

Regulatory Pluralism in NGOs Governance: An Impending Threat to National Security

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Non-governmental organizations (NGOs) are democratic voluntary agencies, which function independently of the government to tackle a myriad of social, economic and environmental problems and to foster social inclusion, economic integration and sustainable development. Therefore, NGOs play a vital role in socio-economic development of a state by complementing efforts of a government to provide services and assistance to vulnerable segments of the local population. However, with the decentralization of terrorist movements such as Al Qaeda, LTTE and development of localized terrorist actors, NGOs are identified as one of the popular channels exploited by terrorists to solicit monetary and non-monetary support for terrorist activities. To infiltrate the sector and misuse NGO funds and operations to cover for or support terrorist activities, terrorist organizations take advantage of characteristics of NGOs such as access to multitude of sources of funds, possession of large transitory workforce, high level of public trust, right to preserve anonymity of donors and beneficiaries and its global presence that provides a framework for national and international operations and financial transactions. Therefore, safeguarding the NGO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NGOs and underpin the confidence of its stakeholders.

Sri Lanka possesses a complex legal regime to scrutinize and facilitate operations of the NGO sector. Citizen-based groups operating cooperatively for social welfare is a deeply rooted practice in the Sri Lankan society, which can be evidenced by the existence of Temple Development Societies, Death Donation Societies and Thrift and Credit Co-operative Societies. In the late 1970, the NGO sector increasingly diversified in number and activities due to liberalization of the economy and relaxation of exchange controls and travel restrictions. Following the outbreak of the war against LTTE in 1983, political affairs, reconciliation and ethnic harmony and human rights became the dominant identity of NGOs instead of social and economic development. Owing to these historical and cultural reasons, Sri Lanka does not possess a uniform regulatory regime to promote a strong and sustainable NGO sector through good governance, transparency and accountability. There are 13 laws which institutions can avail to register as an NGO in Sri Lanka, including Voluntary Social Service Organizations (Registration and Monitoring) Act No. 31 of 1980, Companies



Act No.7 of 2007, Consumer Affairs Authority Act No. 09 of 2003 and Trusts Ordinance No.17 of 1917.

Regulatory mechanisms spelled out by above-mentioned laws provide inconsistent treatments for NGOs depending on the legal form and entitlement to government support. Therefore, regulatory framework on NGOs is complex, duplicative and imposes a significant regulatory burden on the NGO sector. As a result of this peculiar situation, NGOs are not properly regulated and monitored and they are not held accountable and transparent financially and functionally to the government. Fragmentation of responsibilities on regulation of NGOs across a range of government institutions increases the NGO sector's real exposure to terrorist financing.

Reporting is an essential tool to ensure accountability and transparency in the NGO sector. However, lead Counter Terrorist Financing Agencies in Sri Lanka have not been able to reap maximum benefits from reporting arrangements laid down by regulatory agencies such as the NGO Secretariat, the Registrar of Companies owing to its ad hoc, uncoordinated and complex nature. These reporting arrangements often focus on a particular activity of NGOs rather than providing a holistic description and key information on their finances and ongoing activities. Further, "current reporting requirements across the sector are inconsistent as there is minimal reporting for some organisations and excessive reporting for others", which is disproportionate to the level of risk posed by these entities. Lack of accurate and meaningful information concerning the whole sector is a significant vulnerability, which decreases the likelihood of success in terms of detection, investigation and law enforcement on terrorism related abuse and risk in the NGO sector.

Moreover, multiple reporting requirements, with considerable duplication of effort due to involvement of many applications and forms with subtly different criteria, impose a high regulatory burden and compliance cost on NGOs and provide opportunities for deception and escape reporting obligations. In the absence of a centralized portal of information over scale and scope of the NGO sector, lead Counter Terrorist Financing Agencies and the public face red tape in accessing information. It severely retards the effectiveness of efforts of regulatory agencies on oversight and detection of wrongdoings in the NGO sector; it limits the decision-making ability of Sri Lankan public on prudent allocation of resources among NGOs. Further, "multiplicity of laws and regulatory agencies could act as a trigger for some entities to remove them from regulatory oversight due to extra administrative burden and cost, thus increasing the number of unregulated entities who are already at greater risk of terrorist exploitation."

Accordingly, it is apparent that the present regulatory mechanisms do not operate as an effective shield against terrorist infiltration and manipulation of the NGO sector, in the absence of a single regulatory agency and uniform law on registration, reporting commitments and oversight of NGOs. Inadequate regulatory scrutiny provides opportunities to imperil the sovereignty and national security of Sri Lanka through NGOs. To successfully counter this threat, the NGO Secretariat should be reformulated as the single lead authority to unite and regulate the work of entire NGO sector, which will eliminate existing regulatory complexities and will ensure better transparency and accountability through enhanced regulatory scrutiny. Regulatory functions presently spread across different government institutions should be merged into the NGO Secretariat. The NGO Secretariat should function as the single portal for registration, reporting commitments, collation and dissemination of information, monitoring compliance with reporting requirements and procedures, preventive, remedial and investigative work, educating and supporting NGOs on good governance irrespective of legal status of voluntary agencies. This effort of unification should be complemented by forming an NGO Coordination Board consisting of top executives of NGO regulatory agencies, which will be a platform to determine what organizations with different legal forms qualify as NGOs to be governed under the Voluntary Social Service Organization Act (VSSOA) and to delegate regulation of such organizations to the NGO Secretariat. Moreover, the NGO Secretariat should be armed with adequate authority and independence by amending the VSSOA to render above-mentioned task productively. To that end, the structure, powers and duties of the NGO Secretariat should be modelled on the Charity Commission of UK. Acute shortage of resources currently experienced by the NGO Secretariat render efficient processing of functions attached with 'one-stop-shop' NGO regulator arduous. Therefore, the NGO Secretariat should be resourced with sufficient financial resources and excellent information technology to employ automated systems for registration, reporting, analysis and maintenance of a database. It should be equipped with skilled human resources to scrutinize risk and instances of terrorist exploitation and to operate automated systems.



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