



**COMMENTARY ON THE RECENTLY PASSED NGO BILL 2015 AND ITS IMPLICATIONS ON ORGANISATIONS
WORKING ON THE RIGHTS OF MARGINALISED PERSONS**

30TH NOVEMBER 2015

Introduction and Background

On Friday, 27th November 2015, the Parliament of the Republic of Uganda passed into law, The Non Governmental Organisations Bill, 2015. The Bill now only awaits Presidential assent to become an Act of Parliament. The Bill which was published in the Government Gazette on 10th April 2015, and shortly tabled in Parliament seeks to replace the current Non Governmental Organisations Act, Cap 113 as amended. According to its Memorandum, the Bill seeks to: replace the existing Act; provide a conducive environment for Non Governmental Organisations (NGOs) to operate; strengthen and promote the capacity of NGOs; provide for corporate status of the National Board of Non Governmental Organisations (NGO Board) and strengthen its capacity to register, regulate and monitor NGOs; to establish regional offices of the NGO Board, and Non Governmental Organisations Monitoring Committee at District and sub county levels; establish a fund for NGOs; and provide for special obligations of NGOs. It contains 51 different provisions divided into 11 parts.

The memorandum further shows that the need for the Bill is due to gaps in the existing law. That there is rapid growth of NGOs, which has led to subversive methods of work and activities, which in turn undermine accountability and transparency in the sector. The bill therefore seeks to streamline NGOs and their activities to ensure that they work within the precincts of the law. While the Bill has noble intentions as mentioned above, it also had some very controversial provisions that if passed into law, would violate the rights to freedom of conscience, expression, movement, assembly and association for both organisations and individuals.

HRAPF at that time published an analysis on how the provisions of the Bill; would if passed into law disproportionately affect organisations working on socially blacklisted issues concerning marginalised groups. These organisations include those working on: Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) rights and issues; sex worker rights and issues; access to safe abortion issues; those protecting religious minorities; and those working with persons charged with terrorism and other serious crimes.

After the First Reading, the Bill was forwarded to the Defence and Internal Affairs Committee of Parliament, which invited civil society organisations and the general public to give their views. This was done and the Committee came up with a report that was largely reflective of civil society positions. At the second reading, the Committee Report was discussed and most of its provisions adopted, and the Bill was passed into law.

Though most of the amendments suggested by the Committee were taken into consideration, the final Bill as passed still has issues that are going to disproportionately affect groups working with marginalised groups. HRAPF has therefore put together this commentary, which shows how the issues raised initially as regards organisation working on issues of marginalised groups were addressed in the passed Bill.

In summary, the Bill as passed addresses most of the concerns that HRAPF had raised. However, three thorny issues remain which concern: the refusal of registration of organisation on the basis that that the objectives are ‘in contravention of the law’; the provisions on ‘special obligations of NGOs’; and ‘grounds for dissolution by court.’

The provision on refusal of registration on grounds that the objectives are in contravention of the law is specifically worrying because it has affected LGBTI organisations before. The Uganda Registration Services Bureau (URSB) refused to register Sexual Minorities Uganda on the basis that its name and objectives showed a connection to work among people whose conduct is criminalised. This gives an indication of how Ugandan institutions may interpret the provision on contravention of the law.

The ‘special obligations’ provision, among others require organisations to desist from engaging in any activities that are prejudicial to the security interests and laws of Uganda, as well as the dignity of the people of Uganda. These were left as they were in the original draft and HRAPF remains concerned that they will easily be used to harass organisations working on LGBTI and other issues that are regarded as socially unacceptable.

As regards the powers of the court to dissolve an NGO for among other reasons ‘threatening national security’, and ‘gross violations of the laws of Uganda’ both of which concepts are not defined, this may put organisations at the risk of being accused of ‘serving foreign interests’ and therefore ‘threatening national security.’ Similarly the ground of ‘gross violations of the laws of Uganda’ is not defined and leaves one wondering what ‘gross’ implies. They will leave such organisations liable to be closed by court or to flimsy accusation brought before them and thus disrupting their operations.

So again, the Bill as passed still has glaring gaps in the protection of organisations working on issues of marginalised groups including LGBTI persons, sex workers, drug users and those working on abortion issues.

The detailed analysis is in the table below:

Issue	Original Position in the NGO Bill	HRAPF Concerns	Position as per Committee Report	Position in the NGO Act as passed by Parliament	HRAPF's Comment
1. Mandatory registration of NGOs	Under Clause 31(1), 'An organisation shall not operate in Uganda unless it has been duly registered by the NGO Board.'	<p>Mandatory registration would require all organisations to register, but this is a limitation on the right to freedom of association, which covers unregistered entities.</p> <p>For those organisations working on issues concerning marginalised and criminalised persons, the requirement for mandatory registration with the NGO Board would make it difficult for them to operate at all, since they have to reserve a name which may be rejected due to the criminal laws, and the objectives may also be rejected leading to</p>	'Any person or group of persons incorporated as an organisation shall register with the bureau [formerly NGO Board]'	'Any person or group of persons incorporated as an organisation shall register with the bureau.'	<p>The Act partly does away with the requirement for mandatory registration for a person or group of persons or those entities that do not want to get incorporated as organisations. It is only those that choose to get incorporated as organisations that have to mandatorily register with the NGO Bureau.</p> <p>This would therefore allow entities working on issues that are socially blacklisted to continue doing their work even when they cannot be registered.</p>

		the organisation being denied registration.			
2. Registration and Incorporation of organisations	According to clause 31(4), an organisation will not be registered where its objectives are in contravention of the law, or where it is in public interest not to register it or for any other reason that the Board may find relevant.	This provision would make organisations working on criminalised and socially black listed issues ineligible to register, because their applications would be rejected for their work 'contravenes' the law, and it would not be in 'public interest to register them' and the Board can provide 'any reasons' including that they are undesirable.	The Committee recommended a replacement of Clause 31 with two clauses, with Clause 32 being on refusal to register. The Bureau can refuse to register where: 'the objectives of the organisation as specified in its Constitution are in contravention of the laws of Uganda; where the application for registration does not comply with the requirements of the Act; where the applicant has given false or misleading information in any material particulars.	This provision was passed in accordance with the recommendations of the Committee.	The provision as passed takes away the arbitrariness of the earlier provision. It now means that the Bureau has to consider the objectives and if they do not contravene the law, or there are no misleading statements and the application is in line with the Act, then the organisation must be registered. The only concern is about 'where the objectives are in contravention of the law' and the interpretation this will be given as regards objectives for organisations working on issues concerning criminalised conduct like sex work and same

					sex relations. The denial of registration to Sexual Minorities Uganda (SMUG) on the basis of the term 'sexual minorities' by the URSB gives an indication of how Ugandan institutions may interpret 'in contravention of the law.'
3. Broad and Undefined offences	Clause 3(10) (a) of the bill stipulates that any organisation which contravenes any provision of the Bill commits an offence.	This is a broad and undefined offence that unfairly makes organisations dealing with issues that are disapproved of by the general public susceptible to criminal liability, since the Bill prohibits organisational activities that are prejudicial to 'public interest'.	This provision was recommended for deletion.	Provision is not part of the Act.	The decision to delete the provision was good as it leaves organisations protected from criminal liability arising out of undefined contraventions of the law.
4. Dual liability of the organisation	Under Clause 31(11), the Bill creates dual	This provision is contrary to the principle of corporate personality,	This provision was deleted.	Provision is not part of the Act.	The decision to delete the provision was good as it leaves

and its directors	criminal liability for an organisation and its officers when the organisation commits an offence.	which is to the effect that an organisation is separate from its members and directors, save in circumstances of fraud. It would give lee-way for the arbitrary arrest and prosecution of directors and officers of organisations that are deemed to commit offences, simply because they engage in work that involves issues relating to persons whose acts are criminalised.			organisations protected from criminal liability arising out of undefined contraventions of the law.
5. Revocation of an organisation's permit	According to Clause 33(1) (d) of the bill, an organisation's permit shall be revoked if in the opinion of the board, it is in the public interest to do so.	This threatens the right to freedom of association of organisations dealing with issues that are unpopular among members of the public, since the board has the discretion to arbitrarily revoke their operating permits on the premise of it being in 'public	This provision was recommended for deletion by the Committee.	The provision was not adopted.	The decision to delete the provision was good as it leaves organisations protected from having their permits revoked on the basis of undefined 'public interest'.

		<p>interest' to do so.</p> <p>The term 'public interest' is not defined in the Bill and it is therefore subjective and subject to abuse.</p>			
<p>6. General Powers of the NGO Board to inspect organisation premises</p>	<p>Under Clause 37 of the Bill, an officer appointed by the board is given discretion to make an unannounced inspection of the premises of an organisation, and to ask for any information that appears to be necessary for the purpose of giving effect to the Bill, and also gives them the power to prosecute any person for an offence alleged to</p>	<p>Such unannounced investigations would be a violation of the right to privacy for organisations. It would also disproportionately affect organisations whose beneficiaries include those whose activities are criminalised, and considered immoral by society as they would most likely attract the inspectors more in order for them to find out what the organisations are doing. It would also make it hard for them to operate smoothly, since they would always be in</p>	<p>This clause was proposed to be amended by: designating inspectors from the NGO Bureau whose names shall be gazetted; requiring notice of at least seven days stating the time and purpose of the inspection; reasonable time was defined as the hours of 8:00am to 5:00pm; and by creating offences for obstruction of an inspector, presenting false documents or making false</p>	<p>The Committee recommendations were generally followed but the notice period was reduced from seven to three days</p>	<p>The provision as adopted is okay except that it gives the inspectors a lot of discretion by giving them powers to ask for any information that they deem 'necessary for purposes of giving effect to the Act.' This can include asking for confidential client files of organisation working on legal aid service provision; and other such information which may put the organisation and the clients at risk. Such information is also likely to be misinterpreted</p>

	be committed under the Bill.	fear of being ambushed and arbitrarily subjected to inspections that may result into criminal prosecutions.	statements; or failing to comply with reasonable orders or directions of the inspector which shall be punishable by a fine not exceeding 24 currency points or imprisonment not exceeding one year.		due to the myths and falsehoods surrounding work around criminalised conduct.
7. Special Obligations of organisations	Under Clause 40(d) and (f) of the Bill, organisations are prohibited from engaging in any activities that are prejudicial to the security interests and laws of Uganda, as well as the dignity of the people of Uganda.	These obligations expose organisations working on criminalised conduct to arbitrary prosecution due to their work being regarded as causing insecurity as they are regarded as 'foreign agents'. For the issue of interest of Ugandans, it can be argued that work on protecting persons who may be engaging in criminalised conduct may not be in the interest of Ugandans; and finally as regards	These sub clauses were proposed to be deleted.	These clauses were included in the final draft of the bill that was passed.	This provision makes it hard for organisations dealing with issues that are considered by the majority of the general public to be detrimental to national security and cultural identity of Uganda to operate smoothly as it subjects them to warnings and even criminal prosecutions.

		dignity of Uganda, work on issues like homosexuality and sex work may be seen as being in violation of the dignity of Ugandans. Since these terms are undefined, these organised are likely to fall foul of them.			
8. Dissolution of organisations	Clause 44(3) (d) gives the NGO Board power to dissolve an organisation for any reason that the board considers to be in public interest.	This provision threatens the right to freedom of association and assembly for members and officers of organisations dealing with socially unpopular issues, since they can easily be wound up in pursuit of 'public interest.'	The committee proposed to amend this clause by divesting the power of dissolution of an organisation from the board, and vesting it in the court on specified grounds which include: 'threatening national security', and 'gross violations of the laws of Uganda' both of which concepts are not defined. Any person, organisation or the bureau may apply to court for an	The House adopted the committee position	The transfer of powers from the NGO Bureau to the Court is a very positive step. However, the provision on threatening national security is left undefined, and due to the connection of national security with 'serving foreign interests' it may be prejudicial to the smooth operation of organisations dealing with issues that are related to criminalised conduct. Similarly the

			order of dissolution on any of these grounds.		ground of 'gross violations of the laws of Uganda' is not defined and leaves one wondering what 'gross' implies. They will leave such organisations liable to be closed by court since anyone can apply for their dissolution.
9. Appeals to be made to the minister and powers of the minister	Clause 45 of the Bill makes the Minister of Internal Affairs the only forum before which an appeal from a decision of the Board can be presented.	Since the minister appoints and disappoints members of the board, and is also in charge of overseeing the activities of the Board and even issue guidelines to the Board on how the board should operate which are binding on the Board. These powers make the Board highly susceptible to the views and opinions and directions of the Minister and therefore appealing to him/her is	The committee proposed to amend the clause and to introduce a new section 46. These proposals were to introduce a hierarchical mechanism of appeal, from the Sub-County Non-governmental Organisation Monitoring Committee (SNMC) to the District Non Governmental Organisations Monitoring Committee (DNMC); and from	The clauses on appeals were passed as per the committee's recommendations	These provisions guarantee the right to a fair hearing since they provide for an appeal mechanism right from the SNMC to the High Court. The only concern is that for appeals from the Bureau, a representative of the Bureau also sits on the Adjudication Committee. For a committee made up of five persons, one person who has a direct

		<p>contrary to the Art.28 (1) of the 1995, Constitution, which provides, <i>inter alia</i>, that in the determination of civil rights and obligations, a person shall have a right to a fair hearing before an impartial court or tribunal.</p> <p>It implies that if the Minister is interested in a particular organisation being denied a permit or being closed down, he can direct the Board to do so, and yet appeals have to go to him/her.</p>	<p>the DNMC to the Bureau.</p> <p>For appeals from the Bureau, it proposed that they should be handled by an Adjudication Committee. The Minister constitutes the Adjudication Committee by appointing the members who shall be made up of a chairperson who shall be an Advocate; a representative of organisations; a representative of the Bureau; and two senior citizens.</p> <p>A person dissatisfied by the decision of the Adjudication Committee may appeal to the High Court.</p>		<p>interest in the matter may be able to influence the rest. It thus beats the right to a fair hearing, which requires that a person should be heard by an impartial tribunal.</p>
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