spectrum of organization - informal, formal, voluntary, paid, non-profit, for profit, national, District focused, community based and village-based and a broad range of types of activities and aims. By regulating all forms and not focusing on harm, the Bill may be successful for the purpose of surveillance and casting a wide net of control, but will administratively cripple certain groups and activities.
4. **Registration, supervision and regulation will be political.** The proposed scheme is steeped in political influence by having the Competent Authority (CA) appointed by the Minister, and the Minister being empowered to make regulations for the sector. Several of the powers refer to an intent that does not support views and ideologies different from the government of the day: for example that the CA is to obtain views of relevant Ministries before registration, CA must function to 'liaise with NGOs to make them part of the development of the country' and 'supervise and facilitate close cooperation between ngos and government', also the CA has power to suspend an NGO for prima facie evidence of prejudice to national security and engaging in activities in contravention of this Act or any other law and registered NGOs have a duty not engage 'in any political activity'. This poses serious risk to organizations who are working on law reforms and challenging existing laws. This is a curtailment of the freedoms of association and expression of citizens who may wish to organize collectively for otherwise entirely lawful activities.
5. **Empowers Competent Authority with police powers to enter and search, power to investigate offences and prosecute.** The draft Bill empowers entry without a warrant and search of premises, which are interferences with physical liberty and rights to privacy which can under existing law only be interfered with under judicial supervision. The Authority is given power to investigate offences, and a list of offences has been created over not fraud but rather administrative acts such as failure to register and not providing information. Contravening a rule or regulation is an offence and undermines the Rule of Law which assures citizens that the definition of an offence attracting criminal penalty will be known with certainty. As rules and regulations are made later, the opportunity for retrospective application is high and also places an impossible burden on citizens to be vigilant of every rule and regulation made.
6. **The definition of NGO is overly broad.** The smallest of community-based groups to the largest of national and international organizations are required to register. This includes those engaged in social services, social welfare, consensus building, advocacy and strengthening civil society. The draft also contemplates the Competent Authority having power over NGOs that are not required to register - such as religious institutions, trade unions, cooperatives. The application of similar rules to all categories of non-governmental organizations will be particularly prohibitive for smaller organizations. Current experience whereby the NGO secretariat and state officials are compelling organizations to obtain numerous, cumbersome approvals, provide quarterly activity reports and proposed plans has been too onerous for small organizations who work with a few staff or engage in voluntary work.

D. UNDERSTANDING THE DRAFT BILL (See annex 1 for detailed note)

1. For Whom (Clause 2)

Some groups are specifically included and some or not. Does not prevent any of the excluded organizations above from being subject to powers and litigation under this Act. (Clause 2(4)) As such the above Clause intends for broad application of the powers of the CA and regulation by the Minister.

2. Establishment of a Competent Authority for Non-governmental organizations (Clauses 3, 4, 5, 6 & 17)

i. Competent Authority: Appointment and Accountability

Provisions result in the lack of independence of the CA, and political oversight of NGOs and CBOs.

ii. Functions of the Competent Authority

The scheme described below is one of compelling non-governmental activity into compliance with the political objectives of government, interference in programs and activities and monopolizing the idea of what is in the interest of the well-being of the public.

iii. Powers of the Competent Authority

Expanding police power together with repressive powers in other proposed and enacted laws is a growing trend in law making by the current government. A criminal law approach to subject citizens into compliance undermines sovereignty, rule of law and democratic principles.

3. Establishment of National Secretariat (Clause 3)

These provisions curiously only require disclosure of conflict of interests after appointment as opposed to preventing persons with conflict of interest being appointed in the first instance.

4. Registration of NGOs (Clauses 8 - 15)

The provisions and scheme described mandates all non-governmental activity to be registered without any justification for such mandatory or wide application of the requirement to register. This approach is premised on suspicion of ALL non-governmental activity. Registration and appeal processes are politicized by requiring opinions and observations of Ministries and Authorities.

5. Duties of a NGOs (Clause 16)

The provisions place extremely subjective restrictions over non-governmental activity and when interpreted by a political appointee will restrict dissent, alternate political views and activities perceived as opposing government. The restrictions of fundraising and transfer of funds has not basis and is not justifiable.

6. Grounds for suspension or cancellation of a NGO (Clause 17)

Suspension and cancellation powers of the CA are also for minor administrative issues. This create serious consequences for inconsequential actions and minor administrative failings without adequate opportunity to explain, correct or comply. This amounts to extremely broad power and a precarious working environment for NGOs.

7. Deregistration (Clause 18)

CA is empowered to de-register a registered organization

8. Offences (Clause 19 and 20)

Extremely punitive scheme of offences over mere administrative issues as opposed to harm causing activity. The ability to wield such punitive power over non-governmental activity is alarming. All directors and office bearers are also responsible for offences unless they can demonstrate they were unaware or tried to prevent.

9. Regulations (Clause 22)

The Minister has wide, unfettered powers to make regulations in respect of discharge of duties by the CA, and matters relating to the supervision of performance, and evaluation of ngos).

10. Interpretation (Clause 23)

The extremely broad definition attracts all problematic provisions and scheme of the Draft Bill to any form of non-governmental entity.

Annex 1: Detailed note on Understanding the Draft bill

1. For Whom (Clause 2)

Does not prevent any of the excluded organizations above from being subject to powers and litigation under this Act. (Clause 2(4)) As such the above Clause intends for broad application of the powers of the CA and regulation by the Minister.

Law applies to **(Clause 2(1))**:

- voluntary social service organizations,
- micro-finance ngos,
- foreign/local funded guarantee limited companies
- foreign/local funded associations,
- a trust engaging in voluntary or social services or any community-based activity,
- a body incorporated in terms of Standing Orders of Parliament as a Private Member Bill,
- ngos established with the object of providing voluntary social services, facilitating social welfare, aiming at consensus building or strengthening civil society or advocacy and is approved under Inland Revenue Act, Registered under government Ministry or Registered in any country other than Sri Lanka, operating international including in Sri Lanka

Excludes **(Clause 2(3))**

- any religious organization which is registered under the relevant law,
- a bank,
- a public limited company,
- private limited company,
- cooperative society,
- partnerships and sole proprietor establishment,
- a school development society,
- an alumni association,
- a trade union, and
- a political party

2. Establishment of Competent Authority for Non-governmental Organizations

2.1 Competent Authority: Appointment and Accountability

Provisions result in the lack of independence of the CA, and political oversight of NGOs and CBOs.

- a) is appointed by the Minister. There is no criteria for appointment (Clause 3(1)).
- b) Minister empowered to issue general or special directions to the CA as may be necessary to him to discharge the functions of the CA, and it shall be the duty of the CA to comply. (Clause 7)

2.2 Functions of the Competent Authority

The scheme described below is one of compelling non-governmental activity into compliance with the political objectives of government, interference in programs and activities and monopolizing the idea of what is in the interest of the well being of the public.

- a) Register NGOs (Clause 4(1)(a))
- b) Issue Circulars and Guidelines to NGOs (Clause 4(1)(b))
- c) Recommend to Minister to make regulations (Clause 4(1)(c) & (p))
- d) Liaise with NGOs to make them part of the development of the country (Clause 4(1)(f))
- e) Supervise and facilitate close cooperation between NGO and government (Clause 4(1)(c)(i))
- f) Encourage NGOs to self-adopt codes of ethics for accountability and transparency and supervise performance of NGOs Clause 4(1)(j))
- g) Set up resource centers and libraries for NGOs (Clause 4(1)(k)) and organize lectures and seminars within and outside of Sri Lanka Clause 4(1)(l))
- h) Facilitate, coordinate, and evaluate programmes and projects implemented by NGOs (Clause 4(h))

- i) To refer any misconduct, ‘clientele relationship’ or relationship between NGOs that deter wellbeing of the public, or criminal activity relating to a NGO to a relevant authority or law enforcement authority, (Clause 4(1)(m))
- j) May ‘perform such other functions as are necessary and incidental to the implementation of the provisions of this Act’ (Clause 4(1)(q))

2.3 Powers of the Competent Authority

Expanding police power together with repressive powers in other proposed and enacted laws is a growing trend in law making by the current government. A criminal law approach to subject citizens into compliance undermines sovereignty, rule of law and democratic principles.

- a) to enter the premises of any NGO with a peace officer (with or without warrant) upon prior notice at any reasonable time, to access information or records of the NGO to ascertain whether the NGO is ‘upto prescribed standards’ (Clause 5(e))
- b) ‘request and obtain any information from any non-governmental organization required under this Act (Clause 5(i)) – overbroad
- c) may delegate power, duty or function to any officer or servant, without any limitations or exceptions contained therein (Clause 6(1))
- d) to suspend an NGO (Clause 17)

3. Establishment of National Secretariat (Clause 3)

These provisions curiously only require disclosure of conflict of interests after appointment as opposed to preventing persons with conflict of interest being appointed in the first instance.

- a) The National Secretariat officers shall assist the CA in the implementation of the Act (Clause 3(2))
- b) The CA and National Secretariat officers are required within one month of appointment to disclose any conflict of interest (Clause 3(3))

4. Registration of NGOs (Clauses 8 - 15)

The provisions and scheme described below mandates all non-governmental activity to be registered without any justification for such mandatory or wide application of the requirement to register. This approach is premised on suspicion of ALL non-governmental activity. Registration and appeal processes are politicized by requiring opinions and observations of Ministries and Authorities.

- a) Every NGO shall register with the CA (Clause 8(1))
- b) Pre-requisites for registration to be prescribed later (Clause 8(2))
- c) All NGOs not registered with NGO secretariat must register within 3 months of commencing operations.
- d) Registration procedure (Clause 9) – fee and documents required to be prescribed
- e) The CA may refer the application to a Ministry or other such authority for ‘recommendation, opinion, or observation’ (Clause 9(4)).
- f) CA shall take into account any recommendation, opinion, observation of any Ministry or Authority.
- g) Procedure for Appeal against the decision of a CA to the Secretary to the Ministry (Clause 9(5), (6))
- h) CA to issue certificate of registration (Clause 10), Categorise NGOs (Clause 11), maintain database of NGOs (Clause 12), Update register of NGOs every 90 days (Clause 13(2)) and make available for public inspection (Clause 13(3)), Renew registration (Clause 14), Provisional registration of a NGO as an interim issue to address a state of emergency, with a provision for extension of the validity period (Clause 15)

5. Duties of a NGOs (Clause 16)

The below provisions place extremely subjective restrictions over non-governmental activity and when interpreted by a political appointee will restrict dissent, alternate political views and activities perceived as opposing government. The restrictions of fundraising and transfer of funds has not basis and is not justifiable.

- a) Duty to not engage in any activity that ‘affect core cultural values’ (Clause 16(b))
- b) Duty to ‘not engage in any political activity’ (Clause 16(d))
- c) Duty to act ‘in conformity with and be subject to every direction, instruction or guideline issued by the Central Bank of Sri Lanka (Clause 16(g))

- d) Duty to not engage in any crowdfunding activity exceeding Rs.10 million in one fund raising drive without the approval of the CA (Clause 16(m))
- e) Not to transfer funds to or receive funds from another NGO that is not registered.

6. **Grounds for suspension or cancellation of a NGO (Clause 17)**

Suspension and cancellation powers of the CA are for minor administrative issues creating serious consequences for inconsequential actions and minor administrative failings without adequate opportunity to explain, correct or comply. This amounts to extremely broad power creating a precarious working environment for NGOs.

6.1 CA is empowered to suspend an NGO for

- being inoperative for consecutive period of 3 years,
- failing to comply with terms of registration,
- failing to submit a document (annual reports, periodical returns, audited accounts, any other document),
- engaging in activities contrary to its objectives,
- failing to renew registration,
- prima facie findings by CA of fraud, prejudicial to national security, engaged in activities in contravention of this Act or any other law.

6.2 Appeals are to the CA itself. There is no distinction between grounds for suspension or cancellation, it is at the discretion of the CA. Appeals are available against suspension, not cancellation (Clause 17(3))

7. **Deregistration (Clause 18)**

CA is empowered to de-register a registered organization

- a. Voluntary application by the organization (Clause 18(1)),
- b. under the grounds in Clause 17 (Clause 18(2)),
- c. on the order of a competent court (Clause 18(3)), with the procedure for the same provided (Clause 18)

8. **Offences (Clause 19)**

Extremely punitive scheme of offences over mere administrative issues as opposed to harm causing activity. The ability to wield such punitive power over non-governmental activity is alarming.

8.1 Creates a list of offences where legal action will be initiated by CA before Magistrate and by a summary trial where a Magistrate finds NGO to be liable - fine not exceeding Rs.250,000, or to imprisonment of either description for a period of one year

- a) Non registration
- b) Knowingly makes false statement or provides false information
- c) Fails to furnish information (for registration or under any regulation)
- d) Willfully neglects or fails to provide material for application for registration
- e) Resists or obstructs any authorized officer in the exercise of power
- f) Fails to comply with order of CA
- g) Contravenes any provision or regulation

8.2 Offences of a body of persons (Clause 20) – all directors and office bearers are responsible unless they can demonstrate they were unaware or tried to prevent.

9. **Regulations (Clause 22)**

The Minister has wide, unfettered powers to make regulations in respect of discharge of duties by the CA, and matters relating to the supervision of performance, and evaluation of ngos).

10. **Interpretation (Clause 23)**

The extremely broad definition attracts all problematic provisions and scheme of the Draft Bill to any form of non-governmental entity.

‘non-governmental organization’ – formed by anyone, is non-governmental or represents civil society, is profit or non-profit, serving general public and includes any association, council, community hostel, society, trust, foundation, federation, movement, center, consortium, company or branch organizations of duly established foreign organization for charitable purpose, national or international organization.