

# PROMOTING THREE BASIC FREEDOMS

Towards Greater Freedom of Association,  
Assembly and Expression in Asia

A REGION WIDE RESEARCH AND ADVOCACY PROJECT



## SRI LANKA

Politics, National Security and the Vibrancy of NGOs



### LAW & SOCIETY TRUST

**This country report seeks to discuss the legal and regulatory framework applicable to NGOs in Sri Lanka and is part of a regional project sponsored by NOVIB, to strengthen opportunities for NGOs in Asia to promote the freedoms of association, assembly and expression.**

**The report surveys the relevant legal provisions relating to the freedoms of association, assembly and expression including those in the Draft Constitution. It analyses the emergence of various NGOs in Sri Lanka against the backdrop of the political situation in the country and the various attempts made by successive governments at regulating the activities of NGOs.**

**This report forms the foundation for future action to strengthen civil society institutions and to promote the freedoms of association, assembly and expression in Sri Lanka.**

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**SRI LANKA**  
Politics, National Security and the Vibrancy of NGOs  
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## Contents

I. Introduction .....	1
II. Regulatory Structure .....	10
III. Enforcement and Impact of the Regulatory Structure .....	16
IV. Analysis .....	28
V. Recommendations .....	34
List of abbreviation .....	36
Bibilography .....	37



## **I. Introduction**

This report on Sri Lanka is part of a regional project to strengthen opportunities for non-governmental organisations (NGOs) in Asia to engage in a mutually re-enforcing advocacy effort to promote the freedoms of association, assembly, and expression. The need to actively promote these “three freedoms” stems from wider discussions among Asian NGOs about the legal and regulatory frameworks in Asian societies that have hampered the development of civil society and the work of NGOs in advancing human rights, social justice, gender equality, and environmental sustainability.

This country report is premised on the theoretical argument that where institutions that function as bulwarks of democracy, diversity, and pluralism are either non-existent or weak, NGOs play an essential role in ensuring the vitality and sustenance of civil society, and interrogating the state when it acts in violation of the rights and interests of members of society. The performance of this role by NGOs is predicated on the existence of a legal framework that guarantees their integrity and independence. The three freedoms - association, assembly, and expression - form the bedrock of this framework.

It is, of course, questionable whether the existence of a legal framework with respect to the three freedoms is adequate to guarantee the integrity and independence of NGOs. It is indeed arguable that the freedoms of association, assembly, and expression provide the basic but not the sufficient conditions for NGOs to operate. Much depends upon the context within which NGOs are placed but it is undeniable that the existence of the three freedoms enables them to assert their rights at least formally.

The experience of Sri Lanka in the recent past has raised serious questions about the capacity of traditional institutions of civil society to meet the challenges to democracy and pluralism. For decades after independence from British colonial rule in 1948, Sri Lanka enjoyed an enviable reputation

for its democratic process and social achievements. For nearly 30 years, Sri Lanka boasted of the “turnover pattern” in the formation of governments. Polls were not completely free of corruption and violence, but they were meaningful exercises for the electorate, and indeed, exercises in which the populace participated in impressive numbers. With a long tradition of commitment to social welfarism, Sri Lanka emerged, in the years after independence, as a country with an impressive record of advancements in the social conditions of its people. Although poverty and social justice issues continued to demand attention, remarkable gains were made in such areas as literacy, infant mortality rate, and life expectancy.

Since the 1970s there has been a gradual transformation of this picture. The reasons are complex, although several salient factors can be identified. The turnover pattern in government formation ceased with the coming into power of the United National Party (UNP) in 1977. The UNP entrenched itself through various devices, including the promulgation of a new constitution in 1978, and governed the country until 1994 when it was defeated by the People’s Alliance (PA) at the election. New constitutions were drafted and proclaimed in 1972 by the Sri Lanka Freedom Party (SLFP) government and in 1978 by the UNP, and the drafting of yet another new constitution has been underway since 1994 by the PA government. In all these cases, the citizenry of Sri Lanka has not been accorded a direct participatory role; the current effort, like that of 1978, is vested with the Parliamentary Select Committee on the Constitution, and the 1972 constitution emerged from the deliberations of the Constituent Assembly, the instrument into which the elected Parliament transformed itself for the purpose of the exercise.

At the same time the government was making important changes in its policies towards welfarism. The UNP government’s aggressive pursuit of “open economy” (*laissez faire*) policies, staunchly supported by Bretton Woods institutions such as the World Bank and the International Monetary Fund, brought about notable economic growth during its long tenure.



However, these open market policies, combined with the gradual withdrawal of the state from its historic role as the primary agent in poverty alleviation and social welfare, had an enormous adverse impact upon the poor. The trend has not been reversed in any significant way by the PA government.

Moreover, political violence began to intrude into Sri Lankan life to such an extent that in the 1980s it took on an institutionalised form. Violence had been embedded in Sri Lanka's political life from the beginning but the past occurrences bore no comparison with the character and the level of intensity of political violence in the recent period. Perhaps the defining moment of this development was the insurgency of the People's Liberation Front (*Janatha Vimukti Peramuna*, "JVP") in 1971 and the extraordinary measures that the SLFP government took to crush the effort. Subsequently, the state and state-sponsored violence under the UNP government reached new heights - in fact, the late 1980s and the early 1990s, when the government embarked upon a renewed drive to crush the revived JVP, can truly be described as a period of impunity.

Further, a new dimension was added to the country's culture of violence, when the minority Tamil community became the target of hysterical, widespread, and violent attacks by some elements of the majority Sinhala, in July 1983. The Tamils had suffered previously, most notably during the "riots" of 1958 when they were targeted by Sinhala mobs, but what was different this time was that the violence was far greater in intensity and it affected far more people. Moreover, unlike before, the violence this time was undoubtedly led by state-sponsored gangs, and the state did not act promptly to halt the atrocities committed upon the Tamil population. July 1983 also marked a crucial turning point in Sinhala-Tamil relations in that it spurred the movement towards the goal of a separate state for the minority Tamils and the categorical embracement of the principle of armed struggle on the part of several Tamil separatist organisations. Eventually, one organisation, the Liberation Tigers of Tamil Eelam (LTTE), became the indisputable power, and its deployment of armed cadres and the counter-deployment of the armed forces by the government,

resulted in the perpetration of brutal violence upon innocent civilians across the ethnic divide. The cumulative impact of these developments was the widespread human rights violations.

Political violence and human rights abuses, in turn, amply demonstrated the inability of traditional democratic institutions in Sri Lankan civil society to act as bulwarks against threats to and assaults upon civil society. Thus, for example, there was an abject failure on the part of political parties and elected representatives to fulfil the trust conventionally placed in them for the protection and advancement of the interests of the population at large. The meaning and value of participation in the democratic political process was questioned again and again during the UNP's long tenure in power. The exclusion of the citizenry from as fundamentally important a duty as constitution-making, raised the critical question of who held ownership over change. Again, the press fared miserably, partly because it had been crippled by the state and partly also because it lacked courage to stand up to the state; in essence, there was no "free press."

Coincidentally, it was precisely at the stage when democracy and pluralism in the country were most threatened and undermined that witnessed the most striking growth in the numbers of NGOs and the proliferation of their activities. Clearly they were filling a void, both in terms of protecting and asserting the rights of the members of civil society and in terms of carrying out poverty alleviation and development activities from which the state had gradually withdrawn or never participated in from the start. Ironically, the "open economy" permitted fund raising, which in turn provided greater opportunities for NGOs to emerge.

NGOs have a long and distinguished history in Sri Lanka. The first NGOs came into being in the aftermath of the establishment of British rule over Sri Lanka (1796-1948). These were local counterparts of organisations affiliated with Christian missionary efforts in the British overseas empire. In the wake of the indigenous religious revivalist movements of the latter part of the nineteenth century, Buddhists, Hindus, and Muslims began to

emulate the organisational frameworks of the Christians and form their own organisations. While NGOs worked specifically on “secular” issues such as poverty alleviation and social welfare in the nineteenth century, it was only in the following century that the need for such organisations began to be clearly recognised. Special impetus was given to poverty alleviation programmes, in particular during the depression of the early 1930s. At the time of Sri Lanka’s independence in 1948, a number of NGOs were involved in social welfare and poverty alleviation activities, while others developed more specialised areas of expertise and international links.

In the post-independence period, NGOs began to gradually increase in numbers, radiating outwards to other regions in Sri Lanka from their former base of operations in the Southwest, the part of the country with the heaviest population concentration. Beginning in the mid-1970s, the numbers of NGOs, both national and international, increased rapidly, while NGO activities expanded and diversified at the same time. Apart from local factors discussed previously, these developments were also spurred by international trends, in particular the funding of NGOs by donor countries and bilateral and multilateral institutions.

By 1990, an unpublished government report estimated that about 3,000 NGOs were operating in Sri Lanka. A higher estimate can be offered on the basis of recent sources (see Table 1). However, the actual number of the NGOs cannot be determined with certainty due to the lack of available documentation. In addition, it is difficult to provide the precise number of the small grassroots organisations.

**Table 1: Estimated Numbers of NGOs by Source**

Source	Local	Foreign
Department of Social Services*	2,161	—
Department of Probation & Child Care Services	515	—
Ministry of Policy Planning & Implementation**	—	47
IRED Directory of Development NGOs***	291	
Approved Charities****	889	—
TOTAL	3,856	47

*Source: ALAILIMA 1995: p. 6; IRED 1995a, 1995b; NGO Commission Report 1993. [There is of course a methodological problem with the data presented here in that the figures given are for different years, and to that extent the total may be misleading. The numbers may be deceptive as well because the sources do not distinguish between active and inactive organisations.]*

*Notes: \* Registered under Act No. 31 of 1980*

*\*\* As of December 1993*

*\*\*\* IRED 1995a, 1995b*

*\*\*\*\* As of March 1991*

The issue of defining the term NGO is a subject that has sparked considerable debate. For the purpose of this report, we define the term as any association or organisation that is non-profit and non-governmental, and engaged in relief and rehabilitation, social justice, social welfare, environmental protection, gender equality, development, and human rights. Excluded from our definition are organisations that are primarily of a religious nature, non-profit and devoted to commercial activities (such as chambers of commerce), political parties, and trade unions.

NGOs in Sri Lanka take diverse forms in terms of their goals, priorities, constituencies, organisational structure and composition, sources of funding, and programming and services. The main distinction is between

international NGOs, national NGOs, and grassroots organisations. In recent years, the numbers of international NGOs in Sri Lanka has increased, primarily because of the perceived need to address issues arising from the on-going armed conflict between the government and the LTTE. Organisations such as U.K. Save the Children Fund, Redd Barna, CARE, and Medecins Sans Frontieres work in Sri Lanka alongside United Nations agencies such as UNICEF and UNHCR, national NGOs, as well as government agencies.

National NGOs are of two types: local counterparts of international NGOs such as the Sri Lanka Red Cross Society, and purely Sri Lankan organisations. While international and national NGOs clearly differ in their structure and organisation, the national NGOs - with perhaps the exception of certain Voluntary Social Service Organisations that receive state grants-in-aid - are heavily dependent upon international funding. National NGOs develop an international dimension to the extent that their activities are driven by their need and ability to attract overseas funding. Thus, *Lanka Jathika Sarvodaya Sharmadana Samitiya* (Sarvodaya), the largest and undoubtedly the best known of the national NGOs committed to non-violent social transformation through intervention at the grassroots level, is substantially funded by foreign sources. The structure and organisation of national NGOs is determined by the legal framework they have embraced (see Section II below). Thus, those that are incorporated as companies under the law are organised in accordance with the prescribed legal form. Voluntary Social Service Organisations generally are membership associations, while other groups are tightly organised under a single or collective leadership.

The grassroots Organisations, also identified as people's organisations, are found at the village or neighbourhood level. They play a significant role in their respective communities, functioning as either mutual support groups, such as funeral assistance societies (*maranadara samiti*), or as organisations promoting religious, cultural, and recreational activities.



The objectives, constituencies, and services of the national NGOs cover an extremely wide spectrum. The NGOs generally identify their objectives in multi-sectoral terms, although a close review generally reveals a primary focus on a particular subject matter, and consequently, a fairly well-defined constituency in terms of their services. Interestingly, there is a general tendency on the part of the NGOs to couch objectives and goals in terms of "development" - in a sense, there is almost a cultural, if not an ideologically driven, need for identification with development, either in terms of economic development or empowerment. Even Voluntary Social Service Organisations include a development-oriented component in their work: thus, to provide vocational training is to promote empowerment through self-employment. Equally, those NGOs that can be classified as development NGOs often engage in activities that at first glance may not seem to be development oriented. These different characteristics of the national NGOs can be illustrated by an analysis of the information regarding development NGOs provided in the directory called *Innovations et Reseaux pour le Development* (IREED) produced in 1995 (see Table 2).

An oft-heard criticism is the lack of co-ordination among NGOs, which leads to duplication of services and competition for limited resources, especially funding. However, NGOs working in similar fields have made attempts at co-operation through the formation of consortia and other umbrella structures. Two prominent examples of co-operation are the Consortium of Humanitarian Agencies - primarily consisting of international NGOs engaged in relief and rehabilitation activities - and the Central Council of Social Services, a consortium of organisations engaged in voluntary social services.

Currently, no study exists that has empirically examined the impact of NGO work as a whole in Sri Lanka. Evaluations of the activities of specific NGOs - often required by funders - are available but not in the public domain.

Table 2: Classification of Development NGOs by Sector, 1995

Social Welfare	Participatory Development and Empowerment	Research	Environment	Human Rights
76	81	24	26	32

Source: IRED 1995a

Total: 239

*Notes: 1. For each organisation, the source lists "type of organisation," "main objectives," "fields of activities," and "special area of interest." These have been cross-referenced and particular weight has been given to the special area of interest to arrive at the classification given here. Thus, development is broadly defined and perhaps includes areas conventionally not considered as such.*

*2. The total number in this table is different from the number of development NGOs given in Table 1. The discrepancy is due to the fact that 52 organisations were excluded from this table because of the absence of relevant information and because they fell outside the definition of NGOs adopted in this report.*

Despite the lack of empirical data on the impact of NGOs, it is fair to conclude that the benefits of NGOs generally found in other countries are observable in Sri Lanka as well. NGOs hold a distinct advantage over the government in much of their activities: they approach their work informally, work from a multidisciplinary perspective, gather information more quickly, and use resources more efficiently, innovatively, flexibly, and in a timely fashion - whether it be human resources, finances, or material goods. They intervene in areas and among peoples either ignored, neglected, or marginalised by government policies; mobilising public support for social issues and functioning as watchdogs of the state by interrogating it when it acts to the detriment of society. Arguably, NGOs can play the role in the economy promoted by the World Bank Handbook 1996, such as enhancing efficiency and providing indirect support to the market economy. Apart from the issue whether such a role is ethically proper, it is not clear to what extent NGOs perform these functions in Sri Lanka, either directly or indirectly.

## II. Regulatory Structure

Chapter III of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka incorporates provisions on fundamental rights, including those relating to freedoms of association, assembly, and expression. Article 14(1)(c) guarantees freedom of association subject to, under Article 15(4), such restrictions as may be prescribed by law in the interests of racial and religious harmony or national economy. Article 14(1)(b) guarantees freedom of peaceful assembly. This right may be subject to, under Article 15(3), lawful restrictions imposed in the interests of racial and religious harmony. The guarantee of freedom of expression, including publication, is provided in Article 14(1)(a); subject to, according to Article 15(2), restrictions that may be imposed in accordance with law in the interest of racial and religious harmony, or parliamentary privilege, contempt of court, defamation, or incitement to an offence.

These rights are available only to citizens. Apart from the specific restrictions on individual rights spelled out in the Constitution, Article 15(7) states that all rights enumerated in Chapter III may be restricted by law :

*in the interests of national security, public order and the protection of public health and morality, or for the purposes of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.*

Moreover, other provisions in the Constitution effectively undermine the guaranteed rights. Thus, Article 16 states that all laws - "written and unwritten" - in existence at the time the Constitution came into force remain valid, regardless of whether they are consistent with the fundamental rights chapter.

In April 1997 the PA government made public a draft of a new constitution for Sri Lanka that had been under consideration of the Parliamentary



Select Committee on the Constitution since 1994. As in the present constitution, this draft carries a chapter on fundamental rights (Chapter III). There is of course no assurance that the draft version will eventually be implemented without modifications as the Constitution of the Republic of Sri Lanka (the new name for the country). Nonetheless, it is worthwhile noting here its provisions relating to the three freedoms.

In the draft constitution, the freedoms of association and peaceful assembly are guaranteed by Articles 18(1) and 17(1) respectively. In the case of freedom of association, Article 18(3) provides that restrictions may be prescribed by law when necessary in a democratic society in the interest of national security, public order, racial or religious harmony, national economy, or for securing due recognition and respect for the rights and freedoms of others. With respect to freedom of assembly, Article 17(2) permits lawful restrictions on the basis of the interests enumerated in Article 18(2), except that in addition, the protection of public health is also recognised as an interest that can serve as the basis for restrictions. Freedom of speech and expression, including publication, is guaranteed in Article 16(1), with lawful restrictions permitted by Article 16(2) as necessary in a democratic society to protect national security, public order, public health, morality, racial and religious harmony, or in relation to parliamentary privilege, contempt of court, defamation, or incitement to an offence or for securing due recognition and respect for the rights and freedoms of others.

The draft constitution significantly expands the entitlement to the three freedoms, from citizens under the 1978 Constitution, to all "persons." The draft language also conforms to the International Covenant on Civil and Political Rights (ICCPR) in many respects. However, there remain several provisions that have the capacity to undermine the exercise of these rights. Thus, for example, the legal validity of written and unwritten laws that are inconsistent with the proposed constitution remains in Article 25(1).

Of the general laws that affect the three freedoms in Sri Lanka, two in particular should be noted. The first is the Public Security Ordinance (PSO) No. 25 of 1997 (as amended). This statute was incorporated into the 1978 Constitution as Article 155(2). The PSO permits the President of Sri Lanka to proclaim a state of public emergency (Section 2), and this, in turn, permits the Executive to promulgate "regulations" (which are treated as laws under the Constitution). Article 155(2) of the Constitution declares that emergency regulations can override, amend, or suspend any general law except any provisions of the Constitution. However, given that freedoms of association, assembly, and expression can be restricted under Article 15(7) in the interest of national security and public order, the PSO in essence can circumvent the constitutional prohibition. The only constitutional rights that emergency regulations cannot affect are those that are deemed absolute (freedom of thought, conscience, and religion; and freedom from torture).

In reviewing government action taken under emergency regulations, the Sri Lankan Supreme Court has evolved a standard of reasonableness in subjecting particular emergency regulations to its scrutiny. The most categorical articulation of this standard is found in the landmark decision of *Joseph Perera v. Attorney General* (1987), in which the Court struck down a regulation restricting speech on the basis that it lacked clarity and permitted arbitrary and capricious action by the police. The Court held on this occasion that even during periods of emergency rule any regulation promulgated by the government that seeks to restrict fundamental rights must have a reasonable relationship to the objective sought. Despite the decision's significance, it still leaves considerable scope for governmental interference under emergency rule.

The second statutory provision to be noted is the Prevention of Terrorism Act (PTA) No. 48 of 1975 (as amended). Originally enacted as a temporary measure for a period of three years, it was amended in 1982 and became a permanent law. This statute gives sweeping powers to the Executive, including the authority to issue orders that could infringe on freedoms of

association, assembly, and expression. Thus, for example, the Minister of Defence may issue an order requiring that a "competent authority" must give prior written authorisation for any newspaper to publish any item relating to the commission of an offence that comes under the law or the investigation of such offence.

Of the international instruments that are directly relevant to the present discussion, the ICCPR was acceded to by Sri Lanka in 1980, and the Optional Protocol to the ICCPR in 1997. The formal acceptance of the ICCPR has not meant that the constitutional and statutory framework in Sri Lanka strictly conforms to it or, for that matter, to other international instruments, including the 1948 Universal Declaration of Human Rights (UDHR). Thus, the restrictions in place in the 1978 Constitution with respect to the freedoms of association, assembly, and expression are certainly broader than those contemplated by the ICCPR. To illustrate, Article 22(2) of the ICCPR (as well as Article 29(2) of the UDHR and the Syracuse Principles on the Limitation of and Derogation of Provisions in the International Covenant on Civil and Political Rights of 1984) specifies that freedom of association may be restricted by law only when necessary in a democratic society to protect national security, public safety, public order, public health, morals, or the rights and freedoms of others. The Sri Lankan Constitution does not recognise "necessity" as the basis for the derogation of rights.

In Sri Lanka not only is denial of guaranteed rights possible on a wider basis, the scope of action available to citizens to challenge such derogations at their inception on constitutional grounds is also limited. Article 121 of the 1978 Constitution provides that, within a week of a Bill being placed before the Parliament, the jurisdiction of the Supreme Court has to be invoked by a citizen to test its constitutionality. The Court then has three weeks within which to determine the issue. This narrow time period allows the government to manipulate the timing of the introduction of legislation. Thus, in April 1997, the PA government introduced a broadcasting law that included provisions contrary to freedom of expression. This occurred

during a time when the Sinhala and Tamils were holding their traditional New Year celebrations, and the Court itself was on vacation. The vigilance of some citizens and groups led to the invocation of the jurisdiction of the Supreme Court, which declared the Bill unconstitutional. The overall experience, however, demonstrated the inadequacy of constitutional provisions to protect the citizenry from a manipulative government.

Currently Sri Lanka does not possess specific statutory or regulatory provisions that subject NGOs to legal scrutiny. The only mandatory requirements concern Voluntary Social Service Organisations (defined as social service NGOs that are dependent upon public contributions or government grants for funding), which are required to register with the Ministry of Social Services under the Voluntary Social Services Organisations (Registration and Supervision) Act No. 31 of 1980 known as the VSSO Act. While registration is compulsory, there are no penalties for failure to comply. However, in the absence of registration, no government grants-in-aid would be made nor would visas be granted to expatriate staff of the organisations. With the ratification of the 13th Amendment to the 1978 Constitution in 1987 and the enactment of the Provincial Council Act No. 42 of 1987 - a largely ineffectual step to transfer power from the centre to the periphery - the registration of organisations under the VSSO Act was transferred from the central Ministry of Social Services to the provincial ministries. Under the Development Councils (Amendment) Act No. 45 of 1981, those Voluntary Social Service Organisations that registered with the Ministry were given the legal right to participate in the affairs of the village improvement councils (*gramodaya mandala*) together with the elected representatives. This was clearly intended to serve as an incentive to register with the state.

NGOs that do not receive grants-in-aid from the state for their activities can choose to formalise their legal position by utilising one of the available statutory schemes. There are several options: registration as mutual provident societies under the Mutual Provident Societies Act No. 55 of 1949, incorporation as limited liability companies under the Companies Act No. 17 of 1982, establishment as trusts under the Trust Ordinance

No. 9 of 1917 (as amended), registration as "charities" under the Inland Revenue Act No. 28 of 1979, or as "Approved Charities" under the 1963 Inland Revenue Act No.4 of 1965 (the differentiation relates to the level of concessionary taxation), and finally, incorporation by an Act of Parliament, a measure typically initiated by a private Member's Bill. The choice is not determined by the nature of the NGO's activities. Rather, these statutes activate particular attributes of the NGO and bring forth different provisions relating to its operation and accountability. Thus, for example, if an NGO requires legal recognition but at the same time rejects government intervention in any form in its activities, the option of unincorporated associations is available. On the other hand, if an NGO chooses not to become a legal person, it can do so without sanctions or penalty.

Administrative measures have also been introduced to formalise and link NGO work with the state. Thus, under the National Environmental Act No. 47 of 1980 (as amended), seven NGO representatives sit on the Environmental Council. This body is dominated by government official, but nonetheless plays a significant role in environmental regulation. The last UNP regime saw the establishment of the NGO Panel in the Women's Bureau, the NGO Committee of the Children's Secretariat, and the NGO Liaison Unit at the Ministry of Policy Planning and Implementation. The first two are defunct while the third, the NGO Liaison Unit, remains active. Its most important function has been to negotiate Memoranda of Understanding (covering NGO objectives and agreements to conform and abide by local laws, inform government of their activities, and furnish statements of local disbursements) with each of the international NGOs engaged in Sri Lanka. By 1993, 40 of the 47 international NGOs concerned had entered into such bilateral agreements. The memoranda continue to be valid, and international NGOs seeking to launch projects in Sri Lanka are required to enter into similar agreements. There have also been efforts to monitor, if not control, financial remittances by international NGOs to Sri Lanka through commercial banks and foreign exchange regulations, but with the liberalising of the economy under the UNP government these were discarded.

### III. Enforcement and Impact of the Regulatory Structure

The assault upon the three freedoms has principally come from action taken by the Executive in the interest of "national security." The primary vehicle for such actions has been the Public Security Ordinance and the regulations promulgated under this statute. The declaration of emergency and the promulgation of regulations bypass the normal legislative process and, therefore, are not subject either to parliamentary scrutiny or public debate. Emergency regulations are *ad hoc* measures, and become law without publicity via extraordinary *Gazettes*, which carry the government's official announcements and legal notices. Indeed, the emergency regulations are often difficult to trace, ostensibly because of the *Gazette's* distribution problems. On occasion, the *Gazette* has not been available even at its legal depository - the Government Archives - and in fact, public officials have even been confused at times as to whether emergency rule was in effect or not.

Freedom of expression is undoubtedly the right that has suffered the most under emergency rule. Emergency regulations on expression, which in effect impose censorship, have been aimed at the media, with the armed conflict with the LTTE forming the rationale. The alleged violators of censorship have been dealt in a heavy-handed fashion by successive regimes, including the PA government, which came into power with the most categorical of promises of press freedom. Thus, in April 1996, the PA government banned the broadcast of news bulletins by two radio stations and subjected station employees to harassment on the grounds that they had allegedly broadcast an incorrect news item. Both the UNP and PA governments have used the Prevention of Terrorism Act against journalists on several occasions for writing or broadcasting news that allegedly constituted incitement to violence, the most recent incident being the legal action instituted by the PA in January 1997 against a television news director for an inaccurate broadcast concerning the conflict (the charges were subsequently dropped).



An additional legal mechanism has been effectively employed with respect to freedom of speech: section 479 of the Penal Code relating to criminal defamation. Criminal defamation carries heavy sanctions, and since the charges are put forward by the Attorney-General and not the public figures who have allegedly been defamed, it has become an effective tool for the Executive particularly against journalists and publications. Thus, in June 1997, the editor of a newspaper that published a "gossip column" item about President Chandrika Kumaratunga was convicted by the High Court of Colombo for criminal defamation and given a heavy sentence (the decision is being appealed).

Emergency regulations have imposed significant limitations on freedom of assembly, including freedom of movement, not only in the conflict zones but also in other areas - particularly Colombo - where intense security measures are regularly invoked. Freedom of association has not been the target of explicit measures, with a number of NGOs working in the predominantly Sinhala areas. However, the experience of NGOs with humanitarian and human rights mandates in the conflict areas is dramatically and radically different. The theatre of war has been the focus of much of the serious humanitarian and human rights issues that have arisen in Sri Lanka recently. Government censorship has meant that there is virtually complete reliance upon the state for reporting of the war. Access to the conflict areas is tightly controlled by the armed forces - in fact, even though in recent months more territory in the North has been brought under government control through military operations, there has been a patent policy of "militarisation" of these areas, drastically curtailing freedom of movement. The LTTE has not provided access to the areas under its control, either. Thus, the absence of independent reporting and lack of access has seriously hampered the work of journalists and humanitarian and human rights NGOs.

To be sure, it is not the regulations alone that have curbed the three freedoms of these NGOs. Largely *ad hoc* policies of the Ministry of Defence and the armed forces on the ground in the conflict areas - including

individual decision-making by sectoral force commanders - have created a great deal of uncertainty, confusion, and difficulty for NGOs trying to carry out relief and rehabilitation activities. The *ad hoc* nature of the regulatory measures is exemplified by the fact that individual NGOs have been able to negotiate with authorities to overcome problems on the ground to carry out their activities. On the other hand, it is also clear that policies invoked for international NGOs differ from those applicable to national NGOs: the fact that international NGOs are formally guided by Memoranda of Understanding with the government has on occasion created a distinct advantage in dealing with the authorities, in comparison with national NGOs that lack such formal arrangements.

Until recently, the only regulatory mechanism directly aimed at the NGOs, the VSSO Act, functioned innocuously. Since 1995, there has been a flurry of activity. The newspapers reported in April 1995 that the Minister of Social Services had obtained Cabinet approval to amend the Act to authorise the takeover of any NGO by the state for an interim period where a *prima facie* case had been established of misappropriation of funds or other malpractice. Subsequently, the Minister presented the Voluntary Social Service Organisations (Registration and Supervision) (Amendment) Bill (VSSO Amendment Bill) to the Parliament but to date, for reasons unknown, it has not received approval. In early 1996, the Ministry of Social Services established a National Secretariat for Non-Governmental Organisations, to serve as the clearing house for NGO programmes and to monitor their activities. The nature of these monitoring functions is unknown at this time. However, it is understood that a committee of senior officials under the aegis of the Ministry has been formulating regulations for NGOs. Whether this committee will come up with regulations to "supervise" NGOs in the voluntary service sector, as provided in the VSSO Act (section 15), or is working in anticipation of the amendment of the law covering all NGOs, is not known.

After nearly 15 years of operation with very little activity other than registering organisations, the VSSO Act suddenly became the focal point



of interest. In April 1995, under the authority vested in him by the Act, the Minister began to investigate the Sri Lanka Red Cross Society for serious allegations of fraud and misappropriation. The allegations were sustained by an officially-appointed Board of Inquiry, and the Minister appointed an interim Board in place of the existing officers of the Red Cross Society. Under the VSSO Act the Minister had no authority to administratively remove officials of an organisation registered with the Ministry, and in the subsequent litigation initiated by some of the Society's governors, the Colombo District Court determined in September 1996 that the interim Board had been appointed in violation of the law and reinstated certain removed governors until the Society's next annual general meeting.

The so-called "Red Cross Affair" received widespread publicity. The press took up the cause, not for the first time, of the "crying need" to regulate "corrupt" NGOs. However meritorious the case against Red Cross officers found to be engaged in corruption, the ministerial intervention in the organisation pointed to an issue of serious concern for NGOs: the scant respect for the law displayed by the country's political leaders. The VSSO Amendment Bill that emerged from this incident granted enormous powers to the Minister of Social Services. In Sri Lanka, allegations of fraud and corruption - together with more emotive issues such as the corrupting influence of foreign countries and alleged links with the LTTE - have historically provided convenient excuses for governments to fashion new laws explicitly to bring NGOs under some form of state control.

**Ministerial Powers incorporated in the Voluntary Social Service Organizations (Registration and Supervision) (Amendment) Bill of 1995**

*Section 2: (insertion of a new section):*

*"14a (1). Notwithstanding the provisions contained in section 14, where a Board of Inquiry constituted under section 11 reports to the Minister that there is evidence to support and allegation of fraud or misappropriation made against a voluntary organization and the Minister is satisfied that the fraud or misappropriation is of such nature as would affect the financial management of the organization and that public interest will suffer if such organization is continued to be carried on by its existing executive committee, he shall, by Order published in the Gazette, appoint an Interim Board of Management for the purpose of administering the affairs of such Voluntary Organization.*

*(2). Every Order under subsection (1) shall -*

- (a) set out the names of the members of the Interim Board of Management; and*
- (b) specify the period for which such an Interim Board of Management is being appointed, being a period only of such duration as shall be necessary to ensure that financial management of the organisation is restored.*

*(3). Where an Interim Board of Management has been appointed in respect of any voluntary organization, such Board shall exercise, perform and discharge all the powers, duties and functions of the executive committee and such executive committee shall during the period for which the Interim Board of Management is appointed, cease to exercise, perform or discharge any such powers, duties and functions."*

The VSSO Act itself originated as an effort to closely regulate NGOs in the social service sector. The impetus for the legislation was the allegations made against a well-known Buddhist organisation, the All Ceylon Buddhist Women's Congress, that its staff had engaged in malpractices and illegal activities. The law, as originally crafted in 1978, contained quite stringent provisions relating to the registration and supervision of voluntary social service organisations but objections within the government eventually led to a much watered-down version.

The state has made repeated attempts to act against NGOs. During the long tenure of the UNP government, on at least three separate occasions - 1983, 1987, and 1988 - the government seriously considered and then abandoned efforts to establish a stricter framework for the operation of NGOs. The most notorious and blatant instance of the UNP government regulating NGOs occurred during 1990-93. The UNP's actions at that time are all the more ironic given that it was the first party in Sri Lanka - in fact, as yet the only party - to warmly embrace NGOs and their work. As its 1988 Manifesto declared:

*Whether big or small, foreign or local, we consider [NGOs] to be committed to development on the side of the needy communities. We will strengthen their role in [the] future, through mobilizing them as intermediaries of support, especially in local level development.*

The developments of 1990-93 provide an object lesson about the independence and integrity of NGOs in Sri Lanka. In March 1990, President R. Premadasa appointed a high-powered committee of officials to investigate allegations that foreign funds were flowing into both international and national NGOs without the knowledge or concurrence of the government. This committee reportedly made three key findings: that about 3,000 NGOs were functioning in Sri Lanka; that no framework existed to monitor their activities and funding; and that funds received from both foreign sources and those generated in Sri Lanka were being misappropriated or used for "activities prejudicial to national security, public order and/or economic interests, and for activities detrimental to

the maintenance of ethnic, religious, and cultural harmony among the people of Sri Lanka." On the basis of this report, the President gazetted the Commission of Inquiry in Respect of Non-Governmental Organisations (known as the NGO Commission) on 7 December 1990, to conduct a public inquiry. While an official reason for the creation of the NGO Commission was stated in its formal report, the President is thought to have been motivated more by his personal and political animosity towards the work of the NGO Sarvodaya and its leader, A.T. Ariyaratne.

The NGO Commission was given wide powers to investigate and report on, among other things, the misuse of funds by NGOs and whether the existing legal provisions for monitoring NGO activities and funding were adequate, and if not, what provisions should be adopted instead. During its proceedings, the crucial question was whether the Commission was engaged in fact-finding - as required by its terms of reference as well as by the statutory authority by which it was created (Commission of Inquiry Act No. 17 of 1948, as amended) - or functioning as an investigatory body leading to criminal prosecution of organisations and individuals. There were good grounds for suspicion about the agenda of the Commission. Its formal proceedings included highly questionable practices, notably the manner in which evidence was elicited, its targeting of three NGOs - Sarvodaya, the Eye Donation Society, and World Vision - and the investigations and intimidation carried out by the police unit attached to it. Although the Commission consisted of seven distinguished members, including two prominent jurists, there was ample reason to doubt its integrity.

NGOs sought to mobilise in the face of the NGO Commission. An international campaign was led by the International Commission of Jurists (ICJ), which sent a mission to Sri Lanka in May and June, 1991. The mission issued a scathing report on the Commission's activities in November 1991, but its efforts to meet with the government to discuss its findings and recommendations proved to be fruitless. Ultimately, the international campaign failed to have any impact and the internal effort

in Sri Lanka to counter the work of the Commission was quite muted as well. The reasons were obvious. The national press coverage was extremely laudatory of the Commission and openly antagonistic to NGOs. Clearly the aim of the media campaign - the reporting cannot be described in any other terms - was to create a climate of hostility towards NGOs among the population at large. This climate, together with the harassment carried out by the police unit, brought about a palpable fear among NGOs, as the ICJ reported. It is worth remembering here the broader backdrop to the working of the Commission, which was the impunity that prevailed in the country.

The report issued by the NGO Commission on 13 December 1993, contained a series of findings and recommendations to the government. The report displayed a deep hostility towards NGOs and their role in Sri Lanka as well as what amounts to paranoia about international links of the national NGOs. The report was so poorly structured and written that it could be dismissed as a laughable effort, if not for the impact it had. The Commission affirmed the validity of several allegations and charges brought to its attention. Thus, it found that there had been unfair and deceitful conversions to Christianity by certain NGOs (the original allegation had been against World Vision), that NGO officers enjoyed extraordinarily high salaries and fringe benefits, that there was misappropriation and other malpractices by NGOs, and that the NGOs were spending unusually high proportions of their funds for administrative purposes. The report reveals that the Commission had formulated charges (which it did not specify) against Sarvodaya and its leader, and that it had recommended the appointment of a separate commission of inquiry to probe these charges. The Commission's key recommendations were for the appointment of a "Commissioner for NGOs" staffed by an elaborately-structured secretariat, and the enactment of a new legal framework requiring compulsory registration of all NGOs (with exemptions for those organisations whose income or assets fall below a certain threshold), and the supervision and monitoring of all NGO funding and activities.

### The Commission on NGOs

*"The political role advocated for NGOs at its most innocuous level may be seen as an attempt to influence politics by politicizing development and welfare work even such as health, education and environment, natural resources and technology. They can assume a political significance or can be used for political purposes by-passing as it were the ordinary political process of parties, elections, and manifestos. Social activist groups would now think it legitimate and within their province to influence government policies, laws and legislation. ... In this new advocacy role where NGOs attempt to influence government policy and interfere with foreign funding support for governmental development work, an NGO could in some instances be wittingly or unwittingly conniving in, or collaborating with unfriendly foreign agencies. Such foreign organisations may enlist unsuspecting local NGOs by offer of money or other deceitful means to support their designs which may be to subvert national sovereignties and the progress and development of Third World Countries. While NGOs have a duty to play their ordained role which includes constructive criticism of the government, this should not be done indiscriminately. There would be occasions when silence is an option. There would be occasions where the destructive and even constructive criticism may burden or weaken the State which may be placed at odds battling devious and designing powerful international forces." - NGO Commission Report 1993:p.139*

It was left to President D.B. Wijetunga, who succeeded President Premadasa after his assassination in May 1993, to act on the NGO Commission's recommendations. On 24 December 1993, the government announced through an Extraordinary Gazette the promulgation of an emergency regulation to implement the recommendations of the Commission.

The emergency mechanism was required, according to the government, because action was urgently needed and the ordinary legislative process was time-consuming. The regulation, entitled the Monitoring of Receipts and Disbursements of Non-Governmental Organisations Regulation No. 1, defined NGOs as non-governmental organisations that are dependent upon the public or government grants-in-aid for funds and that are engaged in social welfare, development, empowerment, research, and environmental protection activities; excluded were co-operative societies and NGOs with annual budgets less than Rs. 50,000, or approximately U.S.\$860. The regulation required organisations that fall within the above definition and whose annual disbursements exceeded Rs. 100,000 to register with the Director of Social Services, submitting detailed information regarding receipts and disbursements, including the sources of receipts and the recipients (names and addresses) of funds, goods and services. Heavy penalties for non-compliance were incorporated into the regulation, with fines and prison sentences up to five years for officials concerned. NGOs covered by the legislation complied with it until the government allowed the regulation to lapse the following year.

Actions taken by the government during 1990-93 against NGOs amply demonstrated not only the state's ability to manipulate the legal framework for its own ends but also the capacity it possessed to intimidate and cower NGOs into potentially pliant organs. Equally ominously, it demonstrated the non-formal resources the state could unleash upon institutions of civil society to achieve its political or partisan aims. Moreover, the blatant use of emergency rule to enforce a regulatory mechanism upon NGOs, a mechanism that was unprecedented both in its scope and the sanctions it carried for non-compliance, demonstrated the UNP government's absolute scorn for the democratic process in Sri Lanka. The necessity for an emergency regulation was never documented, and in fact, could not have been documented, for no evidence has ever surfaced that NGOs posed a threat to national security at that time.



The experience with the UNP government during 1990-93 provides ample testimony to the crucial importance of going beyond the legal and regulatory structure in understanding the environment in which NGOs function and the difficulties they encounter in their activities. Another factor worth observing in this context is the use of intimidation and strong-arm tactics. A distinct pattern is discernible here: verbal attacks by government leaders and/or the state-controlled media (and typically picked up by the non-government media as well), prompted by NGO statements on humanitarian and human rights issues. While it is difficult to establish the precise causal links, physical attacks on the NGOs concerned typically ensue. From the perspective of institutions of civil society, this has been a disastrous development; there is no doubt that freedom of association and expression of NGOs - particularly those working on humanitarian and human rights issues - has suffered greatly.

Unlike the regulatory officials, whose actions can be formally identified and at least responded to, political intimidation and thuggery cannot always be anticipated, its occurrence cannot be easily understood or explained, and very little can realistically be done to hold those responsible accountable.



## NGOs and Political Thuggery

*"... [I]n November [1995], an article appeared in the state-owned Daily News alleging that an un-named NGO which was 'angered by the government's policy of channelling aid (to the displaced in the north) through state machinery' was convening a meeting of over 80 leaders of international and local NGOs in 'an attempt to tarnish the international image of Sri Lanka by showing that food and other aid items are not reaching the affected refugees [from the war torn areas].' Other newspapers also carried similar items, as did the state television and radio news and other broadcasts. The meeting at issue was the annual consultation of the [London-based] NGO Forum on Sri Lanka, which had in fact been planned in March 1995, well before hostilities resumed between the [PA] government and the LTTE. The Daily News the next day (15 November 1995) published a press release issued by the NGO Forum which explained the nature of the Forum and of the meeting, which was 'to discuss cooperation between voluntary organisations (and) discuss ways to promote development, human rights and peace in Sri Lanka.' Yet the damage had already been done. The meeting was cancelled after agitated protesters gathered outside the hotel where it was to be held. The Foreign Ministry had given assurances that the meeting could proceed, and security was provided. However, the hotel management cancelled the meeting, after the police said they could no longer control the situation. Four journalists who were travelling to the meeting were attacked by a mob and injured. Both state-owned and private press the next day carried news of the cancellation, and also carried allegations that the meeting was pro-LTTE."*

—Article 19; 1996: pp. 29-30

## IV. Analysis

In the 1970s Western scholars engaged in a vigorous debate about the demise of the state and the rise of domestic and international civil society institutions in its place. The argument was that statist perspectives could not explain all the changes that were occurring nationally and internationally - in fact, it was even posited that the state had lost its relevance in the context of the New World Order. In the 1980s a revival of the interest in the state, the so-called "return of the state," brought it back to centre stage. But once again there was a shift, with civil society making a resurgence. Most pointedly, it is now recognised that the task of poverty alleviation and the protection and advancement of human rights primarily rests with civil society institutions and not with the state.

For Sri Lanka, and perhaps even for other nations in Asia, this debate is largely irrelevant. The state has dominated the nation state that is Sri Lanka. To be sure, there have been threats to the state, from the JVP and in recent years from the protracted challenge of the LTTE. Yet, there has not even been the suggestion of an eclipse of the state by civil society. Historically, civil society institutions worked quietly, at times alongside the state and at other times on their own, to help the less fortunate. As long as these organisations were not perceived as threats, competitors, or countervailing powers to the state, they were able to conduct their activities in relative obscurity, with the state itself at times claiming credit for their efforts.

This situation underwent a transformation that began in the mid-1970s and was virtually completed by the late 1980s. The numbers of NGOs increased and their activities diversified and proliferated. They received greater national visibility and broader public attention, and perhaps most importantly, they impacted the wider society in an unprecedented fashion. They began to be perceived as a challenge not only to the state but also, perhaps more crucially, to the political leadership. Thus, President Premadasa's animosity towards Sarvodaya cannot be attributed solely to

fears that the organisation was overshadowing the government at the grassroots level. One must also consider the President's jealousy about the prominence of Sarvodaya's leader at the rural level, a level at which the President himself had toiled very hard throughout his political career.

In addition, NGOs went beyond poverty alleviation and development, to engage in the interrogation of the state, holding it accountable for actions harmful to society, in particular with respect to humanitarian and human rights issues. Moreover, the armed hostilities with the LTTE brought a different frame of reference to assess NGOs and their work. This has been particularly true since the escalation of the hostilities by the PA government in April 1995 after its early peace efforts collapsed because of the LTTE's unilateral decision to resume fighting. The humanitarian and human rights fallout from the war efforts became extraordinarily sensitive issues for the government, which carefully scrutinised international opinion - in particular that of donor countries - in attempting to respond to humanitarian and human rights issues. The PA government's ultra sensitivity to NGO criticisms of its policies and humanitarian and human rights issues in the conflict areas, and the manner in which the criticisms were made, should be placed within this context. The campaign against the JVP by the UNP government in the late 1980s did not prompt the government to bear down on NGOs as it had in the past, primarily because NGO intervention in human rights issues was quite muted at that time.

The state had been interrogated and held accountable in the past, but always within the broader political framework, from the likes of opposition political groups and trade unions. The challenges from NGOs are different, in order and quality, making political responses inadequate. The state thus had to cast a wider net, cracking down on NGOs in the name of safeguarding national security, public order and national economic interests, religion and culture, and ethnic and religious harmony. Frequently, all these issues were collapsed into one: branding the NGOs as LTTE supporters or sympathisers. The legitimacy of NGO work could

also be attacked by challenging the lack of transparency and accountability of NGOs. Accusations such as ties with the LTTE are certainly emotive issues, easily raised for vilification and quite difficult to defend on the part of NGOs. Charges such as corruption are of a somewhat different character and can be defended on tangible grounds; for example, by responding that NGOs generally are accountable to their donors and most donors have systems of checks and balances in place. However, there is always the problem of finding the proper public fora to advance the defence. The recent experience of Sri Lankans also shows that prominent government leaders themselves could be subject to charges of corruption, mendacity, and lack of transparency in their dealings. This dimension is ignored by those, as exemplified in the World Bank Handbook 1996, who call for strict regulatory structures to establish transparency and accountability of NGOs.

The government has, of course, formidable formal and informal resources to deploy against NGOs. Perhaps, in the ultimate analysis, whether NGOs are directly targeted or not is irrelevant: the fate of journalists, for example, who have been under fire provides an object lesson and a warning to NGOs. The informal resources that governments can draw upon against NGOs, most notably political thuggery, are as potent as any of the formal resources within its grasp. Among the state's formal resources are its powers under emergency rule and the general statutory scheme. The respective limits of general laws are not difficult to measure; if the authority derived under them is exceeded, as the Red Cross affair demonstrated, the courts can always be resorted to. However, the general exception to this is the PTA: its scope is extremely wide and it imposes considerable limitations on the power of the courts to inquire into actions taken pursuant to it.

The situation with respect to emergency rule is different. The Supreme Court held in *Yasapala v. Wickremasinghe* (1980) that the "existence of a state of emergency is not a justiciable matter that the Court could be called upon to determine by an objective test." Yet, given that the country

has functioned, except for brief interruptions, under emergency rule during the past 25 years, the question has been raised again and again in Sri Lanka as to what really constitutes a public emergency. This is certainly a valid question from the perspective of the international human rights instruments applicable to Sri Lanka as well. Article 4(1) of the ICCPR limits the declaration of a state of emergency to circumstances in which the life of the nation is threatened, such as in a state of war, and requires the government to officially proclaim a state of emergency and observe its obligations in international law, including non-discrimination on the basis of race, colour, sex, language, religion, or social origin. It is, of course, obvious that successive Sri Lankan governments have acted in violation of these standards when they declared their respective states of emergency.

If the focus is shifted from the declarations of emergency to particular emergency regulations, consistent violations of international standards are again observable. In the case of freedom of expression, for example, the denial of access to information relating to the conflict areas in Sri Lanka established by numerous emergency regulations is contrary to the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information that categorically state that restrictions on the flow of information may not thwart human rights and humanitarian law. Unlike the declarations of emergency rule themselves, executive and administrative actions taken through the vehicle of particular emergency regulations can be constitutionally challenged where there has been an infringement or imminent infringement of fundamental rights. The exercise of this right, which emanates from Article 126 of the 1978 Constitution, brings into fore the test of reasonableness before the Supreme Court. How this test will be applied in individual cases cannot be predicted.

In considering the role of the state with respect to NGOs, it is crucial to understand that it is not only the attitude of the politicians that matters. In the recent past, elements in the state bureaucracy have also been implacably opposed to NGOs: after all, the groundwork for the NGO Commission

was laid by a high-powered committee of government officials. Why this has occurred has not been studied in any depth. However, there are plausible reasons, among which the most noteworthy is perhaps the evident resentment of the bureaucratic mind to what is seen as NGO encroachment into realms formerly under the government's exclusive control.

In Sri Lanka, as elsewhere in Asia, the state-controlled media must also be considered in any discussion of the formal powers the state possesses to curb and curtail freedoms of association, assembly, and expression. The Sri Lankan state has always had its own radio broadcasting network, and later, its own television channels. In 1973, the SLFP government took over the ownership of the "Lake House" group of newspapers. The state has been the dominant force in the media in Sri Lanka - in fact, so dominant that the non-government newspapers often follow the lead of government-controlled press. Over the years, the government has not hesitated to use this power for avowedly political ends. Freedom of expression has never received the serious commitment of any of the governments that have been in power since independence.

Thus, government-controlled media is not the only factor explaining the hostile climate towards NGOs; the non-government media has been equally culpable. These attacks are primarily due to the extreme nationalist posture adopted by some segments of the media. This is particularly true of certain English and Sinhala newspapers that have demonstrated they need no prompting from the government to target NGOs.

The anti-NGO messages that have emanated from both the government and the media have found receptive audiences within Sri Lanka. Nativist movements have often functioned as fertile grounds for the reception and dissemination of xenophobic sentiments and opinions. The latest in this trend is the contemporary Sinhala politico-cultural movement known as National Thought (*Jathika Chintanaya*), which has taken a hard-line stance against all things foreign, including NGOs, which have been depicted as elitist, foreign-funded, or foreign-affiliated organisations whose activities

are antithetical to Sinhala interests. In the ultimate analysis, *Jathika Chintanaya* as a political force may be of marginal importance in that it is not in a position, for example, to determine the outcome of electoral contests. Nonetheless, it does exert a strong presence in the cultural arena, and can, therefore, influence public opinion on issues that incite strong nationalist sentiments among the Sinhala people. Within this context, the media as a purveyor of virulent attacks on the NGOs is able to inflict considerable harm on NGO activities.



## **V. Recommendations**

In offering the following recommendations, the Law & Society Trust has taken into consideration the experience of NGOs in Sri Lanka with the freedoms of association, assembly, and expression, and the proposals contemplated by the World Bank Handbook 1996 for stringent laws and regulations for all NGOs. Further, the theoretical position adopted in writing this report - that NGOs are crucial for the sustenance and vitality of civil society and that the performance of this role by NGOs is predicated on the existence of a legal framework that guarantees NGO integrity and independence - guides these recommendations.

1. *Amendment of all constitutional provisions relating to freedoms of association, assembly, and expression to conform to international human rights standards:*

The April 1997 draft constitution of the PA government goes a long way in meeting the international standards respecting human rights but several problem areas remain, including the provision that written and unwritten laws that antedate the new constitution will remain valid whether or not they are consistent with it.

2. *Recognition of a separate and distinct constitutional protection for civil society institutions to associate freely and to choose their own legal forms:*

This proposed right goes beyond the freedom of association, as it is generally recognised, and is modelled after the rights accorded to trade unions, both by international conventions (for example, International Labour Organisation Convention No. 98 Concerning the Application of the Principle of the Right to Organize and Bargain Collectively) and the 1996 Sri Lankan National Workers' Charter that, incorporated, among other things, the right to form and join trade unions. Given the enthusiastic recognition on the part of the World Bank Handbook 1996 for NGOs to play a role with respect to "participatory development" and "good governance," such an



enhanced protection for NGOs should receive the endorsement of the World Bank.

3. ***Adoption of a voluntary code of conduct/ethics on the part of NGOs:***

Two possible models for such action are: (1) *The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief*; (2) *The Code of Ethics of the Alternative Law Groups of the Philippines* (1992). The code should not be mandated by the state but its adoption should be left up to individual NGOs to decide. The adoption and adherence to such codes by NGOs would go a long way in countering some of the more strident accusations made against NGOs, such as that they are "Trojan Horses" for foreign interests or, as portrayed in the World Bank Handbook 1996, that they lack transparency and accountability, terms employed to undermine the legitimacy of their activities.

4. ***Rejection of the imposition of one universally applicable legal framework for the supervision and regulation of NGOs:***

It is both inappropriate and impracticable to establish a universal legal and regulatory framework for NGOs. That there is no uniformity in form and function of NGOs is well known; the World Bank Handbook 1996 also acknowledges this fact. A law that may be appropriate for one type of NGOs, for example those engaged in welfare and social service activity that receive state grants-in-aid, would certainly not be appropriate for other types, such as human rights NGOs whose activities, by their very nature, involve the critique of government policies and practices. All-encompassing legal requirements for NGOs proposed by the World Bank Handbook 1996 should be rejected on the basis of their overbroadness.

**List of abbreviations:**

- ICCPR : International Covenant on Civil and Political Rights  
JVP : People's Liberation Front (*Janatha Vimukti Peramuna*)  
LTTE : Liberation Tigers of Tamil Eelam  
PA : People's Alliance  
PSO : Public Security Ordinance  
PTA : Prevention of Terrorism Act  
SLFP : Sri Lanka Freedom Party  
UNP : United National Party  
VSSO : Voluntary Social Services Organisations  
ICJ : International Commission of Jurists  
NGO : Non Governmental Organisation

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## **The Law & Society Trust**

The Law & Society Trust is a non-profit making body committed to improving public awareness on civil and political rights and social, economic and cultural rights, and equal access to justice. The Trust is also concerned with the consideration of and the improvement of professional skills within the legal community. The Trust has taken a leading role in promoting co-operation between government and society within South Asia on questions relating to human rights, democracy and minority protection, and has participated in initiatives to develop a global intellectual and policy agenda for the nineties.

The Law & Society Trust was established in June 1982 to initiate studies and activities on law, its processes and institutions. In 1990 the Trust was incorporated as a non-profit making body under the provisions of the Companies Act of 1982.

The Trust has designed activities and programmes, and commissioned studies and publications, which have attempted to make the law play a more meaningful role within society. The Trust has attempted to use law as a resource in the battle against underdevelopment and poverty, and has also conducted a series of programmes aimed at members of the legal community, including publications, workshops, seminars and symposia; it is developing its documentation centre with the objective of establishing in the future, a regional centre for advanced legal studies and socio-legal studies and research. The Trust has been responsible for the publication of five consecutive reports on the State of Human Rights in Sri Lanka since 1993.



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