



## Short Note

# **Observations on the Bill to Amend the Voluntary Social Service Organisations (Registration and Supervision) Act No. 31 of 1980**

by

**The Centre for Policy Alternatives (CPA)**

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### **Introduction**

The Centre for Policy Alternatives ('CPA') is informed of a cabinet decision on 20 February 2018, which approved a Bill to amend the Voluntary Social Service Organisations (Registration and Supervision) Act No 31 of 1980 ('VSSO Act'). This amendment Bill, if enacted in its present form, will have serious implications for civil society and the freedom of association in Sri Lanka. This Short Note is prepared on the basis of information obtained on the proposed amendment and in the hope of constructive engagement to ensure that any attempts to regulate civil society is done in a manner that is transparent and accountable; respects fundamental rights guaranteed in the Constitution of Sri Lanka and through international standards and has safeguards to ensure that powers are not used to abuse and target individuals and entities whose views and activities may not align with the views of particular individuals and parties. This Short Note is also premised on the belief that civil society continues to be an integral part of a functioning democracy, with the vital role of

critiquing and engaging in policy reform and providing counter-narratives, both of which are essential elements of an open society.

In the Sri Lankan context, a diverse number of entities encompass what is now loosely termed “civil society” including movements, collectives, societies, non-governmental organisations (NGOs), foundations, societies and trusts. The proposed amendment, if enacted, could have a significant impact on the very existence of these actors, their activities and objectives.

CPA has in the past critiqued and challenged numerous attempts initiated by successive governments to restrict the activities and funding of civil society.<sup>1</sup> CPA has also previously highlighted the existing constitutional and legal framework relevant to the work of civil society, making the case that adequate laws are in place to monitor the activities and finances of civil society actors. Thus, CPA questions at the outset the necessity of the proposed amendment. The government should explain why such an amendment is needed, what objectives are intended to be achieved by it and what gaps in the legal system it seeks to address. Furthermore, the lack of any transparency in the process by which this Bill – which proposes to give the state wide powers that can curtail the work of civil society and have wide ramifications for fundamental rights – was formulated, is deeply troubling and utterly unbecoming of a government that claims to promote “good governance” and the rule of law.

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<sup>1</sup>See Constitutional and Legal Framework Governing Non-Governmental Organisations in Sri Lanka (September 2014, CPA Sri Lanka)

## VSSO Act

To understand the nature and impact of the proposed amendments, they have to be placed in context of the principal enactment. The VSSO Act provides for the registration and supervision of the activities of “*voluntary social service organisations*”. Organisations coming within the purview of this Act have been defined as:

“Any organisation; that has been formed by a group of individuals on a voluntary basis and;

- a) is of a non-governmental in nature;
- b) is dependent on public contribution, charity, governmental aid and local and foreign donations in performing its activities;
- c) has as its main objectives, providing aid and services for mentally handicapped or physically disabled persons, the poor, orphans and the destitute and providing relief in times of disaster.”

The Minister in charge of the subject and the Registrar exercise pervasive powers of control over voluntary organisations that register under this Act. These powers include:

- a) The power for the Registrar or his representative to enter the premises of organisations to ascertain the standard of service provided by the organisation, carry out inspections and report to the Minister any allegations of fraud or misappropriation of funds committed by the organisations.<sup>2</sup>
- b) Attend any executive committee meeting or general meeting of the organisation with the concurrence of the Minister or office bearers of the organisation or on a written request by a majority of the members of an organisation.<sup>3</sup>
- c) Where there is an allegation of fraud or misappropriation, the Minister may appoint a “Board of Inquiry” to investigate such allegations and report back.<sup>4</sup>
- d) Where there is evidence to support such an allegation the Minister has the power to appoint an interim board of management in place of the existing board of Directors.<sup>5</sup>

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<sup>2</sup> See s. 9(a) and s. 9(b) of Voluntary Social Services Organisations (Registration & Supervision) Act No 31 of 1980 (VSSO Act) available at <[http://www.commonlii.org/lk/legis/consol\\_act/vssoas370818.pdf](http://www.commonlii.org/lk/legis/consol_act/vssoas370818.pdf)>

<sup>3</sup> See s.9(c) of VSSO Act.

<sup>4</sup> See ss. 10- 13 of VSSO Act.

<sup>5</sup> See s 14(a) as amended by Voluntary Social Service Organisations [Registration and Supervision] [Amendment] Act Number 8 of 1998, available at <<http://www.ngosecretariat.gov.lk/web/images/downloads/Actno08of1998.pdf>>

Several attempts have been made to expand the scope of its operation.<sup>6</sup>

### **National Secretariat for Non-Governmental Organisations (NGO Secretariat)**

There are several governmental agencies that act as an interface between the Government and NGOs at the national, provincial and district levels. The NGO Secretariat's sphere of control is limited to NGOs that are registered in terms of the VSSO Act. The Secretariat carries out several functions.<sup>7</sup>

The NGO Secretariat was established in 1996 under the Ministry of Health, Highways & Social Services. Whilst the NGO Secretariat carries out many functions in terms of the VSSO Act, no specific provision was made for the establishment of a separate Secretariat in terms of the Act. Though the legal status of the NGO Secretariat remains opaque, information available in the public domain suggests that it was established pursuant to a cabinet decision.<sup>8</sup> However, clause 4 of the proposed amendment (through the insertion of new section 1A) attempts to make a specific direction for the establishment of National Secretariat for Non-Governmental Organizations (hereinafter referred to as the "Secretariat") with significant powers discussed below.

CPA has prepared the following table, listing out proposed amendments and observations on them, as an easy reference to contextualize and understand some of the concerns raised by the present set of proposals.

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<sup>6</sup> See Constitutional and Legal Framework Governing Non-Governmental Organisations in Sri Lanka (September 2014, CPA Sri Lanka)

<sup>7</sup> These include Registration of NGOs; Facilitation Services to NGOs; Signing of MOUs with NGOs; Monitoring of NGO Activities and providing information including Co- ordination between Government institutions, with other NGOs; initiating Legal action against misconduct of NGOs. See for more details [http://www.ngosecretariat.gov.lk/web/index.php?option=com\\_content&view=article&id=50&Itemid=48&lang=en](http://www.ngosecretariat.gov.lk/web/index.php?option=com_content&view=article&id=50&Itemid=48&lang=en)

<sup>8</sup> See Nadira Gunatilleke, "Reining the NGOs, INGOs: interview with the Director, The National Secretariat for Non-Governmental Organisations", *The Daily News*, 5 May 2009, available at <http://archives.dailynews.lk/2009/05/05/fea01.asp>

<b>Proposed Amendment</b>	<b>Observations</b>
<p><b>Proposed New Definition of NGO</b></p> <p>Clause 21 (b) of the proposed legislation amends Section 18 of the principal enactment as follows:</p> <p>“Non-Governmental Organisations means any organisation formed by a group of persons natural or legal, being citizens of Sri Lanka or of any other country–</p> <ul style="list-style-type: none"> <li>(a) that is non-governmental, non-profit orientated or</li> <li>(b) purpose of which is to serve the public specially,</li> <li>(c) that is engaged in the provisions of goods or services to improve the circumstances and prospects of the mentally retarded or physically disabled, the poor the sick, the orphans and the destitute and the disadvantaged people and to the needy in times of disaster,</li> <li>(d) that is engaged in policy formulation and propagation,</li> <li>(e) that is engaged in serving the interest of their individual members,</li> <li>(f) that is engaged in profit-oriented activities that generate profits and which shall not distribute its profits, surpluses, assets, or any form of funds received for public benefit,</li> </ul>	<p>This definition expands the types of organisations covered by the Act. The Act as it exists only required voluntary service organisations to be non-governmental, dependent on public contributions, charities, grants and local and foreign donations, and had as its main objectives relief and services to certain identified vulnerable groups<sup>9</sup>.</p> <p>The expanded definition brings a range of organisations under the purview of the Act including smaller organisations such as informal and membership-based entities that are involved in profit-oriented activities and think tanks involved in policy reform among other activities.</p>

<p>among members or employees of the organisation other than any reasonable remuneration for and reimbursement of any expenses incurred by Board of Management and employees,</p> <p>(g) which is dependent on public contributions, charities, grant payable by the government or donations local or foreign, in carrying out its functions</p> <p>and includes any association, council, society, trust, foundation, federation, movement, center, consortium, company or any organisation under any other written law or an any organisation under any other written law or an organisation incorporated under standing orders of the Parliament of Sri Lanka or any other association of persons including, branch organisations of any Voluntary Service Organisation s registered by legitimate authority in any other country other than Sri Lanka and that has been established and registered for a charitable purpose or for public benefit and also includes all international and national level, foreign funded voluntary social services organisation and community hostel and all foreign or local funded guarantee limited companies,</p>	
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<sup>9</sup> See s. 18 (c) VSSO Act which identifies that it “has as its main objectives, the provision of such reliefs and services as are necessary for the mentally retarded or physically disabled, the poor, the sick, the orphans and the destitute and the provision of relief to the needy in times of disaster, And includes community hostels”.

<p>private limited companies which receive foreign funds for non-profit oriented activities other than foreign exchange received for business, trade or commerce activities,</p> <p>BUT does not include registered Buddhist temples, Christian and Catholic churches, Hindu temples, mosques and other places of worship, banks, public quoted companies, school development societies, Alumni Associations, trade unions, political parties and any such organisations.</p>	
<p><b>Categories of Organisations</b></p> <p>Clause 7 of the proposed legislation introduces a new Section 3B to the principal enactment as follows:</p> <p>For the purpose of registration under section 4, the Secretariat shall categorize all organisations in the following manner:</p> <ol style="list-style-type: none"> <li>a. non-governmental organisations engaged in projects or activities in more than one administrative district with only local funds as <b>National Level Local Non-Governmental Organisations,</b></li> </ol>	<p>A concern that arises here is whether the labelling of NGOs based on their funding could possibly lead to different treatment of foreign-funded NGOs. The imposition of labels creates a real risk of creating negative stereotypes about organisations that receive funds from abroad as "foreign agents", pursuing the agendas of western governments and others.</p>

<ul style="list-style-type: none"> <li>b. non-governmental organisations in receipt of foreign funds in addition to the local funds as National Level <b>Foreign-Funded Non-Governmental Organisations</b>,</li> <li>c. non-governmental organisation that have registered its head office or parent organisation as a non-profit seeking organisation under the relevant laws of a country other than Sri Lanka as <b>International Non-Governmental Organisations</b>,</li> <li>d. non-governmental organisations operating within the geographical area of a district with local funds as a <b>District Level Non-Governmental Organisation</b></li> <li>e. non-governmental organisations operating within the geographical area of a divisional level with local funds as a <b>Divisional Level Non-Governmental Organisation</b>, and</li> <li>f. non-governmental organisations which are incorporated under Standing orders of Parliament</li> </ul>	
<p><b>National Secretariat for Non-Governmental Organisations ('Secretariat') –</b> Established by clause 4 of the proposed legislation</p> <p><b>Powers of the National Secretariat –</b> Clause 5 of the proposed legislation introduces a new Section 2A to the principal enactment.</p>	



Attention should be drawn to the following proposed subsections:

- **2A(c)** – To investigate any complaints on suspicion of,
  - I. Misconduct in such NGO, or
  - II. Criminal activities (offence of terrorist financing, money laundering) which is purported to have been committed by such NGOs and refer such matters to law enforcement agencies.
- **2A(d)** – To respond to such international requests for information relating to such NGOs suspected of terrorist financing, money laundering and other forms of terrorist support,
- **2A(g)** – To facilitate, coordinate, and evaluate programmes and projects implemented by NGOs
- **2A(h)** – To promote accountability and transparency in the NGOs, including the adoption and maintenance of codes of conduct and independent system of monitoring performance,

- In light of existing laws to investigate into criminal activities including money laundering (Prevention of Money Laundering Act, No. 5 of 2006) and terrorist funding (Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005), questions must be posed as to the reasons for introducing separate provisions for the same purposes under this amendment. As the means of investigating and prosecuting such activity is already provided for by law, ascribing these powers to the Secretariat in the context of NGOs appears to be an attempt to further restrict civil society and its activities.
- New subsection 2A(c) empowers the Secretariat to investigate any complaints at its discretion, without any moderation. Significantly, this invites unnecessary intervention in NGOs' activities by third parties who are motivated to intimidate, diminish or eliminate NGOs and their activities.
- The combination of the wording in proposed new subsections 2A(g) and (h) ensures that the government is able to excessively interfere and monitor the projects and programmes conducted by NGOs. This level of scrutiny will certainly have a chilling effect on the independent functioning of NGOs in Sri Lanka. Furthermore, these provisions presuppose that the government is best placed to evaluate projects

<ul style="list-style-type: none"> <li>• <b>2A(j)</b> – To establish divisional, district and national level federations of civil society organisations</li> <li>• <b>2A(l)</b> – To perform such other functions as are necessary and incidental to the implementation of the provisions of this Act</li> </ul>	<p>carried out by NGOs. This is a dangerous assumption as it can risk imposing the political ideology of the government on civil society.</p> <ul style="list-style-type: none"> <li>• The creation of federations as proposed under subsection 2A(j) may result in additional bureaucratic requirements being placed, especially on smaller organisations and collectives. Numerous NGOs have already developed networks with likeminded NGOs during operations over decades. Artificially creating such mechanisms through the State is not likely to add any value to NGOs. More importantly, such mechanisms risk reducing the ability of NGOs and NGO collectives to act independently of the state</li> <li>• The construction of the wording in subsection 2A(l) is vague and provides room for a blanket provision empowering anything to be done in the name of the implementation of the Act.</li> </ul>
<p><b>Extraordinary powers given to the National Secretariat for NGOs</b></p> <p>Clause 5 introduces new Section 2B. Attention should be drawn to the following subsections:</p> <p><b>(e)</b> the ability to enter and inspect the premises of the NGO,</p>	<p>The Secretariat’s ability to enter and inspect the premise of the NGO which was granted by section 9 of the principal enactment is retained in the amendment. Under the ordinary law of the country, even the police require</p>

**(h)** to examine the books, registers or records maintained by such NGO and make copies and extracts,  
**(j)** to request and obtain any information from any NGO,  
**(k)** to require banks to provide information relating to financial activities of the NGO,  
**(m)** generally, to *do all such other acts* and things as are necessary to facilitate the proper discharge of the functions of the Secretariat,

a warrant to effect a search and examine books, registers and records. However, this section empowers the Secretariat to enter the premises without a warrant, and without any requirement for reasonable suspicion of any illegal activity, and carry out a search of the premises. Further, the purpose of such a search is said to be ‘to ascertain whether standards of service as may be prescribed are maintained’. The vague notion of standards of service ‘as may be prescribed’ attracts opportunity for abuse as the provision lacks clarity. This takes away the equal protection of the law guaranteed under the Constitution and undermines the principle of rule of law, which requires the law to be certain.

It is also evident from this provision that the Secretariat is given unfettered powers to examine books, obtain any information from NGOs and even call for information relating to financial activities of the organisations. There is no assurance provided that the information will remain confidential and not be used for other purposes that can impact the work of civil society organisations.

The Secretariat is given unrestricted powers under new section 2B (m) “to *do all such other acts* and things as are necessary to facilitate the proper discharge of the functions”. This section enables potential abuse and

	widens the scope for interference by the Secretariat over the activities of civil society.
<p><b>Mandatory registration of all Non-Governmental Organisations</b></p> <p>Clause 6 of the proposed legislation repeals section 3 of the principal enactment. New section 3 is as follows:</p> <p style="padding-left: 40px;">No Non-governmental organisation shall operate in Sri Lanka unless it has been duly registered under section 4 of this Act.</p>	<p>It has been internationally accepted that legislation must recognise both informal and formal associations, or, at a minimum, permit the former to operate without being considered unlawful. This principle is particularly important since those persons or groups who may face legal, practical, social, religious or cultural barriers to formally establishing an association should still be free to form or join informal associations and carry out activities. The positive obligation of the state to facilitate the exercise of the right to freedom of association includes creating an enabling environment in which formal as well as informal associations can be established and can operate.<sup>10</sup></p>

<sup>10</sup> See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc. A/HRC/23/39, 24 April 2013, para. 82, available at <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf)> also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk), UN Doc. A/HRC/26/29, 14 April 2014, para. 55, available at <[http://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29\\_en.pdf](http://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29_en.pdf)> .

	<p>Thus, by the imposition of a mandatory registration requirement the government is suspending the freedom of association for a large category of civil society and creating an environment by which it is able to exercise greater control over civil society and clamp down on groups some see as problematic or objectionable.</p> <p>Mandatory registration is antithetical to the freedom of association and the right of citizens to collectively discuss, critique and if needed oppose government policy.</p>
<p><b>Financial Control of Organisations</b></p> <p>Clause 13 of the proposed legislation amends the principal enactment by the insertion of a new section 7A titled “Banking Services to Non-Governmental Organisations”.</p> <p>(2) a bank is prevented from facilitating an NGO from opening or maintaining a bank account without a proof of registration under the Act,</p> <p>(3) if the NGO maintains a bank account in contravention of the provisions such organisation shall commit an offence under this Act,</p>	<p>The proposed legislation introduces a number of new provisions imposing restrictions on the financial autonomy of NGOs. These provisions undoubtedly impose additional administrative and financial burdens on these organisations which will hamper their ability to carry out their intended goals and missions.</p> <p>The Financial Transactions Reporting Act, No. 6 of 2006 contains similar provisions requiring institutions to report prescribed financial transactions to the Financial Intelligence Unit.<sup>11</sup> Hence, the combination of</p>

<sup>11</sup> See section 6 and 7 The Financial Transactions Reporting Act, No. 6 of 2006 available at: [http://fiusrilanka.gov.lk/docs/ACTs/FTRA/Financial Transactions Reporting Act 2006-6 \(English\).pdf](http://fiusrilanka.gov.lk/docs/ACTs/FTRA/Financial_Transactions_Reporting_Act_2006-6_(English).pdf)

(4) requires the financial institution to inform the Secretariat when an NGO opens an account or deposit a sum not less than one million rupees.

(5) A financial institution should report to the Secretariat in the following instances:

I. Any transaction performed by an NGO of an amount exceeding such sum as ***shall be prescribed by the Minister.***

II. Any electronic funds transfer at the request of or for the benefit of an NGO exceeding such sum as shall be prescribed by the Minister.

III. Of the aggregate balance of the financial accounts maintained by such organisation within such period as may be prescribed by regulations from time to time.

New Section 9D – Approval of the Director-General to solicit funds over 1 million from the general public.

New Section 9E – Prevents one NGO giving funds to another NGO without the approval of the Director-General.

The Money Laundering Act, No. 5 of 2006, Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 and the Financial Transactions Reporting Act, No. 6 of 2006, provides an adequate legal framework for the investigation and monitoring of NGOs' financial activities. Additionally, NGOs in Sri Lanka also fall under the purview of the Right to Information Act No 12 of 2016 (insofar as they are performing public functions with state, foreign government or international organisation funding). This essentially means that NGOs can be required to provide information with regards to their activities and finances under the RTI regime.

The question remains as to why almost identical sections already prevailing in existing legislation are repeated in this proposed amendment and what need there is for such.

## Suspension and Deregistration

The proposed Section 9J of to the principal enactment gives the power to the Director-General to suspend the operation of an NGO for a period of three months or cancel its registration on the following grounds:

- a) Failure to comply with the terms and conditions of registration
- b) Failure to submit its annual report and any other document
- c) Failure by the NGO to carry out its function for one year or is engaged in activities contrary to its objectives
- d) Failure by the NGO to renew its registration,
- e) where there is evidence of fraud, misappropriation, mismanagement and misconduct on the part of the NGO
- f) Where there is prima facie evidence of irregularities linked with any activity prejudicial to national security
- g) work of an NGO is a threat to national security of Sri Lanka
- h) Where the Governor of the Central Bank on the findings of the Financial Intelligence Unit request for the immediate suspension or cancellation of an NGO,

These sections provide the Director-General and Secretary wide powers to suspend and cancel the registration of NGOs based on vaguely worded terms such as “national security” and “public interest”.

Laws containing ambiguous and overbroad language such as “national security” “public interest” open the door to the exercise of arbitrary and subjective government discretion, allowing the government to terminate NGOs and suppress dissent.

International law increasingly recognises the importance of providing an enabling environment for civil society, particularly noting that state regulatory interventions premised on reasons such as national security and financial propriety can be used to threaten and curtail civil society activities.

The UN Human Rights Council passed a resolution in 2014<sup>12</sup> aimed at supporting an enabling environment for civil society. The Resolution expressed concern regarding NGO regulatory efforts noting that, “in some

<sup>12</sup> See : UN resolution A/HRC/27/L.24 available at <[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/27/L.24](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/27/L.24)>

<p>i) Where an NGO has failed to submit a copy of a publication published by such NGO, which is in the opinion of the Director-General is prejudicial to the public interest or national security</p> <p>j) Where an organisation is engaged in activities in contravention of provisions of this Act, or any other written laws of Sri Lanka.</p> <p>New Section 9L – The de-registration of a Non-Governmental Organisation by the Secretary in consultation with the Director-General, if the Secretary is of the opinion that an NGO operates contrary to the national interest of Sri Lanka</p>	<p>instances, domestic legal and administrative provisions, such as national security and counter-terrorism legislation, and other measures such as provisions on funding to civil society, have sought to or have been misused to hinder the work and endanger the safety of civil society in a manner contrary to international law”.</p> <p>The 2011 Global Partnership for Effective Development which was developed between states, donors and civil society, recognises that state regulatory efforts should be aimed at creating an enabling environment for civil society to operate, and not a restrictive one.<sup>13</sup></p>
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<sup>13</sup> Global Partnership for Effective Development, *Busan Partnership For Effective Development Co-Operation*, December 1, 2011: [http://effectivecooperation.org/wp-content/uploads/2016/03/OUTCOME\\_DOCUMENT\\_FINAL\\_EN.pdf](http://effectivecooperation.org/wp-content/uploads/2016/03/OUTCOME_DOCUMENT_FINAL_EN.pdf); see also, Global Partnership for Effective Development, *Nairobi Outcome Document*, December 1, 2016: <http://effectivecooperation.org/wp-content/uploads/2016/12/OutcomeDocumentEnglish.pdf>



## Offences

Clause 19 of the proposed legislation amends section 16 of the principal Act to create a host of 'offences' punishable under the Act:

Under this section, any person or body of a person who—'

- a) Fails to register a non-governmental organisation
- b) Knowingly makes any false statement in respect of registration or in any return or in any information furnished by him
- c) Fails to furnish any return or information in compliance with any requirement imposed on him under this Act,
- d) Wilfully neglects or refuses to do any act or omits any matter in respect of any application for registration
- e) Resists or obstructs any authorized officer in the exercise by such officer of any power conferred on him under this Act,
- f) Fails to comply with any order or contravenes any provision of the Act or any regulation made thereunder, or,
- g) Continues to operate the activities of the non-governmental organisation after deregistration, attracting fines of up to Rs. 250,000 or a one-year imprisonment of either description.

The scope and severity of the new sanctions and penalties against NGOs coupled with the vague language by which they are formulated present a threat of abuse of power which jeopardises the very existence of civil society.

Insofar as administrative, civil or criminal penalties are imposed on NGOs, they should be based on the existing law and not be *ad hoc* or *ad hominem*. The proposed amendments make civil society easy political targets as they enable the imposition of a simple or rigorous imprisonment for a term of one year or the imposition of a fine. Such penalties would deter not only have a chilling effect on existing NGO activities, but would also deter new NGOs from being formed, impairing the country's civil society space in future.