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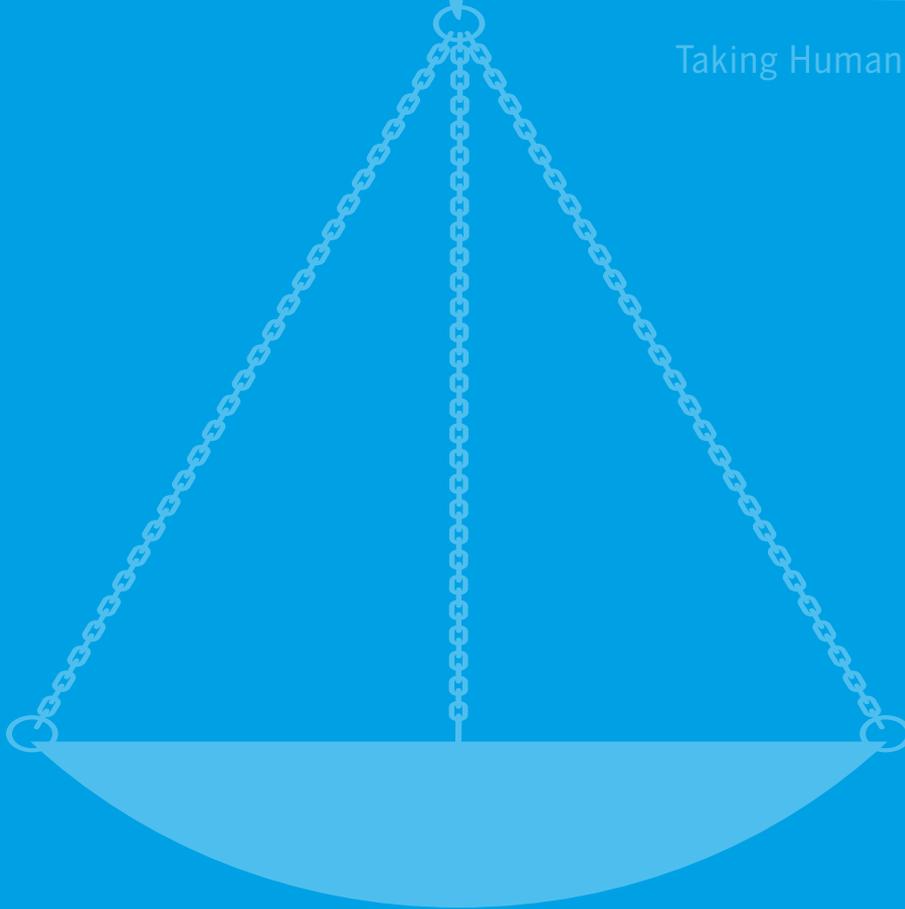
THE HUMAN RIGHTS ADVOCATE

**The Likely Implications of the Non-Governmental
Organisations Act 2016 on Marginalised Groups**



THIRD ISSUE - DECEMBER 2016

Taking Human Rights to All.





THE HUMAN RIGHTS ADVOCATE

THE POTENTIAL IMPACT OF THE NON-GOVERNMENTAL
ORGANISATIONS ACT 2016 ON MARGINALISED GROUPS

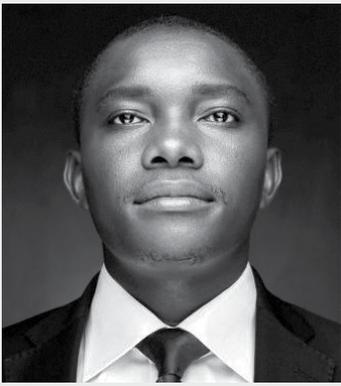
THIRD ISSUE

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EDITOR'S NOTE

Adrian Jjuuko

I am pleased to present to you the third issue of the Human Rights Advocate. This magazine is an annual publication produced by Human Rights Awareness and Promotion Forum (HRAPF) to discuss various laws and bills, and how they affect the rights of Ugandans, especially marginalised persons.

HRAPF is an independent, not-for-profit, non-partisan and non-governmental organisation which aims to raise awareness of rights of marginalised groups. HRAPF advocates for an improved legislative environment for marginalised groups through legal and policy analysis, legal research and documentation and strategic litigation. HRAPF also aims to provide access to justice to these groups through the delivery of legal aid services.

This magazine is a legislative review and advocacy tool in favour of marginalised groups. Each issue contains deliberations from a variety of authors on a particular enactment or proposed enactment which affects marginalised groups, all focusing on a common theme.

This third issue of the Human Rights Advocate focuses on the new Non-Governmental Organisations Act, 2016 and the impact of this Act on marginalised groups in Uganda. The Act came into force on 14 March 2016. The purpose of this Act is to repeal and replace the Non-Governmental Organisations (Registration) Act Cap 113 and to provide 'a conducive and enabling environment for the Non-Governmental Organisations sector; to strengthen and promote the capacity of the Non-Governmental Organisations and their mutual partnership with Government'. The Act furthermore makes provision for the corporate status of the NGO Bureau and sets out its powers and functions. The Act establishes branch offices of the Bureau as well as District Non-Governmental Organisations Monitoring Committees (DNMCs) and Sub-county Non-Governmental Organisations Monitoring Committees (SNMCs). The Act also sets out special obligations resting on NGOs.

This Act has human rights implications at two interlinked levels. Firstly, the Act presents obstacles in

the way of NGOs operations in Uganda in general and closes the space for civic participation in governance. At the second level, the NGO Act poses threats to the exercise of the right to freedom of association for marginalised groups in particular.

This third edition of the Human Rights Advocate contains an editorial, feature, two opinion pieces, two commentaries on the Act and two commentaries on case law. It also contains a case update on the case of *Frank Mugisha, Dennis Wamala & Warry Ssenfuka v Uganda Registration Services Bureau (URSB)*, which challenges a decision by the URSB to refuse to register the name Sexual Minorities Uganda, and consequently incorporate the organisation because its objective of protecting for the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons was viewed as contrary to the laws of Uganda.

The editorial considers the NGO Act, 2016 and the two levels of threats that it poses from a human rights perspective.

The feature considers the legislative history of the NGO Act and describes the contents of the NGO Act.

The first commentary considers the NGO Act from an international human rights law perspective while the second commentary compares the regime governing NGOs in Uganda to that of Kenya.

The first opinion piece argues that the NGO Act forms part of a broad series of 'legalised repression' of political rights and freedoms. The second opinion piece considers the impact of this law on the human development of the country through its repression of the associative rights of minorities.

The first case commentary considers the impact of the recent Constitutional Court decision in the matter of *HURINET and Others v Attorney General* in which provisions of the previous NGO Act and Regulations were upheld on the new regulatory framework of NGOs. The second case commentary discusses the



HRAPF consultation with civil society leaders and other Stakeholders on its position paper on the NGO Act.



This magazine is a legislative review and advocacy tool in favour of marginalised groups.

High Court case which has been filed subsequent to the Uganda Registration Services Bureau's refusal to register an organisation on the basis of its objective to protect the rights of LGBTI persons.

Finally, the Appendix contains the text of the NGO Act 2016; the position paper on the NGO Act, 2016 released by HRAPF shortly after the Act came into force and HRAPF's suggested regulations to the NGO Act, which would address the concerns of minorities and marginalised groups in respect of the Act, are included.

We hope that readers find this magazine to be a valuable tool in analysing the human rights implications of the NGO Act, 2016. In particular, we hope that this magazine will shed light on the dangers presented to the future operation of NGOs advocating for the

rights of marginalised groups or persons who engage in activities, which are criminalised along with the threats posed to the NGO sector as a whole. It is our aim for this magazine to be used as an advocacy tool to challenge the provisions of the NGO Act which are not in line with Uganda's Constitution and international human rights standards.

HRAPF would like to acknowledge the contributors of articles to this issue of the magazine. Dr. Busingye Kabumba of Development Law Associates and the School of Law, Makerere University; Mr. Duncan Okubasu of the School of Law, Kabarak University; Mr Anthony Mutimba, Ms. Joanne Nanyange, Ms. Susan Baluka, Ms. Linette du Toit and Mr. Ronnie Wonder who are all staff of HRAPF. HRAPF also extends a word of thanks to the HRAPF staff, led by Ms. Linette du Toit, who contributed in compiling this issue.

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EDITORIAL

SPEAKING OUT AGAINST THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016... SO THAT WE MAY KEEP OUR VOICE

Adrian Jjuuko*



On 30 January 2016, amidst the hubbub of the upcoming presidential elections and without much ado, President Yoweri Museveni assented to the Non-Governmental Organisations Act, 2016. The adoption of this Act is viewed as another calculated step taken by the government in order to gain a greater measure of control over the civil society sector.

The previous NGO Act, adopted in 1989 and amended in 2006, was viewed as ineffective in creating an optimally functioning environment for NGOs in Uganda.¹ The Regulations to this Act, adopted in 2009, were furthermore viewed as draconian in as far as they created burdensome registration requirements for NGOs² as well as demanding the periodic renewal of permits.³ The Regulations furthermore empowered the NGO Board to dissolve an NGO 'for any (other) reason the Board considers necessary in the public interest'.⁴

These provisions among others were challenged in the Constitutional Court in the case of *Human Rights Network and 7 Others v Attorney General*.⁵ The Court, in a judgment only delivered on 4th April 2016, long after the NGO Act 2009 it challenged had been repealed and replaced by the 2016 Act, held that the 2009 Regulations and provisions of the Act did not contravene the Constitution of Uganda as alleged by the applicants, but instead its provisions and the regulations were necessary in the public interest to regulate civil society. This judgment is criticised by civil society role-players since firstly, it did not take into account that the issue of the constitutionality of provisions of the previous NGO Act had been rendered moot after this Act was repealed and replaced by the new Non-governmental

Organisations Act of 2016.⁶ Secondly, the judgment is criticised for finding that there are no violations of fundamental rights protected under chapter four of the Constitution, yet there is no evidence in the judgment itself of an in-depth engagement with the arguments of the applicants (see J Nanyange, this issue p. 28)

The Non-governmental Organisations Bill of 2015⁷ was gazetted on 10 April 2015 and received with much criticism and suspicion especially from civil society organisations.⁸ A number of these issued analyses of the bill which showed that the bill, if passed in the form in which it was, would impose unconstitutional restrictions on the operations of NGOs.⁹ The Bill contained provisions replicating some of the draconian 2009 Regulations¹⁰ and indeed it saved these very Regulations.¹¹ Mainstream NGOs, under the auspices of the Uganda National NGO

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¹ Uganda National NGO Forum 'A position paper and clause by clause analysis of the NGO Bill 2015' (2015) 2.

² Regulation 5 of The Non-Governmental Organisation Registration Regulations, 2009.

³ Regulation 7 and 8.

⁴ Regulation 17(3)(e).

⁵ Constitutional Petition 5 of 2009.

⁶ The new Act came into force on 14th March 2016 and judgment was only handed down on the 4th of April 2016.

⁷ Non-Governmental Organisations Bill, Bill No. 10 of 2015, April 2015.

⁸ See for example 'Uganda: NGO Bill aims to muzzle civil society, say activists' *Global Development* 23 June 2015 available at <<https://www.theguardian.com/global-development/2015/jun/24/uganda-ngo-bill-aims-muzzle-civil-society-say-activists>> accessed on 18 November 2016.

⁹ See for instance Uganda National NGO Forum (n1 above); Human Rights Network Uganda, *Analysis of the Non-Governmental Organisations Bill, 2015* at <www.hurinet.or.ug/ANALYSIS-OF-NGO-BILL.pdf> 2015-8-13> (accessed on 8 August 2015). Human Rights Awareness and Promotion Forum *The NGO Bill 2015 and its Practical and Human Rights Implications on Organisations Working on the Rights of Marginalised Persons* <<http://hrapf.org/?mdocs-file=1584&mdocs-url=false>> (accessed 8 August 2016), and Human Dignity Trust, *Note on the Non-Governmental Organisations Bill* at <www.humandignitytrust.org/note_on_the_NGO_Bill_2015_20150506.pdf> accessed on 8 August 2016.

¹⁰ The Bill also placed special obligations on organisations, such as the requirement of obtaining permission for operation from local authorities and refraining from acts which are 'prejudicial' to the security and laws of Uganda (clause 40) and thereby replicated regulation 13 of the 2009 Regulations.

¹¹ NGO Act, section 56(2).



Ms. Sheila Muwanga (Board Chairperson, HRAPF), Mr. Hassan Shire (Executive Director, East and Horn of Africa Human Rights Defenders Network) and Mr. Adrian Jjuuko (Executive Director, HRAPF) addressing the media after HRAPF office break-in.

Forum, were vocal and active in opposing the Bill.¹² This is because the Bill posed a clear threat to civil society in general. HRAPF also developed its own analysis focused on the implications of the law on organisations working on protection of marginalised groups. HRAPF analysis highlighted the particular and disproportionate effect which such an enactment would have had on organisations working on so-called 'socially blacklisted' issues.¹³ Due to the concerted efforts of civil society groups, many of the repressive provisions appearing in the Bill did not make their way into the Act which was finally adopted.¹⁴ However, not all of the concerns that civil society had about the Bill were addressed.

The two most disquieting provisions of the 2016 Act are: section 44(d) and (f) which imposes special obligations on organisations and prohibits them from engaging in activities that are prejudicial to the 'security and laws of Uganda', and to the 'interests of Uganda and to dignity of Ugandans' and section 30(1)(a) allows the NGO Bureau to refuse to register an organisation whose objectives are regarded as being in contravention of the laws of Uganda.

In the context of a religious, traditional and moralistic society, these provisions pose a severe threat to organisations doing legitimate work on so called 'controversial', and socially and politically sensitive issues.

¹² A number of NGOs participated in the drafting of a position paper on the NGO Bill, 2015. These organisations included World Voices Uganda, Chapter Four, Development Network of Indigenous Voluntary Associations (DENIVA) and the Federation of Women Lawyers in Uganda (FIDA Uganda).

¹³ Human Rights Awareness and Promotion Forum (HRAPF) 'The NGO Bill 2015 and its practical and human rights implications on organisations working on the rights of marginalised persons' (2015) 2.

¹⁴ For an overview of provisions in the Bill which did and did not survive the legislative process, see 'The Non-Governmental Organisations Act, 2016: An overview' by Linette du Toit, p. 9 below.

The terms 'prejudicial' and 'interests of Ugandans' can be interpreted very broadly and is malleable according to the purposes and motives of the interpreter. Furthermore, the practice of denying registration of organisations which exist to promote the rights of 'criminalised' minorities have already begun. The Uganda Registration Services Bureau has refused to register Sexual Minorities Uganda (SMUG) on the basis that its objectives of promoting the rights of LGBTI persons are contrary to the laws of Uganda.¹⁵ Section 30(1)(a) can easily be used to legitimise the situation of refusing registration of such organisations on the wrong argument that it is a criminal act to

provide services and support to persons who engage in criminal activities.¹⁶

The threat posed by these two provisions, firstly to organisations working on controversial and socially unacceptable issues such as LGBTI rights, but also to civil society as a whole cannot be discounted. It is a matter of urgency to ensure that the effects of these provisions are either ameliorated through the adoption of Regulations to the new Act, which define and clarify the vague terms and phrases used, or to challenge the Act in the Constitutional Court of Uganda. Considering the Court's stance on the previous draconian Act and Regulations, a bleak picture is painted for the freedom of association in Uganda.

It is for this reason, that this edition of the Human Rights Advocate is dedicated to the NGO Act 2016. The fact that the HURINET case which challenged provisions of the now repealed NGO Act Cap 113 and the regulations made thereunder that have almost the same import as the ones that currently appear in the NGO Act 2016, gives the process judicial legitimacy and dampens hopes of successfully overturning this law through the courts.

As such, there is real need for civil society organisations to speak out, engage and challenge the most extreme provisions of this law if civic space is to be protected in this country.

¹⁵ See the case note on the High Court case which has emanated from the Bureau's refusal to register SMUG (*Frank Mugisha & Others v Uganda Registration Services Bureau*) by Susan Baluka, p. 32 (this issue).

¹⁶ For a detailed discussion on the impact of section 30(1)(a) and 44(d) and (f) on organisations working with unpopular minority groups see Appendix II: Human Rights Awareness and Promotion Forum 'Position paper on the Non-Governmental Organisations Act, 2016' (2016) (Appendix II to this volume).

FEATURE

THE NON-GOVERNMENTAL ORGANISATIONS ACT 2016: AN OVERVIEW

Linette du Toit *



Introduction

The Non-Governmental Organisations Act 2016 is the product of a vast amount of lobbying and advocacy from civil society movements over more than a decade. This Act repealed the previous Non-governmental Organisations (Registration) Act Cap 113. This article gives a brief legislative history and a detailed overview of the Act.

Legislative history of the NGO Act, 2016

Non-governmental Organisations (NGOs) in Uganda have been regulated since the adoption of the first Non-Governmental Organisations Registration Act in 1989.¹ This Act provided for the registration of NGOs and the establishment of the NGO Board.² The past three decades saw the increment of NGOs from fewer than 200 NGOs in 1986 up to about 12 500 in 2013.³

Civil society engagement and advocacy for a better legal environment governing NGOs took flight in 1999 when the first amendment to the NGO Registration Act of 1989 was proposed.⁴ Organisations, grouped together under the auspices of the Coalition on the NGO Bill (CONOB) and the Uganda National NGO Forum, attempted to influence the amendment bill.⁵ From this time and up to today, the major concerns of civil society surrounding government's approach to the regulation of NGOs have remained centred around a few recurring points.

In the first place, there has been a measure of conflict about the purpose of an Act regulating NGOs. Civil society has pushed for a law creating an 'enabling environment', while the law-makers have tended to make it clear in the language of the legislation that

their intention was to control so-called 'subversive' organisations.⁶

Another conflict has centred on the exact role, composition and location of the NGO Board.⁷ The government's stance has consistently been that the NGO Board ought to have a monitoring role and that it should focus on security. Civil society, on the other hand, has continuously pushed for a development-focused NGO Board that plays a promotional role and is composed of representatives that have been appointed according to democratic processes.

There has also been a conflict in respect of the use of ambiguous words and phrases in the regulation of NGOs, which are susceptible to abuse by the authorities to clamp down on undesirable or unpopular organisations. Cumbersome registration processes have also been a point of contention as well as the voluntary nature of a quality assurance mechanism. Civil society has continuously contested provisions that would render liable the NGO itself as well as individual members in respect of a single offence.

Over the course of many years of advocacy efforts, the civil society movement as a whole has seen both wins and losses. In 2004, attempts were once again made to influence the amendment of the 1989 NGO Act and organisations went as far as drafting an alternative amendment bill under the CONOB umbrella.⁸ These efforts were not successful in shaping the amendment Act which was finally adopted in 2006.

This 2006 amendment Act was aimed at strengthening the monitoring role of government.⁹ This Act was commended for a number of progressive attributes such as providing for the registration of Community Based Organisations at district level rather than at the NGO Board, which facilitated service provision

* Research and Advocacy Officer, HRAPF.

¹ Uganda NGO Cap 113, formerly Statute 5 of 1989.

² M Nassali 'Civil Society in Africa. Politics, power and accountability: Addressing the elephant in the room in the quest for civil society organizations' right to freedom of association' *International Journal of Not-for Profit Law* 16:2 (2014) 37.

³ Uganda National NGO Forum 'A position paper and clause by clause analysis of the NGO Bill 2015' (2015).

⁴ NGO Forum, n 4 above, 5.

⁵ NGO Forum, n 4 above, 5.

⁶ Memorandum to the NGO Bill, 2015.

⁷ NGO Forum, n 4 above, 6.

⁸ As above.

⁹ Nassali, n 2 above, 40.

to communities.¹⁰ The Act also provided for gender representation on the NGO Board.¹¹ The Act, however, was criticised for criminalising the failure to register an NGO and giving the NGO Board the power to revoke an operating license 'in the public interest'.¹² The situation was made more troubling by the adoption of the 2009 Regulations to the NGO Act, which introduced burdensome registration requirements for NGOs.¹³

The constitutionality of provisions of the NGO Act, as amended by the 2006 Amendment Act, as well as a number of the 2009 Regulations were challenged in the matter of *Human Rights Network (HURINET) and Others v Attorney General*.¹⁴ The Constitutional Court only delivered its decision on this case in April 2016 long after the Act had been repealed and found that the contested provisions did not contravene the Constitution.¹⁵

In 2010/2011, a national NGO Policy was developed by an independent consultant who attempted to give ear to the concerns of both civil society role players and government.¹⁶ The purpose of this NGO Policy was to guide the legal framework governing NGOs and infuse it with human rights principles.¹⁷ Processes for kick-starting the adoption of the 2016 Act were introduced by countrywide consultations and the drafting of a consolidated memorandum under the auspices of the Uganda National NGO Forum in 2013. The NGO Policy has consistently been used as a basis of advocacy for the adoption of a new NGO Act that addresses the concerns of civil society.

The Non-governmental Organisations Bill, 2015 was gazetted on 10 April 2015. The purpose of the Bill was to address the rapid growth of non-governmental organisations which had led to 'subversive methods of work and activities' and which was believed to have undermined 'accountability and transparency in the sector.' The Bill was met with much outcry and criticism especially from civil society organisations. Due to successful advocacy efforts, a number of contested provisions which appeared in the Bill did not make their way into the NGO Act which was finally adopted. These provisions included the criminalisation

of the contravention of *any* provision of the Act;¹⁸ the overly broad powers granted to the NGO Board to revoke the permit of an NGO if it contravenes the provisions of the Act or if it is 'in the public interest' to do so;¹⁹ and certain unclear definitions.²⁰

An overview of the NGO Act, 2016

This section gives an overview of the Act, covering the different themes identified in the Act:

a) Purpose and objects of the Act

According to its long title, the purpose of the NGO Act, 2016 is to repeal and replace the previous NGO Act, which was adopted in 1989 and amended in 2006.²¹ The Act furthermore has the aim of providing a 'conducive and enabling environment' for the NGO sector and to 'promote the capacity of Non-Governmental Organisations and their mutual partnership with Government'. The Act is intended to provide for the National NGO Bureau and to make provision for its corporate status. The Act also provides for the establishment of branch offices of the NGO Bureau and NGO Monitoring Committees at District and Subcounty level. Finally, the purpose of the Act is to provide for special obligations of NGOs and other related matters.

Section 4 of the Act sets out objects of the Act which are: the establishment of an 'enabling environment' as well as a regulatory framework for the operations of NGOs; the establishment of high standards of accountability, transparency and governance on NGOs; the promotion of partnership and cooperation between organisations, government and other stakeholders; the strengthening of the capacity of organisations for the benefit of the public; the promotion of self-regulation; the strengthening of the NGO Bureau's capacity;²² and the promotion and development of 'a charity culture that is voluntary, non-partisan and relevant to the needs and aspirations of the people of Uganda.'²³

b) Definitions and terminology

The Act defines an 'Organisation' to mean 'a legally constituted, non-governmental organisation under this Act, which may be a private voluntary grouping

¹⁰ As above, section 7(2) of the NGO Amendment Act, 2006.

¹¹ Nassali, n 3 above, 40.

¹² Secs 2(5), 2(6) and 10 of the NGO Amendment Act, 2006.

¹³ Nassali, n 2 above, 41.

¹⁴ Constitutional Petition 5 of 2009.

¹⁵ For a detailed discussion on this case, see the commentary by Joanne Nanyange, p.28 of this volume.

¹⁶ NGO Forum, 6. The NGO Policy is available at <http://www.icnl.org/research/library/files/files/Uganda/policy.pdf> accessed on 14 November 2016.

¹⁷ Nassali, n 2 above, 41.

¹⁸ In terms of Clause 31(10) of the Bill, the offence of contravening any provision of the Act would have been punishable with a fine of UGX 4 million or imprisonment of up to four years or both.

¹⁹ Clause 33 of the NGO Bill, 2015.

²⁰ For instance, the Bill defined 'dissolution' to mean voluntary dissolution or dissolution by the NGO Board. The Act that was finally adopted made it clear that the courts have the power to involuntarily dissolve an organisation.

²¹ Non-Governmental Organisations Act, Cap 113.

²² Sec 4(a) – (h).

²³ Sec 4(i).



HRAPF consultation with marginalised groups on the NGO Bill 2015.

of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes.' The Act furthermore distinguishes Community-Based Organisations (CBOs);²⁴ continental, regional, foreign and international organisations.²⁵

c) **The NGO Bureau**

Section 5 of the Act provides for the establishment of a National Bureau for Non-Governmental Organisations²⁶ and accords it corporate status, which implies that it can enter into contracts in its own name, and sue and be sued in its own name and do such things as corporate bodies are lawfully capable of doing.²⁷ The Bureau has the functions of advising the Minister of Internal Affairs on policy relating to the operation of NGOs; the formulation of policy guidelines for NGO Monitoring Committees and the coordination of a national NGO dialogue platform.²⁸ Importantly, the NGO Bureau has the power to establish and maintain a register of organisations and to consider applications for the issuance and renewal

“
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contested provisions
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²⁴ 'an organisation operating at subcounty level or below whose objectives is to promote and advance the wellbeing of the members of the community' (Sec 3).

²⁵ Sec 3.

²⁶ Sec 5(1).

²⁷ Sec 5(2) provides that the Bureau shall be a body corporate that can sue and be sued in its own name while sec 5(3) expressly states the powers of the Bureau to contract and deal with property in its corporate name.

²⁸ Sec 6(a), (b) & (f).

of NGO permits.²⁹

The Act makes detailed provision for a Board of Directors (BOD), which is the governing body of

²⁹ Sec 6(g) & (h).

the Bureau.³⁰ Members of the Board of Directors are appointed by the Minister of Internal Affairs and approved by Cabinet.³¹ The BOD is prescribed to have two representatives of the NGO sector and at least one third of its members to be female.³² The Act stipulates the tenure of members of the BOD and the conditions under which they may be removed from office by the Minister.³³ The functions of the BOD are also clearly set out as well as its authority to establish committees and subcommittees.³⁴ The Act provides that the Minister shall appoint an Executive Director of the BOD, on the recommendation of the BOD, who is the chief executive officer of the Bureau.³⁵ The Act stipulates the requirements for eligibility to be selected as the Executive Director of the BOD, the position's responsibilities, and grounds for removal.³⁶ The Act also provides for the appointment of a Secretary as Principal Legal adviser to the BOD and Bureau as well as the employment of other staff members as necessary.³⁷

Despite the fact that the previous NGO Act (Cap. 113) is repealed, the new Act provides that the Board established under that Act shall continue to operate until a BOD for the newly established Bureau has been appointed.³⁸

The Minister is given the power to give the Bureau written instructions relating to its functions to which it is bound to comply.³⁹

d) Monitoring Committees

The Act provides for the establishment of a Subcounty Non-Governmental Monitoring Committee (SNMC) in every subcounty and a District Non-Governmental Organisations Monitoring Committee (DNMC) in each district.⁴⁰ SNMCs have five members including the subcounty Community Development Officer, the Gombolola (subcounty) Internal Security Officer and a representative of organisations in the subcounty.⁴¹ DNMCs have seven committee members including the District Community Development Officer and a

representative of organisations in the district.⁴²

The functions of the DNMCs are to consider applications for registration of CBOs and to keep an updated register of CBOs as well as monitoring and guiding CBOs in their service provision.⁴³ The Act explicitly requires of CBOs to register with DNMCs.⁴⁴ DNMCs are also tasked with monitoring and providing information on the performance and activities of organisations in the district and to recommend organisations to the Bureau for registration.⁴⁵ SNMCs are monitored and supervised by DNMCs.⁴⁶ The SNMCs, in turn, report to DNMCs on matters of organisations at subcounty level.⁴⁷ SNMCs recommend CBOs to the DNMCs for registration and provide guidelines to CBOs to enable their effective implementation of programmes.⁴⁸

The Act furthermore provides for the establishment of branch offices to the Bureau which are tasked with supervising the DNMCs and keeping a register of registered NGOs and CBOs within the region.⁴⁹

e) Registration of organisations with the Bureau

The Act requires of any person or group of persons incorporated as an organisation to register with the Bureau.⁵⁰ This implies that all incorporated organisations including companies limited by guarantee provided they fit within the definition of an organisation are required to register. Applications for registration are to be accompanied by a certificate of incorporation, the company's constitution and evidence of payment of the prescribed fee.⁵¹ The Act provides that the Bureau shall register an organisation upon compliance with these requirements⁵² and that an organisation shall remain registered until registration is cancelled, or the organisation is voluntarily deregistered or dissolved.⁵³

The Act clearly sets out the conditions in terms of which the Bureau is to refuse registration of an organisation. These conditions are firstly, if the application does not

³⁰ Sec 9(1).

³¹ Sec 9(2).

³² Sec 9(2)(c) & 9(4).

³³ Sec 9(6) & 10.

³⁴ Sec 11 & 14.

³⁵ Sec 16(1) & (4).

³⁶ Sec 16(2), (4) & (5).

³⁷ Sec 17 & 18.

³⁸ Sec 58.

³⁹ Sec 54.

⁴⁰ Sec 20(1) & 21(1).

⁴¹ Sec 21(2).

⁴² Sec 20(2).

⁴³ Sec 20(4)(a) & (b).

⁴⁴ Sec 20(5).

⁴⁵ Sec 20(4)(d) & (f).

⁴⁶ Sec 20(4)(c).

⁴⁷ Sec 21(3)(e).

⁴⁸ Sec 21(3)(a) & (c).

⁴⁹ Sec 19.

⁵⁰ Sec 29(1).

⁵¹ Sec 29(2).

⁵² Sec 29(3).

⁵³ Sec 29(4).

comply with the requirements of the Act; where the applicant has given false or misleading information or where the objectives of the organisation (as specified in its constitution) are in contravention of the laws of Uganda.⁵⁴ The Bureau is to inform the applicant of the decision to refuse registration within thirty days.⁵⁵ The Act does not state whether this is thirty days from the date of application or thirty days from the date of its decision, which is a matter which the regulations to the Act are anticipated to address.

f) NGO permits

An organisation is not permitted to operate without a valid permit issued by the Bureau.⁵⁶ Under the previous regime, some NGOs opted to register as companies limited by guarantee rather than to register as NGOs with the Uganda Registration Services Bureau. These organisations were not required to obtain permits from the Board established under the previous Act.⁵⁷ The new Act makes it clear that all 'organisations' are required to obtain NGO permits.⁵⁸ The new Act does however provide that CBOs and organisations which existed immediately before the commencement of the new Act and which were permitted to operate in terms of the previous Act may continue to operate.⁵⁹

An application for a permit is to specify the operations of the organisation, its geographical area of coverage and the areas where it may carry out its activities, its staffing and the location of its headquarters.⁶⁰ The Act stipulates that the Bureau shall grant a permit within forty five days of the application.⁶¹

The Act requires an organisation to apply for the renewal of its permit within six months before its expiry.⁶²

g) Special obligations

The Act places special obligations on organisations. Organisations are not permitted to carry out activities in any part of the country without the approval of the DNMC and local authorities in that area.⁶³ Organisations are furthermore prohibited from engaging in activities which are 'prejudicial to the security and laws of Uganda' or to the 'interests and

dignity of the people of Uganda'.⁶⁴ Organisations are furthermore expected to be non-partisan.⁶⁵ These are some of the most controversial provisions of the Act, as they have been roundly criticised by many stakeholders especially from the NGO sector.

h) Discipline and inspection of organisations

The NGO Bureau has the power to summon and discipline organisations by warning the organisation; suspending or revoking its permit; blacklisting the organisation or exposing it to the public.⁶⁶ The Act also provides that the Bureau cannot take any of these actions against an organisation without first giving it the opportunity to be heard.⁶⁷

The Act provides that organisations which continue operations after the expiry of their permits will be fined to the amount of UGX 200,000 per every month of operation in default of renewal.⁶⁸ The Bureau may revoke the permit of an organisation if it contravenes the conditions in its permit or does not operate in accordance with its constitution.⁶⁹ The Bureau is required to give the organisation an opportunity to show cause why the permit should not be revoked and give reasons for the revocation.⁷⁰ Organisations are permitted to reapply for a permit after such revocation.⁷¹

The Act provides that it is an offence for an organisation or person to engage in any activity prohibited by the Act; to operate contrary to the conditions in its permit; to knowingly give false or incomplete information for the purposes of obtaining a permit; and to fail or refuse to produce documentation to the Bureau when required to do so.⁷² Offences under the Act are punishable with a fine not exceeding UGX 1,440,000 or imprisonment for a term not exceeding three years.⁷³

The Act permits the inspection of the premises of an organisation at any reasonable time and may request any information that appears necessary in order to give effect to the Act.⁷⁴ Written prior notice of the

⁵⁴ Sec 30(1).

⁵⁵ Sec 30(2).

⁵⁶ Sec 31(1).

⁵⁷ Sec 2(1) of the Nongovernment Organisations Registration Act, Cap. 113.

⁵⁸ Sec 31(2).

⁵⁹ Sec 59.

⁶⁰ Sec 31(5).

⁶¹ Sec 31(5).

⁶² Sec 32(1).

⁶³ Sec 44(a).

⁶⁴ Sec 44(d) & (f).

⁶⁵ Sec 44(g).

⁶⁶ Sec 7(1)(b).

⁶⁷ Sec 7(2).

⁶⁸ Sec 32(6).

⁶⁹ Sec 33(1).

⁷⁰ Sec 33(2) & (3).

⁷¹ Sec 33(4).

⁷² Sec 40(1).

⁷³ Sec 40(2).

⁷⁴ Sec 41(1).



It is largely a progressive law, and it is regrettable that a number of the Act's provisions remain problematic for the functioning of organisations dealing with minorities and marginalised groups...

i) Adjudication and appeals mechanisms

The Act prescribes an appeals mechanism to appeal decisions of a SNMC to the DNMC and decisions of a DNMC to the Bureau.⁷⁹ Decisions of the Bureau can be appealed to an 'Adjudication Committee' constituted by the Minister. The Adjudication Committee is empowered to confirm, set aside or vary decisions by the Bureau or may require of the Bureau to review its decision.⁸⁰

j) Self-regulation

The Act provides for two or more organisations to set up a 'self-regulating body', which exercises a degree of regulatory authority over the organisations.⁸¹ Such a self-regulating body is required to register with the Bureau.⁸² Decisions of the Adjudication Committee can be appealed to the High Court.⁸³

k) Other provisions

Apart from the provisions discussed in detail in this overview, the Act also prescribes business operations of organisations⁸⁴ and regulates staffing and voluntary dissolution.⁸⁵ The Act also regulates the way in which organisations are to furnish financial information to the Bureau.⁸⁶

l) Regulations

The Act provides that the Minister may make regulations for giving full effect to the Act.⁸⁷ These regulations may prescribe application forms and the manner in which the organisation shall be wound up when it ceases to operate, submit annual returns, self regulate etc.⁸⁸

Conclusion

From this overview of the Act, in the context of its legislative history, it is clear that it does set out an enabling structure for the functioning of organisations. It is largely a progressive law, and it is regrettable that a number of the Act's provisions remain problematic for the functioning of organisations dealing with minorities and marginalised groups as discussed in the remainder of this issue.

inspection is to be given to organisations.⁷⁵

The Act provides that applications can be made to the High Court for the dissolution of an organisation on the grounds that an organisation is defrauding the public; threatens national security or grossly violates the laws of Uganda.⁷⁶ Such an application can be brought by any person, organisation or the Bureau.⁷⁷ The Court shall dissolve the organisation where it is found guilty of the complained conduct.⁷⁸

⁷⁵ Sec 41(5).

⁷⁶ Sec 50.

⁷⁷ Sec 50(2).

⁷⁸ Sec 50(4).

⁷⁹ Sec 52(1).

⁸⁰ Sec 52(4).

⁸¹ Sec 36 – 38.

⁸² Sec 37(2).

⁸³ Sec 52(5).

⁸⁴ Sec 46.

⁸⁵ Sec 45 and 49.

⁸⁶ Sec 39.

⁸⁷ Sec 55(1).

⁸⁸ Sec 55(2).

COMMENTARY

**THE NON-GOVERNMENTAL ORGANISATIONS ACT 2016:
AN INTERNATIONAL LAW PERSPECTIVE***Linette du Toit* and Ronnie Wonder§***Introduction**

The newly enacted Non-Governmental Organisations Act (NGO Act) has as its aim as to 'provide a conducive and enabling environment' for civil society organisations.¹ There is, however, more than meets the eye. This new Act is more likely to deal a blow to the promotion of human rights especially for marginalised groups in Uganda. This commentary considers this Act from an international human rights law perspective. An assessment is made of whether or not the Act meets the internationally recognised criteria for the protection of civil society.

International Principles Protecting Civil Society

There has been a united response from many nations across the world in order to address increasing restrictions to the work of civil society.² This response includes the passing of the United Nations Human Rights Council (UNHRC) resolution on the 'Rights and Freedoms of Peaceful Assembly and Association' which established a Special Rapporteur; the establishment of a Working Group on 'Enabling and Protecting Civil Society' under the auspices of the Community of Democracies and the creation of an NGO Assistance Fund by 14 governments to support activists facing major opposition.³ The 'Defending Civil Society' Project was launched in 2007 by the Steering Committee of the World Movement for Democracy along with the International Center for Not-for Profit Law (ICNL) in 2007.⁴ This project has released a report which details the international law principles applicable to the protection of civil society.⁵ Seven principles are identified, derived from international instruments such as the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR); and the International

Covenant on Economic, Social and Cultural Rights (CESCR).⁶ These are:

Principle 1: The right to entry / freedom of association:

This principle protects the rights of individuals to form, join and participate in a range of civil society organisations (CSOs). CSOs are permitted to pursue purposes which are lawful. The purpose of 'the promotion and protection of human rights and fundamental freedoms' is explicitly recognised.⁷ The principles furthermore provide that the system and process whereby CSOs are registered and incorporated must be 'truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place'.⁸ The authority empowered to register or incorporate such organisations must furthermore be prevented from arbitrary decision-making.

Principle 2: The right to operate free from unwarranted state interference:

Civil Society Organisations have the right to be free from state interference in their operation. Such interference can only be justified 'where it is prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others'.⁹ Principle 2 provides that the legal regulation of CSOs should be implemented in an 'apolitical' and 'consistent' manner.¹⁰ The dissolution of CSOs has to be guided by objective criteria and organisations should be free to regulate the internal affairs of the organisation without intrusion.¹¹ Unwarranted interference with the privacy of the organisation and its members is not permitted.¹²

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¹ Preamble of the NGO Act, 2016.

² International Center for Not-for Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy 'Defending Civil Society' (2012).

³ As above.

⁴ As above.

⁵ The first version of 'Defending Civil Society' was released in 2008 and an updated report was released in 2012.

⁶ See for example Article 22 of the ICCPR which protects the right to freedom of association.

⁷ Principle 1(1)(b).

⁸ Principle 1(2)(b).

⁹ Principle 2(1)(a).

¹⁰ Principle 2(1)(b).

¹¹ Principle 2(1)(c) and 2(2).

¹² Principle 2(3).

Principle 3: The right to free expression: The right to freedom of expression is stated to extend to inoffensive ideas as well as to those ideas which 'offend, shock, or disturb'. The principles make it clear that interference with this right can only be justified 'where it is provided by law and necessary for respect of the rights or reputations of others; or for the protection of national security or of public order (*ordre public*), or of public health or morals.'¹³

Principle 4: The right to communication and cooperation: Civil society representatives have the right to communicate; to receive and impart information and to form and participate in networks and coalitions to strengthen communication and cooperation.

Principle 5: The right to freedom of peaceful assembly: Civil society representatives have the right to freedom of peaceful assembly, without having to obtain permission to do so. Government has the responsibility to protect peaceful assemblies and their participants. There are limited circumstances under which the interference with the freedom of assembly can be justified.¹⁴

Principle 6: The right to seek and secure resources: CSOs have the right to seek and secure funding from a variety of legal sources, which includes 'individuals, businesses, civil society, international organisations, and intergovernmental organizations, as well as local, national, and foreign governments.'¹⁵

Principle 7: State duty to protect: The state has a duty to refrain from interfering with human rights and fundamental freedoms and also to ensure the respect of these human rights and fundamental freedoms.¹⁶ The state also has a duty to ensure that there exists an enabling legislative framework and institutional mechanism for civil society organisations and their members to exercise their rights.

Application of international principles on the protection of CSOs to the NGO Act, 2016

The purpose behind the international principles on the protection of CSOs is to create a global standard against which legislation regulating civil society can be measured. As a signatory to various international human rights instruments, Uganda has undertaken to

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Arguably, an organisation advocating for legislative reform can be said to be engaging in an act which is ‘prejudicial to the ... laws of Uganda.’

be held to these standards.¹⁷ The NGO Act, 2016 does not meet all of the requirements as set out in the principles and can therefore be said to be repressive in certain respects.

The Act makes the registration of organisations mandatory while also requiring of organisations to obtain permits in order to operate.¹⁸ The necessity of an operating permit, along with formal registration, is questionable and is viewed as an unnecessary administrative and bureaucratic burden, contrary to Principle 1 of the principles protecting civil society.¹⁹ While it is conceded that organisations will have to forfeit certain benefits if they choose not to register with the Bureau (such as certain tax exemptions), the Act would have achieved a greater measure of compliance with international standards if it did not require of '[a]ny person or group of persons

¹³ Principle 3(3).

¹⁴ Such interference can be justified where 'it is in conformity with the law and necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals, or the protection of the rights and freedoms of others.' Principle 4(4).

¹⁵ Principle 6.

¹⁶ Principle 7(1).

¹⁷ Uganda ratified the ICCPR in 1995 and the CESCR in 1987.

¹⁸ Section 29(1) and 31(1) of the NGO Act, 2016.

¹⁹ International Center for Not-for Profit Law 'ICNL's comments on Uganda's *Non-governmental Organisations Bill, 2015*' available at <http://parliamentwatch.ug/wp-content/uploads/2015/05/ICNL-Comments-on-Ugandas-NGO-Bill-2015.pdf> accessed 18 November 2016.

incorporated as an organization to register with the Bureau.²⁰

In terms of Principle 2, the state may only interfere in the operation of NGOs **'where it is prescribed by law...'** Section 44 of the Act, which places special obligations on NGOs, runs contrary to this principle. The provision is ambiguous and organisations cannot be sure which conduct would fall foul of their obligations. Section 44(c) of the Act requires organisations to 'cooperate' with local councils, DNMCs and SNMCs, yet it is not made plain what such cooperation would entail.²¹ Furthermore, organisations are prohibited from engaging in any act which is 'prejudicial to the security and laws of Uganda' or which is 'prejudicial to the interests of Uganda and the dignity of the people of Uganda'²² These obligations are broad and unspecific. Arguably, an organisation advocating for legislative reform can be said to be engaging in an act which is 'prejudicial to the ... laws of Uganda'. The terms 'interests of Uganda' and 'dignity of the people of Uganda' are undefined and just as much as organisations cannot be sure whether their actions transgress these provisions, the authorities are left with too much discretion to interpret these provisions. Section 44 can easily be used for the achievement of ends beyond the purposes of the Act. In particular, the risk is run that government could use these provisions to clamp down on organisations which promote and protect the rights of persons who engage in conduct which is criminalised under the laws of Uganda, such as Lesbian, Gay, Bisexual and Transgender (LGBT) persons, sex workers and women and health workers involved in carrying out abortions.²³

Civil Society Organisations have the right to be free from state interference in their operation; such interference can only be justified 'where it is prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.'²⁴ Principle 2 provides that the legal regulation of CSOs should be implemented in a 'consistent' manner.²⁵ The

dissolution of CSOs has to be guided by objective criteria and organisations should be free to regulate the internal affairs of the organisation without intrusion.²⁶

Article 41(1) of the Act provides that an inspector may inspect the premises of an organisation at any reasonable time and may request for any information that appears to him or her necessary for the purposes of giving effect to the Act. While this is an interference with the operation of organisations which is authorised by law, the discretion granted to an inspector is very broad. The Act gives room to government officials to inspect the premises and property of organisations on the basis of their own whims²⁷ and contrary to Principle 2 which provides that unwarranted interference with the privacy of an organisation and its members is not permitted.²⁸

Section 30(1)(a) of the Act, which prevents the registration of organisations with 'objectives contrary to the laws of Uganda' implicates Principle 3 protecting the right of freedom of expression of civil society organisations. The Principle makes it clear that ideas which 'offend, shock or disturb' are also worthy of protection of the law. By extension, organisations advocating for unpopular viewpoints, such as the decriminalisation of certain groups and actions which are currently criminalised in Uganda, ought to be afforded expressive space in terms of international law. A legislative provision which is amenable to be used to exclude the operation of organisations expressing offensive or unpopular ideas does not meet the international standards for protecting civil society.

Conclusion

While Principle 4, 5 and 6 of the international principles protecting civil society are not directly implicated by the NGO Act, 2016, the Act fails to meet Principles 1, 2 and 3. Accordingly, Principle 7, which places a duty on states to ensure that there exists an enabling legislative framework and institutional mechanism for civil society organisations to exercise their rights, is also not complied with. The provisions of the NGO Act, 2016 as highlighted in this article ought to be amended or repealed in order to bring the Act in line with international human rights standards and principles.

²⁰ Section 29(1) of the NGO Act, 2016.

²¹ International Center for Not-for Profit Law 'ICNL's comments on Uganda's *Non-governmental Organisations Bill ,2015'* available at <http://parliamentwatch.ug/wp-content/uploads/2015/05/ICNL-Comments-on-Ugandas-NGO-Bill-2015.pdf> accessed 18 November 2016.

²² Section 44(d) and (f).

²³ See generally Human Rights Awareness and Promotion Forum *The NGO Bill 2015 and its Practical and Human Rights Implications on Organisations Working on the Rights of Marginalised Persons* <<http://hrapf.org/?mdocs-file=1584&mdocs-url=false>> accessed 8 August 2016.

²⁴ Principle 2(1)(a).

²⁵ Principle 2(1)(b).

²⁶ Principle 2(1)(c) and 2(2).

²⁷ Human Rights Awareness and Promotion Forum 'The NGO Bill 2015 and its practical and human rights implications on organisations working in the rights of marginalised persons' (2015) 6-7.

²⁸ Principle 2(3).

OPINION

**FOREST FROM TREES:
PLACING THE NON-GOVERNMENTAL
ORGANISATIONS ACT, 2016 IN CONTEXT***Dr. Busingye Kabumba**

HRAPF consultation with civil society leaders and other stakeholders on its position paper on the NGO Act.

As a number of contributions in this volume already address the content of the Non-Governmental Organisations Act (hereinafter 'the NGO Act'),¹ this contribution restricts itself to a consideration of the broader implications of the Bill in terms of the country's governance architecture.

As a first point, the major thrust of the Act is to establish a dense regulatory framework, under whose broad, discretionary and subjective rules even the most compliant organisation could be warned, sanctioned or ultimately deregistered. This framework includes: the establishment of a thick bureaucracy, with a National Bureau for NGOs (Sections 5 – 28) supported by

branch offices (Section 19), District NGO Monitoring Committees (Section 20) and Subcounty NGO Monitoring Committees (Section 21) among others; provisions for registration and incorporation of NGOs (Sections 29 – 35); reporting obligations (Section 39) and powers to inspect premises (Section 41). Taken as a whole, this heavy oversight looms over and has a chilling effect upon efforts at citizen organisation and engagement. For instance, to take but one example, in terms of section 44 of the Act no organisation may carry out activities in any part of the country unless it has received the approval of the District NGO Monitoring Committee and Local Government of that area and has signed a memorandum of understanding with the Local Government to that effect. The essence of this provision is that, in addition to the requirement to register with the NGO Bureau, an NGO wishing to operate throughout Uganda would be required to seek and obtain the permission of 112 District NGO Monitoring Committees and as many Local Governments. The difficulty of such an undertaking, even for the better-resourced NGOs, cannot be over-exaggerated. Indeed, this and similar provisions in the Act are patently inconsistent with the constitutional guarantees of the freedoms of association and assembly (Article 29) and of citizen participation in

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¹ The Act was assented to by the President on 30th January 2016.



...the whole gamut of laws increasingly used to restrict not only civic space but human rights generally in Uganda.

the affairs of government (Article 38); in so far as it would be difficult, if not impossible, to understand them as being acceptable and demonstrably justifiable restrictions to those freedoms (as required under Article 43).²

Perhaps more importantly, it is critical to understand the NGO Act as being only one part of a much broader framework of 'legalised repression', in which law and its institutions constrain rather than safeguard liberties. The Act constitutes the continuation of a trend of illiberal legislative amendments and enactments, all evidently having as their object the restriction of liberties rather than the promotion of human rights or good governance. Examples of enactments in this tradition include the Regulation of Interception of Communications Act (2010); the Communication Regulatory Act (2012); the Public Order Management

Act (2013); the Anti-Money Laundering Act (2014) and the (subsequently nullified) Anti-Homosexuality Act (2014). These Acts establish a rigorous regime of surveillance and intrusion into the daily lives of citizens and, taken as a whole, diminish the human rights of Ugandans under the guises of 'public order', 'public security' and other similarly benign grounds. The Public Order Management Act, for instance, allows the Police to restrict assemblies that may unduly disrupt traffic or the conduct of business. In effect, the Act is a reincarnation of restrictions (under the then section 32(2) of the Police Act), which the Constitutional Court previously found unconstitutional in the case of *Muwanga Kivumbi v Attorney General*.³ It is in this context that the 'special obligations' under section 44 (d) of the NGO Act 2016 are to be understood. Under that provision, NGOs must not engage in any act which is prejudicial to the 'security' and to the 'laws of Uganda'. Similarly, under section 30(1)(a) of the Act, one of the grounds for refusal of registration of an NGO is where its objectives, as specified in its constitution, 'are in contravention of the laws of Uganda'. These apparently benign words in essence incorporate into the NGO regulatory regime, the whole gamut of laws increasingly used to restrict not only civic space but human rights generally in Uganda. It is for this reason that it is critical, in assessing the NGO Act, not to lose sight of the bigger forest of 'legal repression' of which it is but one tree. As Professor Oloka Onyango has aptly observed:

We live in a time of legal gymnastics, a time when the law is being openly used as a mechanism to consolidate and perpetuate dictatorship and autocracy and where there is a need for lawyers, activists and intellectuals of all shades of political opinion to come together and speak out against this legal autocracy. We are witnessing the legalization of mob injustice; the granting of a licence to do anything to people who have done nothing but express their dissenting opinions and their different sexuality. The [laws] represent the very essence of the problem we are confronted with in Uganda today, namely growing impunity, autocracy and neglect of the Rule of Law accompanied by increasing nonchalance on the part of the Public.⁴

Similarly, in *Erias Lukwago v The Attorney General & 3 Others*,⁵ one of the numerous decisions arising out of a political struggle waged by the President, the then

² Editor's Note: The author's stance differs from that of the Constitutional Court of Uganda which recently upheld similar provisions as these. The provisions appeared in the regulations to the previous NGO Act and required of organisation not to make any direct contact with people in their area of operation without giving 7 days notice in writing to the local councils and Resident District Commissioners and which prevented organisations from operating beyond the area in which it is permitted to operate. The Court held that these provisions are meant to protect the public and the public interest and that they do not infringe upon organisations' freedom of association. See *Human Rights Network and Others v Attorney General*, Constitutional Petition 5 of 2009. According to the Court's stance on these provisions, a constitutional challenge to section 44(a) and (b), which requires the an organisation to get the approval of DNMCs and local government in order to carry out activities, would not be successful.

³ Constitutional Petition No. 9 of 2005.

⁴ See J Oloka-Onyango 'Of mice and farmers' wives: unveiling the broader picture behind recent legislation in Uganda', paper presented at HURIPEDC Public Dialogue held on March 25, 2014, available at <<http://law.mak.ac.ug/article/mice-and-farmers-wives>> accessed 1 October 2016.

⁵ Misc. Application. No 94 of 2014.



Members of civil society calling on government to investigate break-ins at NGOs' offices shortly after the break-in at HRAPF offices.

Minister for the Presidency, and the Lord Mayor for control of Kampala Capital City Authority, Justice Lydia Mugambe-Ssali found it necessary to remark upon the link between laws (and acts done under them) on the one hand, and a broader system of repression through such laws:

With all the due respect, this big elephant in the room in the name of *rule by law*, in the circumstances before me, appears to have blinded all the respondents in the application before me. Resultantly, they disregarded respect for the rule of law through their utter disregard of the Court Order and ruling of 25th and 28th November 2013 while acknowledging that they received or otherwise know it exists. That, with reckless abandon and effrontery, they/or their agents continue to do the same in whatever manner they cloth it, in my view, is blasphemous and deplorable given they are all in one way or another agents or servants of government – which is mandated to ensure such respect for the rule of law. [Emphasis added]

This reality – of 'legal gymnastics' and 'rule by law' – calls for a new approach by citizens and civil society actors, if the descent towards even more bad governance is to be halted. Importantly

it requires an appreciation of the limitations to exclusively or traditionally lawyerly responses to repressive law. Although a role will remain for public interest litigation, legal aid and other classic forms of legal organising, other forms of non-violent protest should be considered, which engage with a broader, and arguably more effective legitimacy-based discourse. More and more, NGOs and civil society in its broadest sense should be able to challenge not just the legality but also the *legitimacy* of law, especially where, as is increasingly the case – the language of legality (including that of constitutionalism)⁶ is being appropriated by actors bent on illiberal forms of governance.

⁶ See, for instance, a recent petition lodged in the Constitutional Court, challenging the mandatory retirement of a number of public servants, including the President, as 'discriminatory' - <<http://observer.ug/news-headlines/46773-age-limit-saga-goes-to-court>> It is not difficult to trace the link between this petition and political efforts at doing away with the mandatory retirement age for the President, which is the remaining impediment (following the removal of term limits in 2005) to a life presidency in Uganda.

COMMENTARY

**REGULATION OF NGO'S IN KENYA AND UGANDA:
A NORMATIVE AND INSTITUTIONAL ENFORCEMENT
COMPARATIVE PROBE**

Duncan Okubasu*

**Introduction**

This assessment concerns itself with illegitimate aims at regulation of Non-Governmental Organisations (NGOs) in Kenya and Uganda. It does not consider the legitimate objectives, though such objectives certainly exist, but insincere ones, given the impact of such regulation on NGOs. NGOs broadly conceived as part of the civil society stand in the place of a disempowered citizenry to either call for accountability relating to governance or to support the public in one way or the other.¹ Because of this gap they seek to fill, the relationship between the state and NGOs in East Africa is one defined by mistrust and, at times, antagonism.²

The state has the legitimate power to create laws and policies and it also has the instruments of enforcement of those laws and policies. Desolately, law and policies - history has shown - do not always lend themselves to what is good.³ At times they are efficacious instruments of oppression and persecution.⁴ Consequently, legal formulations on the relationship between the state and NGOs must be seen as defining the efficacy of the working of NGOs and also reflecting the nature of the relationship between the two entities.

NGOs in Kenya and Uganda have faced notorious antagonisms such as closure or threat thereof among other incidents in the recent past.⁵ This review is a reflection on the distinctions in legal framework (on select themes) under which NGO's operate. Uganda has recently enacted the Non-Governmental Organisations Act 2016. Kenya enacted a new

law relating to NGOs in 2013, the Public Benefit's Organizations Act, but it has not come into force despite presidential assent and demands, including litigation, to bring it into force.⁶ There have also been divisive attempts at amending the new law before it is operationalised.⁷ This analysis considers the position of Kenya law as it stands – with the new NGO Act not yet in operation. It commences by giving a constitutional context under which NGOs operate in Kenya and Uganda.

Constitutional contexts

The foundational basis (legal) for NGOs is the freedom of association.⁸ Both the constitutions of Kenya and Uganda provide for the right to associate. Persons who wish to form an NGO are understood to be pursuing and exercising their freedom of association. If a liberal constitutional framework exists, formation and operation of NGOs becomes a less obstructed venture.⁹ The Constitution of Uganda was enacted in 1995, while Kenya's latest Constitution was enacted in 2010. The restrictions on the freedom of association as a political right generally, were more proscriptive around 1995 in Uganda than they are in 2010 Kenya.¹⁰ These contexts reflect different formulations that lay the foundation for exercising the freedom of association in relation to NGOs.

The freedom of association is expressed as a free-standing right in the Constitution of Kenya while it is clustered with other 'political' rights in the

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¹ On the role of NGOs see MB Alexander 'The Critical Role of Non-Governmental Organizations in Transitional Justice: A Case Study of Guatemala' (1999) 4:477 *UCLA Journal of International Law and Foreign Affairs*; MD Varelac 'The Role of Non-Governmental Organizations in International Environmental Law' (March 21, 2013). Available at SSRN: <<http://ssrn.com/abstract=2237677>>.

² See M Mutua 'Human Rights NGOs in East Africa: Defining the Challenge' in M Mutua, *Human Rights NGOs in East Africa: Political and Normative Tensions* (2009) 13.

³ NS Timasheff *An Introduction to the Sociology of Law* (2009).

⁴ As above.

⁵ See Mutua (n 2 above).

⁶ I Houghton, 'The Real Issues over Changes to PBO Act' *The Star* 9 March 2015 available at <<http://allafrica.com/stories/201503090976.html>> Accessed 30 June 2016.

⁷ S Churchill, 'Why NGOs are jittery over Public Benefits Organizations Act' *Pambazuka News* 12 June 2013 available at <<http://www.pambazuka.org/taxonomy/term/8557>> Accessed on 30 June 2016.

⁸ JE Knott, *Freedom of Association: A Study of the Role of International Non-Governmental Organizations in the Development Process of Emerging Countries* Union of International Associations (1962).

⁹ N Bullain, 'Creating and Enabling Environment in Eastern and Central Europe', in Y Li *NGOs in China and Europe: Comparisons and Contrasts* (2016) 185.

¹⁰ See 'Report of the Commission of Inquiry into Violations of Human Rights: verbatim record of proceedings' Volume 13 (1995).

Constitution of Uganda.¹¹ In Uganda, the freedom is clustered with the freedom of conscience, expression, movement, religion and assembly - classically viewed as political rights.¹² These rights have certainly been a subject of much political curbing in sub-Saharan Africa and Uganda has not been the exception.¹³ More specifically, political parties and NGOs obtain their constitutional foundation from this article and a political strategy (directed at constitutional reform) to suppress opposition would have a similar effect on legal foundations of NGOs in the case of Uganda. Besides, the freedom of association in Uganda is subject to the limitation clause under article 43 which in turn defers to an inarticulate conception known as 'public interest.' Public interest is not defined save the Constitution highlights three parameters of what is not public interest - leaving a broad spectrum for refusal to observe, recognise, promote, protect and respect the freedom of association.

Kenya's constitutional creations are different. First, political parties have been torn from the freedom of association as their legal foundation since the right to freedom of association is not clustered with other political rights.¹⁴ This has perhaps depoliticised the freedom of association. There is a free-standing right to make political choices which include the right to form political parties.¹⁵ Unstitching political parties from the freedom of association has arguably had a neutralising effect on the process of formation of NGOs. There exists a free-standing freedom of association under article 36 of the Constitution which cautions first, that if legislation requires registration of any kind, that registration cannot be withheld or withdrawn unreasonably and second that if that is to occur, the right to a fair hearing must be afforded.¹⁶ Being part of the Bill of Rights, individuals and organisations have the right to approach the High Court asking for redress in case of a registration concern - which is not redressed only through statute but also through a constitutional promulgation.¹⁷

Constitutional frameworks are important because they supply a normative basis for review of constitutionality of state action relating to registration and de-registration. In Kenya in 2015, the High Court of Kenya made a useful import of the constitutional framework in determining that a rejection of a registration of an NGO (disclosed as furthering LGBTI

rights) was unconstitutional.¹⁸ The Court observed:

As we understand the Board's position to be, it does not accept the names that the petitioner proposed for registration of his organization because the name(s) represents groups whose interests the Board takes the view should not be accorded the right to associate on the same level as others. However, in a representative democracy, and by the very act of adopting and accepting the Constitution, the State is restricted from determining which convictions and moral judgments are tolerable. The Constitution and the right to associate are not selective. The right to associate is a right that is guaranteed to, and applies, to everyone. As submitted by the petitioner, it does not matter if the views of certain groups or related associations are unpopular or unacceptable to certain persons outside those groups or members of other groups. If only people with views that are popular are allowed to associate with others, then the room within which to have a rich dialogue and disagree with government and others in society would be thereby limited.

In addition, the Constitution and the right of freedom of association applies regardless of the popularity of the objects of the association.¹⁹

Legislative contexts

In both Uganda and Kenya, the primary instrument defining the interaction between the state and NGOs is legislation. Save for general constitutional recognition of the right to associate, there is no explicit mention of NGOs in either constitution. The word 'association' in the case of Kenya and the word 'civic organizations' in the case of Uganda do feature in their respective constitutions.²⁰ The relationship between the state and NGOs is thus spelt out in statute. In the case of Kenya, the statute is known as the Non-Governmental Organizations Coordination Act, 1990. As observed though, a new Act was promulgated in 2013 but it has not come into force yet. In Uganda, the principal legislation is the Non-Governmental Organisations Act, 2016.

In this reflection, legislation is reviewed under three broad themes: (a) registration requirements; (b) interference with operations; and (c) redress in the event of an unlawful interference by regulatory

¹¹ Constitution of Kenya, art. 36; Constitution of Uganda art. 29.

¹² As above.

¹³ BP Ambrose, *Democratization and the Protection of Human Rights in Africa: Problems and Prospects* (1995) 33.

¹⁴ Constitution of Kenya 2010, art. 38.

¹⁵ As above.

¹⁶ As above art. 36(3)(a) and (b).

¹⁷ Constitution of Kenya, art. 23.

¹⁸ *Eric Gitari v Non-Governmental Organisations Co-ordination Board & 4 others* [2015] eKLR, available at <<http://kenyalaw.org/caselaw/cases/view/108412/>> accessed on 30 June 2016.

¹⁹ As above at para 88 and 89.

²⁰ Constitution of Kenya, art. 36; Constitution of Uganda art. 29.



HRAPF creating awareness on the provisions of the NGO Act to marginalised groups after its passing.

authorities. In reviewing the statutory framework, a focus is placed on the standards set out in the various legislations, enforcement mechanism of those standards and structural as well as institutional features that have the potential to influence the creation of an environment that can pave the way for unfitting control.

Registration burdens

Before an NGO can legally operate in Kenya or Uganda, it must be registered. As hinted, there are legitimate reasons why NGOs should be registered, the obvious one being to afford the organisation a juristic personality with the ability to enter into contracts and sue and be sued. This is the formal and uncontroversial reason why NGOs need to be registered. The 'substantive' and problematic reasons why NGOs should be registered are firstly, that the state must protect the public at whose instance they seek to work from exploitation and secondly, that the use of NGOs as internal objects of external demeaning intermeddling into the social, economic and political affairs of a sovereign state has to be guarded against.²¹ This second concern appears to be a decisive factor that fashion disingenuous control mechanisms directed at NGOs at the entry and operational level.

Kenya's Constitution of 2010 appears to be alive to the possibility that the state may use legal requirements to prevent NGOs from operating, hence the proscription of unreasonable denial of registration

or its withdrawal.²² The requirements of registration in the case of a proposed NGO in Uganda are fairly compounded and multi-layered. This includes the requirement for governmental recommendation²³ and the need for the renewal of the NGO permit.²⁴

Once submitted, the grounds for refusal of registration include, in the case of Kenya, that the activities must not be in contravention of 'national interest',²⁵ the information must not be misleading.²⁶ The Council can also recommend that an NGO should not be registered.²⁷ In the case of Uganda, registration could be declined where the proposed activities are in contravention of the laws of Uganda, if it does not conform to the requirements of the Act or if false or misleading information has been given to the Bureau.²⁸

Both Uganda's and Kenya's registration regimes debatably disallow registration of an organisation that seeks to foster law reform.²⁹ It is possible to construe the activities of an NGO to be in 'contravention of laws' of Kenya or Uganda if what the NGO seeks to

²¹ Generally see R Christie, *Peace building and NGOs: State-civil Society Interactions* (2013).

²² n 15 above.

²³ International Center for Not-for Profit Law (ICNL) NGO Law Monitor: Uganda; available at <http://www.icnl.org/research/monitor/uganda.html> accessed 30 June 2016.

²⁴ NGO Act, 2016 (Uganda) Part VIII.

²⁵ Sec 14 NGO Coordination Act, 1990 (Kenya).

²⁶ As above.

²⁷ As above.

²⁸ Sec 30 of the NGO Act, 2016 (Uganda).

²⁹ See Sec 30 of the NGO Act, 2016 (Uganda) and sec 14 of the NGO Coordination Act, 1990 (Kenya) on the requirements that the objectives must not be in contravention of laws.

do is to advocate for change of law towards a cause that is banned. The distinguishing feature of these two regimes is the requirement for 'reasonability' which restricts the basis for which an NGO could be denied registration in the case of Kenya. Further, an NGO in Uganda is required under section 44 of the Act to obtain approvals of local governments and to sign a memorandum of understanding in order to operate in particular areas. In the case of Kenya, only an indication in the application for registration is required showing the areas where it proposes to operate. The effect of registration in the case of Kenya is that a certificate of registration is 'conclusive evidence of authority to operate throughout Kenya or such parts of the country as are specified.'³⁰

In Uganda, upon registration, an NGO is required to obtain a permit.³¹ This two-tier formal requirement to operate, the first being registration with the Bureau and second being the requirement for a permit, are onerous entrance and operational criteria. Comparatively, a greater burden is thus imposed on Ugandan NGOs in terms of registration requirements.

Operational superintendence

Both regimes lend themselves to some institutional and normative financial and general operational interdicts. These interdicts are less exacting in the case of Kenya. There is a requirement on the part of NGOs registered in Kenya to supply an annual report.³² This report is essentially a declaration of financial probity of NGOs and requires a disclosure of incomes and expenditure.

Other than financial rectitude demands, Uganda's NGO Act has a requirement for 'inspection'.³³ An inspector (absent in Kenya) is under a duty to investigate the affairs of any NGO and, subject to the Powers of the Director of Public Prosecutions, prosecute anyone for violations of the Act.³⁴ Section 44 of Uganda's Act (titled 'special obligations') is wrought with hefty normative prohibitions that provide an efficacious tool for interference with the working of an NGO by the Inspector.

Other than approval and cooperation demands, the Act requires that NGOs should not engage in any act which is prejudicial to 'the interest of Uganda or the dignity of the people of Uganda' or that is prejudicial to 'the security and laws of Uganda.' The presence of nebulous vetoes such as the demand that an NGO

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There are a legion of legal barriers to registration and operation as well as institutional embargoes that provide room for governmental bullying of NGOs in Uganda.

should not prejudice the dignity of the people of Uganda gives the 'inspector' the wherewithal to harass and evict an NGO from operation let alone prejudicing the operations of an NGO.³⁵ Such a provision, as hinted, does not exist in Kenya's law (except mentions of national security and laws) and even if it did, would have to be subjected to the 'reasonable' standards set out in the Constitution if they are to form a basis for withdrawal of a registration certificate.

Besides the inspection and normative basis for inspection, the powers of the Bureau in Uganda are vast and appear to invite censorship. Under section 7 and 8, for instance, the Bureau has the powers to summon and discipline organisations. This implies that it has policy and regulatory setting roles as well as the role of implementing and enforcing compliance. In summoning and disciplining, the Bureau has the powers to warn, blacklist, expose suspend or revoke the permit given to an organisation.³⁶ The powers of Kenya's board appear to be fundamentally curtailed.

³⁰ Sec 12 NGO Coordination Act, 1990 (Kenya).

³¹ Sec 31 NGO Act, 2016 (Uganda).

³² Non-Governmental Organizations Co-Ordination Regulations, 1992 (Regulation 24) (Kenya).

³³ Sec 41 NGO Act, 2016 (Uganda).

³⁴ As above.

³⁵ See Human Rights Watch, 'Uganda: Reject Vague Crimes in Proposed Law Proposed Act Violates Free Association Rights' (2015) available at <<https://www.hrw.org/news/2015/12/13/uganda-reject-vague-crimes-proposed-law>> accessed on 30 June 2016.

³⁶ Sec 7 of the NGO Act, 2016 (Uganda).

In fact, while inspection also exists in Kenya's Act, the inspection that is envisaged by the Act is that by members of the public.

Other than the regulatory bans set for violation of the provisions of the Act, both Kenya's and Uganda's NGO Acts also creates offences with punishments. Under section 40(1) of Uganda's Act, the failure or refusal to provide the Bureau with requested information is an offence, providing false or incomplete information for the purposes of obtaining a permit as well as operating contrary to the conditions specified in the permit or engaging in any activity prohibited by the Act. Under section 40 of Uganda's Act, a fine of seventy two currency points (about USD 450) or an imprisonment of three years is imposed for the breach of section 40(1).

In Kenya, there are offences for breach of the Act and offences for breach of the regulations. An offence relating to operating an NGO without registration attracts, 'a fine not exceeding fifty thousand shillings or to an imprisonment for a term not exceeding eighteen months or to both.'³⁷ If one falsifies information, one could be imprisoned for three years or pay a fine of two hundred thousand shillings or both, as well as being disbarred from holding an office in an NGO for ten years;³⁸ breach of regulations attract 'a fine not exceeding six thousand shillings, or in the case of an officer, to imprisonment for a term not exceeding six months or to both.'³⁹

Self-regulation

Uganda's Act appears to create a kind of a façade. Under its section 4, read with the preamble, it announces a mission of creating an environment for self-regulation. Indeed, an entire part of the Act devotes itself to the question of self-regulation and permits two or more organisations to form a self-regulating body. The term 'self-regulation' is not defined in the case of Uganda. In the case of Kenya, self-regulation is defined under the regulations as 'the exercise of autonomy, observance of stability and the practice of adaptability'. However, a keen reading of Uganda's Act as well as the overall regulatory mechanisms bespeaks self-regulation as a formal and not functional prescription of the Act.

Redress mechanism

In the event that an NGO suffers a rejection of its application or its affairs are for one reason or another brought to a halt, what redress mechanism does it have? In Uganda, a person aggrieved by the decision of the subcounty Non-Governmental Monitoring Committee has a duty to appeal to the

District Non-governmental Monitoring Committee and then to the Bureau.⁴⁰ A decision of the Bureau can in turn be appealed against to the Adjudication Committee which is appointed by the Minister.⁴¹ There is then the appellate mechanism to the High Court from a decision of the Bureau.⁴² The scope of what constitutes a dispute is however covertly narrow. Persons aggrieved by decisions of the Minister or Inspector do not have the liberty to make use of the mechanism of redress provided for under the Act, it would appear. Under Kenya's 1990 Act, a person aggrieved by a decision of the Board could first appeal to the Minister and then the High Court.⁴³ The proposed act in Kenya does establish a Tribunal and a person aggrieved by a decision of the Authority is required to first apply for a review from the Authority and then an appeal to the Tribunal.⁴⁴ The distinguishing aspect of Kenya's proposed Tribunal as opposed to Uganda's Adjudication Committee is that members of the Tribunal are appointed by the Chief Justice with the Approval of the National Assembly.⁴⁵ In the case of Uganda members of the committee are appointed by the minister.⁴⁶ The former creates a dispute resolution environment that is potentially independent; the latter does not.

Conclusion

The foregoing analysis has sought to demonstrate that the legal environments under which NGOs operate in Kenya and Uganda are hostile. The hostility is however in variant degrees because of the different normative and institutional enforcement standards and criterions. Even in the absence of the new legislation in Kenya that endeavours to attend to the limitations in the Non-Governmental Organisations Coordination's Act, the legal environment under which NGOs operate in Kenya is less strenuous than that which regulates Uganda. There are a legion of legal barriers to registration and operation as well as institutional embargoes that provide room for governmental bullying of NGOs in Uganda. If the freedom of association is to have practical meaning there is need for law reform to eliminate normative, institutional and structural proscriptions relating to registration and operation in Uganda. Kenya's 1991 Act is nonetheless outdated and the 2013 Act should be brought into force with necessary amendments.

³⁷ Sec 22 NGO Coordination Act, 1990 (Kenya).

³⁸ Sec 33 NGO Coordination Act, 1990 (Kenya).

³⁹ Regulation 32 (Kenya).

⁴⁰ Sec 52 NGO Act, 2016 (Uganda).

⁴¹ Sec 53 NGO Act, 2016 (Uganda).

⁴² Sec 53(5) NGO Act, 2016 (Uganda).

⁴³ Sec 19 NGO Coordination Act, 1990 (Kenya).

⁴⁴ Part V, Public Benefits Organisations Act, 2013 (Kenya).

⁴⁵ Sec 50, Public Benefits Organisations Act, 2013 (Kenya).

⁴⁶ Sec 35 NGO Act, 2016 (Uganda).

OPINION

THE NGO ACT AND HUMAN DEVELOPMENT IN UGANDA

Anthony Mutimba*



The world over, NGOs are used as means of transforming society. People with common goals and objectives come together to associate and deliver means of uplifting their societies. NGOs have done a great job in mobilising and organising communities for a common good. Especially in the context of a divided society, this mobilisation is essential for complementing government efforts for social development and transformation.

According to the United Nations, Uganda is still listed among the Least Developed Countries.¹ The inability of our society to mobilise and work together is largely responsible for the low level of development in the country. NGOs thus have an essential part to play in stimulating cohesion and cooperation.

The current low level of development is rooted in the post-colonial history of the country. In the 1960s, Uganda was united for a common cause. Citizens wanted independence and all their efforts were geared toward becoming independent. The colonialists used the approach of divide and rule, which the citizens defeated to attain independence. After independence, those who received power from the colonialists did not disband the then prevailing political system. They instead inherited it and made it their own to guarantee their long stay in power. The country became divided majorly based on ethnical groupings. This led to high-level of deaths and displacement of people. As a result, productivity was low and the economy greatly suffered. The would be productive Ugandans were forced into exile while many remained internally displaced.

These events illustrated a link between division and marginalisation within a society. Marginalisation is defined as the process by which some people are excluded from participation in processes and activities of the community, which in turn leaves them disadvantaged. The United Nations Education and Scientific Cooperation Organisation (UNESCO) defines it as occurring 'when people are systematically

excluded from meaningful participation in economic, social, political, cultural and other forms of human activity in their communities and thus are denied the opportunity to fulfil themselves as human beings.'

Since the early days of independence, the basis for division and marginalisation in Ugandan society has changed face. Marginalisation suffered on ethnic grounds is much less overt than marginalisation suffered on the basis of being a so-called social deviant. The enactment of laws like the annulled Anti Homosexual Act, 2014 as well as the retention of the offence against morality which criminalises consensual same-sex conduct in the Penal Code,² point to this kind of nationalised and institutionalised marginalisation.

In 2011, Rev. Fr. Simon Lokodo, the State Minister for Ethics and Integrity dispersed a training of LGBTI persons which was aimed at equipping the participants with leadership skills for social transformation of their communities. All efforts to explain to the Minister the objectives and purpose of the training fell on a deaf ear. He rendered it illegal because the trainees belonged to a marginalised group, which in his view was illegal and socially unacceptable to the majority of Ugandans. In his view, he was acting in the public interest and protecting the dignity of Ugandans. His actions were later ratified by the High Court in the case of *Jacqueline Kasha & Others vs. Attorney General & Another*.³ Such actions that are unjust but backed by the law are a huge obstacle to social organising of the marginalised groups. In the end, such groups can never engage in development activities because they will always find themselves on the wrong side of the law. In most cases, it is not about their actions and deeds but their 'being' and categorisation.

In January 2016, President Yoweri Museveni assented to the Non-Governmental Organisations Act which repealed and replaced the Non-Governmental Organisations Act Cap 113. The Act intends to provide a conducive and enabling environment for Non-Governmental Organisations (NGOs), to promote their capacity and mutual partnership with Government, and to coordinate and monitor their activities among other objectives. The Act thus shows

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¹ United Nations Committee for Development Policy 'List of least developed countries' available at <http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf> accessed on 2 December 2016.

² Sec 145 of the Penal Code Act.

³ High Court Miscellaneous Cause No 33 of 2012.

great promise in ensuring that NGOs are able to play their role of bringing together a divided society and enhancing development, one grouping or community at a time. Ideally, the Act could have had a major impact in enabling marginalised groups to associate. However, although efforts were made by different stakeholders to ensure that the law serves its major purpose, some provisions pose a threat to the operation of NGOs especially those working on issues considered to be in contravention of the law.⁴

Such laws make particular sections of the population illegal, marginalised and unable to associate. Section 44(f) of the NGO Act prohibits organisations from engaging in acts which are prejudicial to the security and laws of Uganda; the interests of Uganda and the dignity of its people.⁵ This provision essentially takes away the right of marginalised groups like sexual minorities to associate. Because the majority disapprove of their ways of life and they are seen as a threat to the dignity of Ugandans, their rights to associate and participate in economic activities using registered NGOs as means are disenfranchised under the laws.

This limitation on the right of minority groups to come together to address issues that affect them stifles their social transformation and development. By taking away the rights of marginalised groups to associate, the NGO Act is in reality implying that they are not human and are therefore not fit to participate in the process of economic development of the country. In so doing, those sections of the population delay the process of economic and human development of the entire society and country. Such groups become largely unproductive and in the end they lower the country's indicators of economic growth and development indicators like the per capita income and Gross National Product per capita. Those indicators keep the country on the list of Least Developed Countries. It is also important to note that economic development without human development is not development at all. We can have the good infrastructure but if we continue to alienate particular groups from participating in this development, society may not own the development and it will never be sustainable.

Unfortunately, many NGOs in Uganda have not paid enough attention to the provisions of

the Act impacting upon marginalised groups since they do not yet impact on their activities. They have opted to accept the Act in its entirety with some arguing that no efforts should be made to upset the status quo. This brings to life Martin Niemöller's popular poem:

'First they came for the Socialists, and I did not speak out— Because I was not a Socialist. Then they came for the Trade Unionists, and I did not speak out— Because I was not a Trade Unionist. Then they came for the Jews, and I did not speak out— Because I was not a Jew. Then they came for me—and there was no one left to speak for me.'

The majority of Ugandans seem blind to the fact that curtailing civil society space for a small group poses a bigger threat to social, economic, political and human development of the country. If Uganda is to attain a sustainable and balanced economic, social and human development, the rights of all Ugandans should be respected and observed. The state has the duty to protect rights of all persons in Uganda without discrimination. The test of majority approval is in reality the basis for marginalisation. If the state nationalises such discrimination, it's like acknowledging that a particular section of the citizens are not worth being human beings and therefore should not participate in the development of the country. Provisions like Section 44(f) of the NGO Act, 2016 which restrict civil society space not only defeat the purpose of legislation but also adversely impact of civil organising which is a cornerstone of economic transformation. Sexual minorities are already victims of marginalisation, discrimination and exclusion. The government should protect them and ensure that they are also productively involved in Uganda's development rather than enacting laws that marginalise them further. If not, the social development of the entire country will continue to suffer.



HRAPF consultation with marginalised groups on the development of regulations to the NGO Act 2016.

⁴ Sec 30 (1)(a) of the NGO Act 2016.

⁵ Sec 44 (f) of the NGO Act 2016.

CASE COMMENTARY

AN ANALYSIS OF THE CONSTITUTIONAL COURT'S JUDGMENT IN THE CASE OF HURINET & ORS V ATTORNEY GENERAL AND ITS EFFECT ON FUTURE CHALLENGES OF THE NGO LAW IN UGANDA

Joaninne Nanyange*



Introduction

The Case of *Human Rights Network and 7 Others v Attorney General*¹ (herein after 'HURINET case'), was filed in the Constitutional Court by eight civil society organisations: the Human Rights Network (HURINET); the Anti-Corruption Coalition Uganda (ACCU); the Advocates Coalition for Development and Environment (ACODE); the Development Network for Indigenous Voluntary Associations (DENIVA); the NGO Forum; the Uganda Women's Network (UWONET); the Uganda Land Alliance; and the Environment Alert. The case challenged certain provisions of the NGO Act Cap 113 as amended, and the Regulations made thereunder. Judgment in the case was delivered on 4th April 2016. In the meantime, a new NGO Act had come into force on 14th March 2016 and it repealed the Act that was challenged in this case. It however saved the Regulations until new ones repealing them are made.² The new Regulations are in the process of being finalised. Some of the provisions in the new Act are similar to the ones that were challenged in this case. The essence of this analysis therefore is to see how the judgment affects any future attempts to challenge such similar provisions in the new NGO Act.

Background

The Non-Government Organisations Registration Act Cap 113 was enacted in 1989 to provide for the registration of Non-Governmental Organisations and to establish a Board for these purposes and for other connected matters.³ The Act was amended in 2006 to among others provide for: the monitoring of Non-Governmental Organisations (NGOs);⁴ mandatory registration of NGOs;⁵ commission of offences by NGOs;⁶ exemption of organisations;⁷ and constitution

of the NGO Board.⁸ The Regulations to the Act were enacted in 2009. They provided for different issues like requirements needed for registration of NGOs,⁹ issuance¹⁰ and renewal of permits,¹¹ special obligations of organisations,¹² dissolution of organisations,¹³ among other provisions. The case in particular challenged sections 2(1),¹⁴ 8(a),¹⁵ (b),¹⁶ (c)¹⁷ of the NGO Act, and Regulations 5,¹⁸ 7,¹⁹ 8,²⁰ 13,²¹ and 17²² of the Regulations to the Act. The petitioners argued that the above-mentioned sections and regulations contravened article 29(1)(c),²³ (e),²⁴ and article 22 of the International Covenant on Civil and Political Rights which provides for the freedom of association and the Treaty for the Establishment of the East African Community.

⁸ NGO Act (n 2 above) sec 6.

⁹ Non-Governmental Organisations Registration Regulations 2009, Regulation 5.

¹⁰ NGO Regulations (n 7 above) Regulation 7.

¹¹ NGO Regulations (n 7 above) Regulation 8.

¹² NGO Regulations (n 7 above) Regulation 13.

¹³ NGO Regulations (n 7 above) Regulation 17.

¹⁴ Mandatory registration.

¹⁵ Powers of the board to approve or reject applications for registration.

¹⁶ Powers to grant or revoke certificates of registration.

¹⁷ Powers to do all such things as are incidental to the proper carrying out of its proper functions.

¹⁸ Requirements for registration.

¹⁹ Issuance of permits.

²⁰ Renewal of permits.

²¹ Special obligations of organisations.

²² Dissolution of organisations.

²³ Right to freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with the constitution.

²⁴ Right to freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

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¹ Constitutional Petition 5 of 2009.

² NGO Act, 2016, section 56(2).

³ Long Title of the Act.

⁴ Non-Governmental Organisations Registration (Amendment) Act (NGO Act), 2006 Sec 2.

⁵ NGO Act (n 2 above) sec 4.

⁶ NGO Act (n 2 above) sec 4(e).

⁷ NGO Act (n 2 above) sec 5.

The Petitioners' Arguments

The petitioners argued that the legal framework for NGOs should be enabling rather than restrictive of NGOs. They argued that the requirement for compulsory registration does not enhance the guarantees of freedom of association provided for under the Constitution, which freedom can be enjoyed informally; that the requirements by the Regulations to present NGO budgets and workplans as a condition preceding to the registration complicates the process of registration rather than enabling the work of civil society organisations; that the power given to the NGO Board to approve renewal of permits annually and to refuse or approve applications for registration and to put conditions on issuance of permits affects the independence of NGOs; and that the requirement for annual renewal of permits presents a burdensome encumbrance on NGOs instead of enabling their operation.

Respondents' Arguments

The Respondent argued that the sections of the Act and the Regulations complained of did not contravene the said articles of the Constitution. That rather they are a necessary limitation envisaged under Article 43 of the Constitution in a free and democratic society. The respondent contended that various NGOs have and continue to mislead vulnerable populations like children, women and widows and therefore need to be regulated and their activities monitored to protect the rights of others that these NGOs deal with.

Issues for determination

The main issue left for the court's determination therefore was whether the impugned sections of the Act and the Regulations thereunder contravene the said articles of the Constitution.

The court's decision

The court gave judgment in favour of the Respondent, as it held that the provisions of the NGO Act and the Regulations did not contravene the Constitution. That since freedom of association is not absolute and can be limited in accordance with Article 43, the sections of the Act and the Regulations were necessary for the good governance of the nation. That as a matter of fact, if no regulation was put in place to govern the operations of NGOs in particular, and other organisations in general, this would be against the values, norms and aspirations of the people of Uganda. It was further added that there is need for NGOs to be registered to ensure that their objectives do not contravene the Constitution. The court pointed out that registration was not only peculiar to NGOs as it applies to other people and other organisations in order to give their activities credence and legal status. It was concluded that the restrictions to the freedom of association are healthy and necessary for the protection of the public and public interest in a democratic society.

Impact of the judgment on future challenges to the NGO Act

The current NGO Act is much more extensive but maintains almost the same issues as those challenged in this case. Issues of mandatory registration, the Bureau's discretion to grant or refuse to grant an application for registration, putting conditions on issuance of permits, requirements for the renewal of permits among others are still present in the new law. The new law imports some of the provisions that were part of the 2009 Regulations, most problematic of which is the provision on special obligations.²⁵ The new law also introduces other provisions like the provision on inspection of organisations.²⁶ Read as a whole, it is clear that the new law seeks to be more controlling than the old law and therefore narrows civic space much more than the old law did. Its most outstanding problems however, like mandatory registration, the Bureau's discretionary powers, requirements of renewal of permits, and special obligations, are the same problems that existed in the old law and the Regulations. All these provisions were part of the Constitutional challenge.

The provisions in the new law therefore, that would be worthy of a challenge, were already adjudicated upon in the *HURINET* case, in which court upheld their relevance and necessity, as a legitimate limitation on the freedom of association. Bringing another challenge on the same provisions before the same court would present very limited chances of success unless the court overturns its own decision which indeed it can do. The Court clearly stated that the provisions complained of were legitimate in a free and democratic society, and needed to protect the rights of vulnerable Ugandans that are the target of most NGOs.

This decision is not only dangerous, it was not properly arrived at as the Court ought to have discussed the different provisions of the Act separately in line of internationally accepted principles on freedom of association. Then it ought to have gone ahead to apply the limitation clause. A more human rights embracing finding would have been that although such restrictions are necessary, those in the law are excessive and not proportional to the object of the limitations. There was need to re-enforce the 'limitation within a limitation' argument in the case. Maybe this was done, but not entirely brought out in the judgment, because the court clearly made an omnibus judgment on whether the provisions should be there or not. The UN Human Rights Committee has held that the mere existence of objective justifications for limiting the right to freedom

²⁵ Sec 44.

²⁶ Sec 41.



The burden is on the state to show that these reasons are sufficient for a freedom to be limited.

of association is not sufficient.²⁷ The state party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical threat and that less intrusive measures would be insufficient to achieve the same purpose.

It follows from the above that it is not enough to point out legitimate or objective reasons or justifications for limiting the freedom of association. In addition to having such legitimate justifications, court was mandated to discuss the possibility of other less intrusive and less restrictive measures to achieve its intended purpose. The measures must not be arbitrary, unfair or based on irrational considerations. For example, one of the justifications given by the court for limiting the freedom of association is that there is need for the government to monitor the work done by NGOs, to ensure that the organisations are engaging in work that they set out to engage in. While this might be a legitimate concern, it does not justify burdensome requirements for registration like production of budgets, work plans, periodic renewals of operation permits, empowering the NGO Board to dissolve NGOs, among other provisions. There are other ways that the government can ensure that the work engaged in by NGOs is legal without such burdensome and intrusive measures. These could include encouragement of setting up of a self-regulatory body or bodies for NGOs that self-monitor, and such bodies can be accountable to a state organ. This would reduce government interference in the work of civil society and it would also take away the need to police and seek burdensome requirements that make incorporation and operation of NGOs almost impossible. The court, in handling this case, should have looked at the provisions challenged, and the objective they intended to achieve and extensively

discussed whether there were better alternatives to achieve such objectives that do not grossly interfere with the freedom to associate.

In addition to ensuring that the impugned provisions were proportional to the achievement of their stated objective, the court should have shown that by upholding the existence of such provisions, it was protecting against a real threat, rather than a hypothetical one. The court does mention the fact that NGOs interact with various groups of vulnerable persons like women and orphans whose rights need to be protected. While this might be the case, it was not shown that it was common place for organisations to violate the rights of the vulnerable persons they get into contact with. One of the affidavits relied on by the respondent gave an example of the tragic incident where in hundreds of people were killed in Kanungu district by a religious cult, and pointed out that organisations continue to mislead and abuse public confidence. While this is true, and while it is probable that a number of organisations use their status to mislead the public, there has been very little evidence of this. Most of what is said about NGOs that defraud the public is hearsay, and not many organisations have been pointed out by the authorities as an example that NGOs are indeed engaged in violation of rights. On the contrary, what seems to be common place is the evidence that the civil society sector has made and continues to make tremendous contributions to human development and to the development of the country. The few cases of organisations that are regarded as 'misleading the public' are normally organisations that are facing persecution because of their work, and not that they are doing illegal work. In this case therefore, the court should have established from the available evidence before it that the threat being guarded against by upholding the provisions was a real threat and not merely a hypothetical one. The court however merely stated that NGOs were likely to abuse the rights of the vulnerable persons they engage with. In reality, NGOs have improved these people's lives, much more than they threaten to violate their rights. Using this as a basis to uphold restrictive provisions was therefore misguided.

In the case of *Andrew Mwenda & Onyango Obbo v Attorney General*, Uganda's Constitutional Court²⁸ in interpreting the limitation clause in Article 43 of the Constitution emphasised the proportionality test as discussed above, and also discussed another test which is that for a limitation to be upheld as constitutional, there is need to show that the object for which the limitation is intended to serve is sufficient to warrant overriding a constitutionally guaranteed freedom. Unlike what was done by Court in the *HURINET* case, merely stating that the provisions are necessary to

²⁷ *Raisa Mikhailovskaya & Oleg Volcheck v Belarus* (Communication No. 1993/2010).

²⁸ Constitutional Petition No 15 of 1997.

protect rights or to facilitate government monitoring is not enough. The burden is on the state to show that these reasons are sufficient for a freedom to be limited. As emphasised by court in the *Andrew Mwenda case*, this standard is very high and is aimed at ensuring that objectives that are trivial and discordant to the principles integral to a free and democratic society do not gain protection under the limitation clause. The court therefore ought to have applied this standard but it did not.

Some of the provisions challenged by HURINET and others were challenged on account of their vagueness and breadth, for example the regulations on special obligations that enjoined organisations not to engage in activities that are contrary to the security of Uganda and the dignity of Ugandans. These kinds of provisions are amply dealt with by Twinomujuni, JA in the *Andrew Mwenda case*, where he found the offence of publishing false news under section 50 of the Penal Code to be unconstitutional since it was vague and undefined. He quoted with approval the following paragraph in the decision of *DPP v Pete*²⁹ which was cited in the Tanzanian decision of *Pumba v Attorney General*:³⁰

A law which seeks to limit or derogate from the basic rights of the individual on grounds of public interest will be saved by Article 30(2) of the Constitution (our Article 43) only if it satisfies two essential requirements: First, such a law must be lawful in a sense that it is not arbitrary. It should make adequate safeguards against arbitrary decisions and provide effective controls against abuse by those in authority by those using the law. Secondly the limitation imposed by such a law must not be more than is reasonably necessary to achieve the legitimate objective. This is what is also known as the principle of proportionality. The principle requires that such a law must not be drafted too widely so as to net everyone including even the untargeted members of society. If a law which infringes a basic right does not meet both requirements, such a law is not saved by Article 30(2) of the Constitution, it is null and void.

The above-mentioned provisions do not meet these requirements and yet the court does not attempt to deal with this issue at all. Instead, all the challenged provisions are handled together, and an omnibus ruling given.

As discussed, domestic, regional and international law are all to the effect that the freedom of association can and should be restricted. All these different laws provide different reasons, standards and circumstances

when the state is justified in limiting enjoyment of this freedom. Even then, like was held by the African Court on Human and Peoples' Rights in the case of *Interights and Others v Mauritania*,³¹ the limitations even when legal and justified should not affect the freedom in such a way that it becomes illusory. In the enforcement of human rights, it should always be remembered that provision for and the protection of human rights are the primary objective, while their limitation is merely secondary. Provisions relating to fundamental human rights and freedoms should therefore be given a purposive and generous interpretation in such a way as to ensure maximum enjoyment of the rights and freedoms guaranteed. Therefore, any person that seeks to limit a right has the burden of proving the legitimacy of such limitation. However, from the judgment, the court seemed to shift this burden to the petitioners to prove why the limitations should not apply to them. This ran through almost the whole judgment as court upheld the provisions as matters of fact, without attempting to justify or qualify them, yet the state is required to justify and actually prove the legitimacy of their limitations.

The *HURINET case* presented a chance for the court to look into the excessive restrictions that the state is placing on the civil society sector, in the name of regulation. However, the judgment given by the Court seems to encourage these restrictions, most of which are not demonstrably justifiable in a free and democratic society. The narrowing civil society space is a growing concern in the country and there is need for courts to extensively and objectively discuss the issue, without making sweeping generalisations. The court seems to give the state room to make any such limitations as they deem fit, which poses a danger to the exercise of the freedom of association.

There is a real chance of the decision being challenged before the Supreme Court with some expectation of success. The appeal would be on grounds of public importance.³²

Conclusion

The judgment of the Constitutional Court is a dangerous precedent that could be used to stifle civil society operations, with no limits to check them. Article 43 should not be used as a blank cheque to limit the enjoyment of rights unjustifiably. For civil society organisations, this case is the chance to have that addressed. NGOs could wait for specific violations and apply to court for remedies, but these applications would most probably be in High Court, which would be bound by this decision. If there is a possibility of an appeal to the Supreme Court, it should be filed.

²⁹ [1991] LRC (Cons) 553.

³⁰ [1993]2 LRC 317 at 323.

³¹ (2004) AHRLR 87.

³² Look at the case of *Julius Rwabinumi v Hope Bahimbisomwe* (Supreme Court Civil Appeal No 10 of 2009).

CASE COMMENTARY

THE SMUG REGISTRATION CASE: CONTINUING THE LEGACY OF CHALLENGING THE PHENOMENON OF GUILT BY ASSOCIATION

Susan Baluka*



Introduction

On 1st June 2016, the promoters of Sexual Minorities Uganda (SMUG) filed a case challenging the rejection of their prospective company name and the resultant refusal to register the company by the Registrar General of the Uganda Registration Services Bureau (URSB). This is the latest attempt at challenging the restrictions of freedom of association imposed on LGBTI organisations in Uganda. This article discusses the challenge in light of the social-political context surrounding the enjoyment of the right to freedom of association by LGBTI persons in Uganda, and in light of court decisions on the freedom of association of LGBTI persons. It examines how homophobia has impeded realisation of association rights for LGBTI persons by using criminalisation of same sex relations to impute criminality on efforts by LGBTI persons and LGBTI rights activists to further legitimate LGBTI interests through LGBTI organisations and forums.

The SMUG registration Case: An overview

The case, *Frank Mugisha, Denis Wamala and Senfuka Joanita Warry v Uganda Registration Services Bureau and Attorney General*¹ was filed on 1st June 2016.² The background to the case is that in November 2012, Sexual Minorities Uganda (SMUG), a prospective umbrella human rights organisation for LGBTI persons and organisations, applied to the Uganda Registration Services Bureau (URSB) for reservation of its prospective name, Sexual Minorities Uganda.³ The Registrar General rejected the name on the grounds that it was undesirable, and as such, could not be registered under the Companies Act.⁴ The

undesirability that was pointed out by the Registrar is in the fact that the company's main objective was to advocate for the rights and well-being of lesbians and gays, who engage in activities that are labelled criminal under section 145 of the Penal Code Act.⁵ After much deliberation⁶ with member and partner organisations, SMUG made a decision to file a rights enforcement application against the Uganda Registration Services Bureau and the Attorney General. The promoters of Sexual Minorities Uganda seek a declaration that the rejection of their prospective company name, and consequently, registration of their company, is a violation of their right to freedom of association, assembly, and conscience, which are provided for under Article 29 of the Constitution. They also seek for a declaration that the rejection of their prospective name and denial of registration of the organisation is a violation of their right to freedom from discrimination, it was a failure on the respondents as government agents to take affirmative action in favour of a group of marginalised persons under Article 32, and a violation of the right to participate in peaceful activities to influence government policies, and through civic organisations under Article 38. This article will however only focus on the rights sought to be enforced under Article 29 of the Constitution.

The application presented yet another opportunity for the Ugandan judiciary to pronounce itself on association rights for LGBTI persons, wherein the human rights implications of the disruption of a skills training workshop were adjudicated upon.⁷

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¹ Miscellaneous Cause No. 95 of 2016.

² Kuchu Times, 'SMUG files case against Registrar General,' <<https://www.kuchutimes.com/2016/06/smug-files-case-against-registrar-general/>> accessed on 15th November 2016.

³ Affidavit to notice of motion filed by promoters of SMUG against the Uganda Registration Services Bureau and the Attorney General.

⁴ Sec 36 (1) of the Companies Act 2012, gives the registrar of companies the mandate to reserve the name of a company that is yet to be registered, upon application by the company. Sec 36(2) is to the effect that if in the opinion of the registrar, the name that is sought to be reserved is not desirable, then it will not be reserved, and the company shall not be registered by it.

⁵ The registrar actually gave this response after SMUG's legal representatives had availed details of the company's objectives. Initially, reservation of the name had been rejected on the ground that it was not clear, and in seeking particulars from the registrar as to what exactly was unclear about the name, SMUG's legal representatives availed details of its objectives, which, clearly indicated that it was aimed at advocating for LGBTI rights and interests. See n 1 above.

⁶ SexualMinoritiesUganda, 'SMUGandHRAFPHoldConsultative Meeting-Resolutions,' <<https://sexualminoritiesuganda.com/smug-and-hrapf-hold-consultative-meeting-resolutions/>> accessed on 15th November 2016.

⁷ Look at the case of *Kasha Jacqueline Nabagesera and 3 others v Rev. Fr. Simon Lokodo*.

The Social–Political Context of Association Rights for LGBTI Persons in Uganda.

In Uganda, identifying as an LGBTI person is met with immense disdain. It is considered to be immoral and against African culture, and discussions around it are often met with unimaginable revulsion.⁸ Such homophobia derives more validation from the fact that same sex relations are criminalised under section 145 of the Penal Code Act, wherein the section is often misinterpreted as criminalising an individual's identification as lesbian, gay, bisexual or transgender. Such a misconception of the law has given leeway for arbitrary arrest of LGBTI persons, wherein those arrested are often subjected to public humiliation through exposure in the media, and are also subjected to extortion from police officers.⁹

With homophobia so deeply rooted in the Ugandan society, association rights for LGBTI persons are under constant threat of being reduced to an ideal prospect, rather than turned into a reality. This threat particularly lies in the fact that LGBTI rights organisations are perceived as promoters of homosexuality by the public. As evidenced from the fact that 33 out of 54 (61%) African countries criminalise same sex sexual conduct,¹⁰ and the two-million signature petition that was submitted to the Ugandan parliament in support of the Anti-Homosexuality Bill,¹¹ the wave of homophobia on the African continent and Uganda in particular is so strong that it has upped the persecution of LGBTI persons and their groups, wherein they are arbitrarily arrested on suspicion of being gay or lesbian, subjected to invasive procedures such as anal examinations,¹² outed in the media where coarse graphic language is used to refer to them,¹³ and physically assaulted and

murdered by private persons,¹⁴ to mention but a few. This persecution does not only stop with individuals, but trickles down to LGBTI organisations as well, wherein their operations are interfered with by local authorities on the premise that they are promoting homosexuality. For instance, in 2014, the Refugee Law Project, which hosted the Civil Society Coalition on Human Rights and Constitutional Law, which led the local opposition to the Anti-Homosexuality Bill, was directed to cease meeting clients in refugee camps and at its offices on the basis that it was 'promoting homosexuality under the guise of human rights work.'¹⁵ In 2016, the Sexual Minorities Unit of HRAPF's Access to Justice Department handled two cases that involved police invasion of office premises of LGBTI organisations following complaints by local dwellers that they would 'recruit their children into homosexuality.'

In addition to perpetrating the invasions, the Uganda Police have exhibited reluctance to actively investigate cases of burglary at premises of Civil Society Organisations, including LGBTI rights organisations.¹⁶ A case in point is the break-in and murder of a guard at HRAPF offices, wherein, despite availability of CCTV footage identifying the culprits, as well as finger prints and blood samples that were recovered from the scene, the culprits are yet to be arrested by the police. The police's reluctance in this particular case was further highlighted by the police spokesperson's baseless accusations against the organisation's management as having orchestrated the break-in.¹⁷ Whether such reluctance by police is due to homophobia may not be categorically proven, but it can also not be ruled out, given the brutality, as discussed above, with which police handles LGBTI persons and groups.

In order to curb the 'spread of homosexuality' and to appease the homophobic masses, the state is keen on suppressing LGBTI rights activism. Instances of this oppression are clearly illustrated in the adoption of the Anti-Homosexuality Act in 2014 and the interruption of LGBTI workshops and gatherings, which will be discussed in detail in the remainder of this section.

⁸ Immigration South Africa. 'Homophobia in Africa Forces Gays to Express Their Opinions Publicly' <<https://www.immigrationsouthafrica.org/blog/homophobia-in-africa-forces-gays-to-express-their-opinions-publicly/>> accessed on 30th November 2016.

⁹ Human Rights Awareness and Promotion Forum (HRAPF) and the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL), 'Protecting 'Morals' by Dehumanising Suspected LGBTI Persons? : A Critique of the Enforcement of Laws Criminalising Same Sex Conduct in Uganda' (2013) at 12.

¹⁰ 76 Crimes '76 countries Where Homosexuality Is Illegal,' 29 November 2016 at <<https://76crimes.com/76-countries-where-homosexuality-is-illegal/>> accessed on 30th November 2016

¹¹ Adrian Jjuuko, 'The Incremental Approach: Uganda's Struggle for Decriminalisation of Homosexuality,' at <http://sas-space.sas.ac.uk/4815/1/14juuko.pdf> accessed 30th November 2016

¹² Amnesty International, 'Wave of Homophobia In Sub-Saharan Africa Are Dangerous and Must Be Tackled,' at <<https://www.amnesty.org/en/latest/news/2013/06/rising-levels-homophobia-sub-saharan-africa-are-dangerous-and-must-be-tackled/>> accessed on 30th November 2016

¹³ See n 7 (above) at 36.

¹⁴ See n 12 above.

¹⁵ 76 Crimes, 'Uganda Refugee Project Survives Anti-gay Attacks,' 23rd January 2015 at <<https://76crimes.com/2015/01/23/uganda-refugee-project-survives-anti-gay-attacks-of-2014/>> accessed on 1st December 2016.

¹⁶ Human Rights Watch, 'Uganda: Investigate Break-ins at Groups Offices,' 13th June 2016 at <<https://www.hrw.org/news/2016/06/13/uganda-investigate-break-ins-groups-offices>> accessed on 1st December 2016.

¹⁷ A Jjuuko, 'Enanga's Statement on HRAPF Break in Baseless,' 15th June 2016 at <<http://allafrica.com/stories/201606150674.html>> accessed on 1st December 2016.

The Anti-Homosexuality Act and attempts at further criminalisation of same sex relations

In 2009, the Anti-Homosexuality Bill was tabled before parliament.¹⁸ The memorandum to the Bill contended that the Ugandan law lacked provisions for penalising the procurement, promotion and dissemination of literature and other graphic materials concerning offences of homosexuality; and as such, there was a need to make legal provision for charging, investigating, prosecuting, and sentencing offenders.¹⁹

In February 2014, the Bill was passed into law²⁰ with clause 13, which prohibited promotion of homosexuality, setting sanctions against participation in production, procuring, marketing, broadcasting and disseminating information and funding or sponsoring of homosexuality and other related activities, or offering of premises or other fixed or movable assets for the same. The maximum term of imprisonment that was set for this offence was seven (7) years and the minimum was five (5) years. For corporate bodies and non-government organisations, the penalty went as far as having their permits revoked, and subjecting the directors and proprietors to a maximum punishment of seven years' imprisonment.²¹

Although the Act was later nullified,²² it is important to look into its ramifications and their human rights implications in light of the state's obligation to respect, uphold and promote constitutional rights guarantees.²³ By enacting a law that criminalised dissemination of information related to homosexuality and facilitation, monetary or otherwise, of homosexual related activities, the state evidently sought to cripple the work of organisations whose mission is to advocate for the rights of persons that identify as lesbian, gay, bisexual and transgender. Such a law would leave the organisations with no source of funding, and no spaces, physical or otherwise, for them to advance the rights of LGBTI persons. This would in effect also

be a violation of the right to freedom of conscience, expression, speech, and ultimately, association, since members of such organisations would be prohibited, by law, from assembling to air out and discuss their views on LGBTI rights in the country²⁴. From this it can be sufficiently stated that in passing the Act into law, and by assenting to it, the members of the legislature and executive arms of government generally do not acknowledge association rights for LGBTI persons as a constitutional guarantee, and they certainly do not acknowledge that they have an obligation to protect such rights. In fact, parliamentarians were elated at the prospect of re-tabling of the Anti-Homosexuality Bill, following the annulment of the Act. Its re-introduction into parliament garnered the support of over 254 MPs out of 376.²⁵

The NGO Act 2016

The NGO Act was passed into law on 30th January 2016. The memorandum to the Bill from which the Act was begotten indicated that it was aimed at dealing with, among other issues, the 'subversive activities' that were a result of the rapid growth of Non-Governmental Organisations.²⁶ In light of the fact that the NGO Board had previously prevented LGBTI organisations from getting registered and obtaining NGO status,²⁷ the fact that the Act has the implication of crippling LGBTI organising cannot be ruled out. This notion can further be supported by the fact that the Act makes it mandatory for all not for profit organisations to register with the NGO Bureau,²⁸ whereas prohibiting the registration of organisations 'whose objectives are in contravention of the law.'²⁹ The effect of such provisions is that they increase the susceptibility of LGBTI organisations to denial of registration on the misconception that their work is in contravention of the law that criminalises same sex sexual conduct, while also making it impossible for them to continue operation merely as companies limited by guarantee or trusts without necessarily being brought under the regulation of the NGO Bureau. The provisions on inspection further buttress these concerns.

¹⁸ Amnesty International, 'Uganda : Anti-Homosexuality Bill Is Inherently Discriminatory and Threatens Broader Human Rights,' available at <<https://www.amnesty.org/download/Documents/36000/afr590032010en.pdf>> accessed on 15th November 2016.

¹⁹ The Anti-Homosexuality Bill, 2009, Uganda Gazette No. 47, vol. CII, Bills Suppl. No. 13 (25 September 2009).

²⁰ Amnesty International, 'Uganda's Anti Homosexuality Bill Becomes Law', 24th February 2014, available at <<https://www.amnesty.org.uk/ugandas-anti-homosexuality-bill-becomes-law>> accessed on 18th November 2016.

²¹ Sec 13, Anti-Homosexuality Act 2014 of Uganda.

²² The Anti-Homosexuality Act was annulled on 1st August 2014 for having been passed by parliament without the necessary quorum. See BBC News, 'Uganda Court Annuls Anti-Homosexuality Law,' available at <<http://www.bbc.com/news/world-africa-28605400>> accessed on 18th November 2016.

²³ See Art 20 of the 1995 Constitution of Uganda.

²⁴ See n 12 above at 14.

²⁵ 'MPs Start Process to Re-table Gay Bill' *The Daily Monitor* 3rd September 2016 at <<http://www.monitor.co.ug/News/National/MPs-start-process-to-re-table-gay-Bill/688334-2438860-8baoozv/index.html>> accessed on 1st December 2016

²⁶ The Non-Governmental Organisations Bill, 2015, Uganda Gazette No.18, Vol. CVIII, Bills Supplement No.5 (10th April 2015)

²⁷ Bureau of Democracy, Human Rights and Labour, US Department of State, '2011 Country Reports on Human Rights Practices: Uganda' at <<http://www.state.gov/documents/organization/186464.pdf>> accessed on 1st December 2016

²⁸ Sec 31 of the Act.

²⁹ Sec 30 of the Act.



The effect of such provisions is that they increase the susceptibility of LGBTI organisations to denial of registration on the misconception that their work is in contravention of the law that criminalises same sex sexual conduct...

Disruption of LGBTI-Related Gatherings

On 14th February 2012, Rev. Fr. Simon Lokodo in his capacity as Minister of State for Ethics and Integrity closed down a skills training workshop that had been organised by Freedom and Roam Uganda (FARUG) at Imperial Resort Beach Hotel in Entebbe. He disrupted the workshop on allegations that it was an illegal gathering of homosexuals.³⁰ While the workshop was aimed at developing the participants' advocacy, planning, leadership and human rights skills, the minister insisted that the training was

aimed at 'promoting homosexual acts'.³¹ The workshop organisers filed an application against the minister and the Attorney General seeking a declaration that the disruption of the workshop was a violation of their right to freedom of assembly, association, speech and expression. The court however decided the matter in favour of the respondents and stated that the workshop was an 'unlawful exercise of the applicants' rights,' and as such, it was rightly dispersed by the Minister.³²

On the 18th of June 2012, four months after the disruption of the FARUG workshop, the police raided a workshop for LGBTI rights activists from East Africa that had been organised by the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) at Esella Hotel on the outskirts of Kampala. Participants and other hotel guests were held hostage for over three hours, while two of the participants were detained in a police bus for over an hour. Just as was the case with the FARUG workshop, Rev. Fr. Simon Lokodo was the architect of the raid on the EHAHRDP workshop.³³ The raid was yet another manifestation of the state's lack of appreciation of and respect for association rights for LGBTI persons in Uganda.

More recently, on 4th August 2016, the police raided a beauty pageant organised as part of the Pride celebrations 2016 at Venom Club in the Kampala suburb of Kabalagala. The police arrested over 16 LGBTI rights activists and detained hundreds of the revellers who were subjected to beatings and their pictures taken without their consent, while the participants, in particular, transgender women and men, were groped and fondled.³⁴ In a press statement, the Minister justified the raid as a curbing of activities that are against the 'laws of the Republic of Uganda, specifically, the Penal Code Act,' and were aimed at promoting homosexuality. He further stated that there was a need to protect 'cultural, religious and traditional family values of Ugandans against attempts of sexual rights activists seeking to impose values of sexual promiscuity.' He also directed the organisers of the Pride Parade to abandon any preparations for the

³⁰ *Kasha Jacqueline Nabagesera and 3 Ors V A.G and Rev.Fr.Simon Lokodo* Miscellaneous Cause No.33 of 2013.

³¹ As above.

³² See n 30 above. The judge's decision in the case will be discussed further.

³³ Freedom House, 'Uganda: Police Raid On LGBTI Rights Activists Workshop In Kampala Condemned', 19th June 2012 available at <<https://freedomhouse.org/article/uganda-police-raid-lgbti-activists-workshop-kampala-condemned>> accessed on 15th November 2016.

³⁴ Human Rights Watch, 'Uganda: Police Attack LGBTI Pride Event', 5th August 2016 at <<https://www.hrw.org/news/2016/08/05/uganda-police-attack-lgbti-pride-event>> on accessed 1st December 2016.

same.³⁵ The pride celebrations were thus postponed. The government exhibited commitment to suppress LGBTI activities in the country, when a month later, the police halted a Pride Parade in Entebbe on the premise of it being illegal.³⁶ The celebration of sexuality and gender identity by LGBTI persons in solidarity, through Pride activities is one way of exercising their right to freedom of expression, assembly and association, and government interference with such activities is a violation of those rights.

The build up to the SMUG case: Cases brought before court on freedom of association of LGBTI persons so far

As a custodian of the rule of law and justice, the LGBTI rights movement looks to the judiciary to save them from the moralistic anti-LGBTI rhetoric that impedes advancement of association rights for LGBTI persons in Uganda. Indeed, while the criminalisation of consensual same sex conduct has not yet been challenged, steady progress towards that goal is being made, wherein courts of law are being engaged on enforcement of rights of LGBTI persons.³⁷ In a society where LGBTI persons and activists are persecuted and branded as criminals for exercising their right to freedom of association, assembly, conscience, expression and speech, the judiciary, being the temple of impartiality and independence, is the last hope for justice. In Uganda, enforcement of the right to freedom of association, assembly, conscience, expression and speech for LGBTI persons has so far been adjudicated upon in the case of *Kasha Jacqueline Nabagesera and 3 others V Attorney General and Rev. Fr. Simon Lokodo*,³⁸ and it was included as a substantive ground in the case of *Prof J Oloka Onyango & 9 others v Attorney General*,³⁹ at the Constitutional Court and that of *Human Rights Awareness and Promotion Forum v Attorney General*,⁴⁰ at the East African Court of Justice, both of which challenged the Anti-Homosexuality Act. These cases are discussed in details below:

³⁵ Uganda Media Center, 'Government Position on the Activities of Lesbians, Gay, Bi-Sexuals & Transgender (LGBT) in Uganda,' 8th August 2016 at <<https://ugandamediacentreblog.wordpress.com/2016/08/08/government-position-on-the-activities-of-lesbians-gay-bi-sexuals-transgender-lgbt-in-uganda/>> accessed on 1st December 2016.

³⁶ Rodney Muhumuza, 'Uganda: Police Stop Gay Pride Parade Deemed Illegal' 24th September 2016 at <<http://bigstory.ap.org/article/73e4bd35947c452ca6b9a9a1f96aed89/uganda-police-stop-gay-pride-parade-deemed-illegal>> accessed on 1st December 2016.

³⁷ For a deeper discussion of the strategy, see n 11 above at 393.

³⁸ Miscellaneous Cause No. 33 of 2013. The case is also commonly referred to as the *Lokodo* case.

³⁹ *Prof J. Oloka-Onyango and 9 Others v Attorney General*, Constitutional Petition No. 8 of 2014.

⁴⁰ Reference No. 6 of 2014.



In a society where LGBTI persons and activists are persecuted and branded as criminals for exercising their right to freedom of association, assembly, conscience, expression and speech, the judiciary, being the temple of impartiality and independence, is the last hope for justice.

The Kasha Jacqueline case

With a number of decisions having been made on the right to privacy for LGBTI persons,⁴¹ the case was yet another stride being made in the LGBTI rights movement; it was an effort to gain ground with the realisation of association rights for LGBTI persons in Uganda.

The background to the case is that on the 14th of February 2012, a skills training workshop for LGBTI persons that had been organised by FARUG, an LBT rights organisation, was disrupted on the orders of the Minister for Ethics and Integrity, Rev. Fr. Simon Lokodo. The organisers of the workshop filed an application for enforcement of certain rights that they alleged had been violated by the minister and the state, in disrupting the workshop. Key among these rights were: the right to freedom of assembly, association, conscience, speech, and expression as provided for under Article 29 of the Constitution. In dealing with the application, the key issues that were formulated for determination were: whether by organising and attending the workshop, the applicants were engaging in illegal and unlawful activities, and whether the applicants' constitutional rights were unlawfully infringed when the second respondent closed down the workshop. The judge decided both issues in the respondents' favour.

As regards the first issue, counsel for the applicants argued that the workshop was not an illegality, since the participants were not found engaging in same sex relations, and as such, there was no crime committed under section 145 of the Penal Code Act. The judge, Musota J in concurrence with counsel for the respondents took the view that whereas the participants were not engaged in same sex relations per se, the workshop aimed at encouraging them to engage in and promote same sex practices, which, according to section 21 of the Penal Code Act, amounts to incitement to commit an offence. In formulating this opinion, the judge relied on the affidavit of the second respondent who stated that the applicants were members of organisations that organised workshops targeting homosexuals, who would be trained in human rights advocacy and project planning, with the aim of 'equipping them with the confidence, knowledge and skills to conduct and promote same sex practices.' The judge further pointed out that the minister's evidence was 'minutely' corroborated by the affidavit of George Oundo, a former associate of the applicants, wherein he stated that the applicants' organisations participated in project activities that encouraged homosexuals to accept, continue and improve same sex practices through distribution of

homosexual literature illustrating same sex techniques and training homosexual youth to safely engage in same sex practices by distributing homosexual literature. The judge disregarded the first applicant's affidavit in rejoinder as insufficient since it was a general denial of FARUG's promotion of same sex conduct. He stated that it did not rebut Mr. Oundo's detailed evidence of FARUG's promotion of same sex practices. The judge relied on this to conclude that the workshop that had been closed down on 14th February 2012 was aimed at encouraging persons to engage in same sex practices.

With regard to the second issue, the judge stated that since the workshop was an illegality, then its closure amounted to a justified limitation of the applicants' rights under article 43 of the constitution, which stipulates that in the enjoyment of constitutionally guaranteed rights and freedoms, no person shall prejudice the rights and freedoms of others, or the public interest. He stated that in exercising their rights of expression, association, and assembly, the applicants were promoting prohibited acts which was prejudicial to public interest. He stated that promotion of morals is widely recognised as a legitimate aspect of public interest to warrant restriction on human rights. He referred to Articles 17(3), 27 and 29(7) of the African Charter on Human and Peoples' Rights where the duty to preserve morals and African culture, both for the state and individuals are stipulated. He further pointed out that the title to Chapter 15 of the Penal Code Act of Uganda, where same sex relations are prohibited, is titled, 'Offences Against Morality'. He stated that offences under that chapter of the Penal Code Act are prohibited because they are against Ugandan morals.

The judgment is faulted on a number of fronts. These are:

Legality of the Workshop: With regard to judge's decision on the legality of the workshop, there are a number of aspects that ought to have been taken into consideration before ruling it an illegality under section 21 of the Penal Code Act. The judge relied on the affidavit evidence of the minister and Mr. Oundo to conclude that the workshop that had been closed on 14th February 2012 was an illegality. However, the affidavits were clearly giving evidence as regards to other workshops that had allegedly been organised by the applicants. They were not in respect to the particular workshop that was the subject of the application. As such, no evidence was actually adduced to prove that the workshop that had been disrupted by the minister was aimed at inciting participants to engage in carnal knowledge against the order of nature under, which is an offence under section 145 of the Penal Code Act. In addition to that, before concluding that the workshop was aimed at encouraging participants to engage in same sex practices, the judge ought to have taken into consideration the annexures to the

⁴¹ See *Victor Juliet Mukasa and Yvone Oyo v Attorney General* High Court Miscellaneous Cause 247 of 2006 and *Kasha Jacqueline and others v Rolling Stone Limited and Another* Miscellaneous Cause 163 of 2010.

applicants' affidavit, that is, the workshop program, topics and papers to ascertain its actual objectives.⁴²

Additionally, in light of the fact that he was dealing with an application for enforcement of constitutionally guaranteed rights, the judge ought to have applied a purposive approach to the interpretation of section 21 of the Penal Code Act. The section makes it an offence for one to incite another to commit an offence, whether or not any offence is committed in consequence of the incitement. The section was meant to sanction direct and express lobbying for the commitment of crimes. It would cause an absurdity to interpret the section as criminalising all acts that may or may not encourage others to commit crimes. Such an interpretation is a threat to the right to freedom of conscience and expression of unpopular ideas on issues that are criminalised under the law. It would be constitutionally unjust to criminalise advocacy relating to criminalised acts simply because it may or may not encourage others to commit crimes.⁴³

Limitation on the Applicants' rights: The judge cited morals as a legitimate matter of public interest to justify limitation of the applicants' right to freedom of assembly, association, conscience and expression. He went ahead to cite provisions in the African Charter on Human and People's Rights that enjoined states and individuals to protect morals and African Values. He simply relied on the fact that same sex relations are against Ugandan morals to come to the conclusion that it was justifiable for the applicants' rights to be limited. He did not apply the elaborate test laid down in Article 43 of the Constitution on limitation of rights. The limitation is regarded as secondary and the right can only be limited in very narrow circumstances as was stated in the case of *Charles Onyango Obbo & Andrew Mwenda v Attorney General*.⁴⁴

The standards for a reasonable limitation of rights was addressed in the case of *Muwanga Kivumbi V Attorney General*⁴⁵ wherein the criteria for justification of legal limitation on guaranteed rights was laid down. Most important on this checklist is whether the legislative objective which the limitation is designed to promote is sufficiently important to warrant overriding a fundamental right. In the *Lokodo* case, as rightly pointed out by the judge, section 145 of the Penal Code Act is evidently aimed at preserving what is considered to be the morals of the majority of Ugandans, and section

“
...the Constitution
is meant to protect
those who are
unpopular and whom
the majority may find
morally objectionable...”

21 is an aid to the achievement of that objective. The question however is whether preservation of the moral values of the majority who consider same sex relations to be socially unacceptable is important enough to justify the infringement of constitutionally guaranteed rights of freedom of assembly, association and expression for the minority to advance ideas on same sex relations that are contrary to those of the majority. As opined by judges in a number of court decisions, both from the African continent, and from the United Kingdom, moral, cultural and religious values of the majority are not supposed to be 'turned into dogma to be imposed on the whole of society'⁴⁶, 'and they should certainly not be given effect when determining questions on constitutional guarantees.'⁴⁷ These are key principles that the judge ought to have given due regard in determining the application, rather than focus on issues of criminality where there was no criminal trial and no proof beyond reasonable doubt.

The Anti-Homosexuality Act case

This case was filed in the Constitutional Court following the passing of the Anti- Homosexuality Act 2014. It is *Prof. J. Oloka-Onyango & 9 others v Attorney General*.⁴⁸ The petitioners challenged the constitutionality of the Act on the ground that it had been passed without the requisite quorum of one third of all members of parliament, and that it was in violation of various human rights guaranteed under chapter four of the constitution, including the right to freedom of assembly, expression and association

⁴² Appellants' conferencing notes in *Kasha Jacqueline and 2 Others v Attorney General and Rev. Fr. Simon Lokodo* Civil Appeal No.195 of 2014.

⁴³ See *Thuto Ramogae and 19 Others V Attorney General of Botswana* Application No.175 of 2013 (LEGABIBO case).

⁴⁴ Constitutional Appeal No. 2 of 2002]. For an elaborate discussion of this test, see J Nanyange (p. 30-31 of this issue).

⁴⁵ [2008]1 EA 174.

⁴⁶ *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6.

⁴⁷ *Patrick Reyes v The Queen Privy Council Appeal* No.64 of 2001.

⁴⁸ n 39 above.

guaranteed under Article 29. The petition particularly argued on freedom of association that sections 7 and 13 of the Act that criminalised procuring promotion of homosexuality would unjustly penalise legitimate debate, professional counsel and provision of health services. The court however did not get to pronounce itself on these issues, since the issue pertaining to quorum disposed of the whole suit in the event that it was resolved in the affirmative.

With the battlelines drawn, the respondent only had absence of factual evidence of lack of quorum as its point of defence. Counsel for the respondent dismissed evidence in the Hansard that had been relied on by the petitioners as merely being proof of the fact that the issue of quorum was raised by certain members who were present, and not proof that the number of Members of Parliament (MPs) in chambers did not make the requisite quorum. Her submissions were however disregarded by court on the premise that the respondent had not specifically denied the claim that the Act had been passed without quorum, and as such, according to the Civil Procedure Rules, they were deemed to have admitted it. The court further stated that the Hansard proved, on a balance of probabilities that there was no quorum, owing to the fact that the issue had been brought to the Speaker's attention, yet there was no record of her response to it. There is no saying for sure what the decision of the court would have been if the case had been decided on its merits.

The HRAPF case

A challenge to the Anti-Homosexuality Act was filed at the East African Court of justice (EACJ) by human rights activists under the auspices of the Civil Society Coalition on Human Rights and Constitutional Law, through HRAPF. The reference, *Human Rights Awareness and Promotion Forum v Attorney General of Uganda*⁴⁹ contended that by enacting the Anti-Homosexuality Act, Uganda was in violation of the Treaty for the Establishment of the East African Community (hereinafter referred to as the 'treaty'), wherein certain provisions in the Act were in contravention of obligations specified in treaty.

The treaty obligations that the applicant alleged had been violated by the Act were those found in Articles 6(d), 7(2), which enjoin state parties to the East African Community 'to abide by the principles of good governance including adherence to democracy, rule of law, social justice and the maintenance of universally accepted rights.' Some of the provisions of the Act that were specifically challenged by the applicant are sections 7 and 13 that criminalised promotion of homosexuality. As had been done in the case before the Ugandan Constitutional Court, the

applicants in the reference argued that such provisions were ultimately a violation of the right to freedom of expression, assembly, and association.

However, still, as had been the case before the Constitutional Court, the East African Court of Justice did not get to adjudicate over the Act's compliance with the treaty obligations. This was owing to the fact that the reference, despite having been amended, was rendered moot by the court. This was on the premise that the issues that it presented to the court for determination required the examination of and decision on a law that had been annulled by a court of competent jurisdiction, and as such, there was no live controversy for the court to resolve.

Counsel for the applicant moved court to determine the reference on its merits, despite being moot, under the public interest exception. The court however found that evidence of indignities that had been suffered by LGBTI persons during the lifespan of the Anti-Homosexuality Act were not sufficient to establish a degree of importance attached to the 'practice of homosexuality' in Uganda to warrant determination of the reference on the public interest exception. This conclusion was in spite of the fact that Ugandan politicians had used the Anti Homosexuality Act as a ploy to gain political favour with the masses.⁵⁰

Conclusion and Going Forward

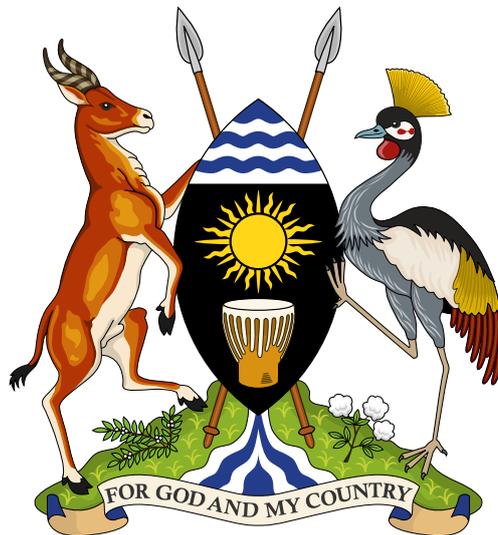
It is evident that the prevailing socio-political environment in the country is unfavourable to the true realisation of the right to freedom of association for LGBTI persons, given the fallacious, yet popular notion that identification as an LGBTI person is a crime, and any association for the advancement of LGBTI rights is a conspiracy to commit that crime. This notion is evidently what cost the Ugandan LGBTI rights movement its first battle against abuse of association rights in the *Kasha Jacqueline case*.

As the war against abuse of association rights for LGBTI persons continues (as it is with the SMUG Registration case and other cases yet to be filed) the singular hope is that the Ugandan judiciary will live up to the tenets of a just judicial system; and that they will be cognisant of the fact that the Constitution is meant to protect those who are unpopular and whom the majority may find morally objectionable, since their rights as human beings cannot be subjected to the will of the majority.

⁴⁹ Reference No. 006 of 2014.

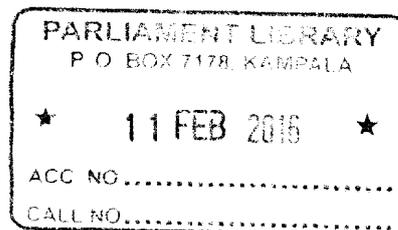
⁵⁰ See n 15 above.

Appendix 1: NGO ACT 2016



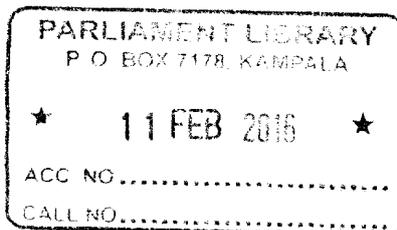
THE REPUBLIC OF UGANDA

NON-GOVERNMENTAL ORGANISATIONS ACT, 2016





THE REPUBLIC OF UGANDA



I SIGNIFY my assent to the bill.

Yoweri Museveni
.....
President

Date of assent:.....*30/1/2016*.....

THE NON-GOVERNMENTAL ORGANISATIONS **Section**

ACT, 2016

ARRANGEMENT OF SECTIONS

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PART VII - FINANCIAL PROVISIONS

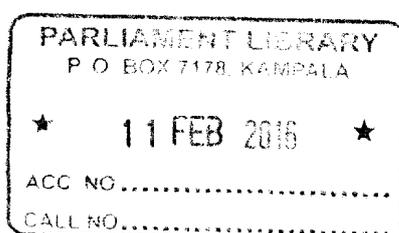
22. Funds of the Bureau
23. Estimates
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25. Financial year of the Bureau
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57. Vesting of assets and liabilities
 58. Continuation of the Board and employment of employees of the Board
 59. Continuation of operation of organisations

SCHEDULES

- Schedule 1—currency point
 Schedule 2—Meetings of the board of directors

**THE REPUBLIC OF UGANDA****THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016**

An Act to repeal and replace the Non-Governmental Organisations Act Cap. 113; to provide a conducive and an enabling environment for the Non-Governmental Organisations sector; to strengthen and promote the capacity of Non-Governmental Organisations and their mutual partnership with Government; to make provision for the corporate status of the National Bureau for Non-Governmental Organisations and provide for its capacity to register, regulate, coordinate and monitor Non-Governmental Organisations activities; to provide for the board of directors; to provide for the establishment of branch offices of the Bureau, District Non-Governmental Organisations Monitoring Committees, Subcounty Non-Governmental Organisations Monitoring Committees, to make provision for special obligations of Non-Governmental Organisations and to provide for other related matters.

DATE OF ASSENT:

Date of Commencement:

BE IT ENACTED by Parliament as follows -

PART I – PRELIMINARY**1. Title**

This Act may be cited as the Non-Governmental Organisations Act, 2016.

2. Commencement

This Act shall come into force on a date appointed by the Minister by statutory instrument.

3. Interpretation

In this Act, unless the context otherwise requires –

“board of directors” means the board of directors established under section 9;

“Bureau” means the National Bureau of Non-Governmental Organisations established under section 5;

“CBOs” means Community Based Organisations;

“Chairperson” means the Chairperson of the Board appointed under section 9;

“Community Based Organisation” means an organisation operating at a subcounty level and below whose objectives is to promote and advance the wellbeing of the members of the community;

“continental organisation” means an organisation that has its original incorporation in any African country, other than the Partner States of the East African Community, and is partially or wholly controlled by citizens of one or more African countries, other than the citizens of the Partner State of the East African Community, and is operating in Uganda under the authority of a permit issued by the Bureau;

“currency point” has the value specified in Schedule I;

“dissolution” means the cessation of operations of an organisation, voluntarily or by order of the court;

“DNMC” means District Non-Governmental Organisations Monitoring Committee;

“emergency situation” means a situation of a serious nature that develops suddenly and unexpectedly and poses an immediate risk to health, life, property or the environment;

“Executive Director” means the Executive Director of the Bureau appointed under section 16;

“foreign organisation” means an organisation that does not have original incorporation in any country, and is partially or wholly controlled by citizens of other countries, other than the citizens of the Partner States of the East African Community, and is operating in Uganda under the authority of a permit issued by the Bureau;

“indigenous organisation” means an organisation that is wholly controlled by Ugandan citizens;

“international organisation” means an organisation that has its original incorporation in a country, other than a Partner State of the East African Community and is partially or wholly controlled by citizens of one or more countries, other than the citizens of the Partner States of the East African Community, and is operating in Uganda under the authority of a permit issued by the Bureau;

“Minister” means the Minister responsible for internal affairs;

“Organisation” means a legally constituted non-governmental organisation under this Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes;

“permit” means a permit issued by the Board under section 31, granting permission to an organisation to operate;

“regional organisation” means an organisation incorporated in one or more of the Partner States of the East African Community, and which is partially or wholly controlled by citizens of one or more of the Partner States of the East African Community, and which is operating in Uganda under the authority of a permit issued by the Bureau;

“register” means a record of all organisations registered under the Act that is maintained by the Bureau in both electronic and hard copy; and

“SNMC” means Subcounty Non-Governmental Organisations Monitoring Committee.

4. Objects of the Act

The objects of this Act are to –

- (a) establish an administrative and regulatory framework within which organisations can conduct their affairs;
- (b) promote and require organisations to maintain high standards of governance, transparency and accountability;
- (c) promote a spirit of cooperation, mutual partnership and shared responsibility between the organisations sector, the Ministries, Departments and Agencies of Government and other stakeholders dealing with organisations;
- (d) provide the development of strong organisations and to facilitate the formation and effective function of organisations for public benefit purposes;
- (e) promote and strengthen the capacity of the organisations sector that is sustainable and able to deliver services professionally;
- (f) promote the development of self-regulation among organisations;
- (g) provide an enabling environment for the organisations sector;
- (h) strengthen the capacity of the Bureau; and
- (i) promote and develop a charity culture that is voluntary, non-partisan and relevant to the needs and aspirations of the people of Uganda.

PART II - THE NATIONAL BUREAU FOR NON-GOVERNMENTAL ORGANISATIONS

5. Establishment of the Bureau

- (1) There is established a National Bureau for Non- Governmental Organisations.
- (2) The Bureau shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name.
- (3) The Bureau may for, and in connection with its functions under this Act –
 - (a) purchase, acquire, hold, manage and dispose of any movable and immovable property;
 - (b) enter into any contract or other transaction it may deem expedient; and
 - (c) do all acts and things as a body corporate may lawfully do.

6. Functions of the Bureau

The functions of the Bureau are –

- (a) to advise the Minister on the policy relating to the operations of organisations;
- (b) to formulate, develop and issue policy guidelines for DNMCs and SNMCs for the effective and efficient monitoring of the operations of the organisations;
- (c) to establish branch offices of the Bureau;
- (d) to formulate and develop policy guidelines for DNMCs, SNMCs, and CBOs;
- (e) to make recommendations to the relevant authorities with regard to employment of non citizens by an organisation, on whether an organisation may be exempted from taxes and duties or be accorded any other privileges or immunities;
- (f) to coordinate the establishment and functions of a National Non Governmental Organisations consultative and dialogue platform;
- (g) to establish and maintain a register of organisations;
- (h) to consider applications for issue and renewal of permits; and
- (i) to perform any other function under this Act or as may be directed in writing by the Minister.

7. Powers of the Bureau

- (1) The Bureau shall have power to -
 - (a) co-opt technical officers to deal with specific issues;
 - (b) summon and discipline organisations by either –

- (i) warning the organisation;
 - (ii) suspending the permit of the organisation;
 - (iii) exposing the affected organisation to the public;
 - (iv) blacklisting the organisation; or
 - (v) revocation of an organisation's permit; and
- (c) charge fees for any services performed by the Bureau.

- (2) The Bureau shall before taking any action against an organisation under subsection (1), give the organisation the opportunity to be heard.

8. Common seal of the Bureau

- (1) The Bureau shall have a common seal which shall be kept in the custody of the Executive Director.
- (2) The affixing of the common seal of the Bureau shall be authenticated by the signature of the Executive Director.
- (3) Every document purporting to be an instrument issued by the Bureau, sealed with the official seal of the Bureau, and is authenticated in the manner provided by this section, shall be received and deemed to be such an instrument without further proof unless the contrary is shown.

PART III - BOARD OF DIRECTORS

9. Board of directors

- (1) The governing body of the Bureau is the board of directors.
- (2) The board of directors shall be appointed by the Minister and approved by Cabinet and shall consist of –
 - (a) a chairperson;
 - (b) a vice chairperson;
 - (c) two representatives from the Non-Governmental Organisations Sector in Uganda; and
 - (d) three other persons.
- (3) A member of the board of directors shall have proven experience of at least ten years in the relevant field
- (4) At least one third of the members of the board of directors shall be female.
- (5) A member of the board of directors shall –
 - (a) be a citizen of Uganda; and
 - (b) be of high moral character and proven integrity.

(6) A member of the board of directors may resign his or her office by writing to the Minister or may be removed from office by the Minister on any of the following grounds –

- (a) inability to perform the functions of his or her office arising out of physical or mental incapacity;
- (b) incompetence;
- (c) conflict of interest;
- (d) is convicted of a criminal offence in respect of which a penalty of imprisonment of one year or more is imposed without the option of a fine;
- (e) is adjudged bankrupt;
- (f) abuse of office; or
- (g) failure to attend four consecutive board of directors meetings without prior permission of the chairperson, or absence from Uganda for more than twelve months.

(7) Where a member of the board of directors dies, resigns or for any reason ceases to be a member, the Minister may appoint another person to take the place of that member, and the person appointed, shall hold office until the expiration of the term of the member in whose place he or she was appointed

10. Tenure of office of members of the board of directors

A member of the board of directors shall hold office for a period of three years and is eligible for reappointment for one further term.

11. Functions of the board of directors

The board of directors is responsible for –

- (a) overseeing implementation of the Bureau's policies and programmes in the organisations sector;
- (b) reviewing and approving strategic plans of the Bureau;
- (c) reviewing and approving the annual plans and budget of the Bureau;
- (d) approving the annual reports and accounts of the Bureau;
- (e) establishing and approving rules and procedures for proper financial management and accountability of the Bureau;
- (f) determining and reviewing the structure and staffing levels;
- (g) appointing staff of the Bureau;
- (h) establishing and approving rules and procedures for appointment, discipline, termination of services and general personnel matters;
- (i) determining and reviewing terms and

conditions of service of staff of the Bureau; and

- (j) performing such other functions as may be prescribed by law.

12. Meetings of the board of directors

The meetings of the board of directors shall be conducted in accordance with Schedule 2.

13. Remuneration of the board of directors

The chairperson, vice chairperson and members of the board of directors shall be paid such remuneration as the Minister may, in consultation with the Minister responsible for finance, determine.

PART IV - COMMITTEES AND SUB-COMMITTEES OF THE BOARD OF DIRECTORS

14. Committees and sub-committees

(1) The board of directors may establish committees and subcommittees for the efficient performance of their functions under this Act.

(2) A committee or sub-committee established under this section may comprise members of the board of directors or members of the staff or both.

(3) The board of directors may assign to any committee or subcommittee established under this section, functions subject to conditions and restrictions as the board of directors may determine.

(4) A decision of the committee or sub-committee shall be subject to confirmation by the board of directors before being implemented.

(5) A member of a committee or sub-committee shall disclose conflict of interest.

15. Procedure of committees and sub-committees

Except as expressly provided under this Act, the procedure of committees or sub-committees established under section 14 shall be prescribed by the board of directors.

PART V - MANAGEMENT AND STAFF OF THE BUREAU

16. Executive Director

(1) There shall be an Executive Director of the Bureau who will be appointed by the Minister on the recommendation of the board of directors for a period of four years, eligible for reappointment for one further term on terms and conditions specified in the instrument of appointment.

(2) The Executive Director shall be a person of high moral character and proven integrity, with

the relevant qualifications and experience in any of the following fields -

- (a) public administration and management;
 - (b) law;
 - (c) economics; or
 - (d) any other applicable qualification.
- (3) The Executive Director shall be an ex-officio member of the board of directors.
- (4) The Executive Director shall be the chief executive officer of the Bureau and shall be subject to the general supervision and control of the board of directors, and shall be responsible for –
- (a) the day to day operations of the Bureau;
 - (b) the management of the funds of the Bureau;
 - (c) the administration and management of the property of the Bureau;
 - (d) the supervision and control of the officers and other staff of the Bureau;
 - (e) keeping a register of registered organisations;
 - (f) implementing the decisions of the board of directors;
 - (g) reporting to the board of directors on the operations of the Bureau;
 - (h) certifying documents upon payment of the prescribed fee; and
 - (i) performing any other functions assigned to him or her by the board of directors.
- (5) The Minister may, on recommendation of the board of directors, remove the Executive Director from office for –
- (a) inability to perform the functions of that office due to infirmity of mind or body;
 - (b) misbehaviour or misconduct;
 - (c) incompetence; or
 - (d) is declared bankrupt.

17. Secretary to the Bureau

- (1) There shall be a Secretary to the Bureau who shall be appointed by the board of directors for a period of four years and is eligible for reappointment for one further term on terms and conditions specified in the instrument of appointment.
- (2) The Secretary to the Bureau shall be the Principal Legal adviser to the board of directors and Bureau;
- (3) The Secretary to the Bureau shall perform such functions as the Executive Director may direct and in addition, shall be responsible for –

- (a) arranging the business at meetings of the board of directors;
- (b) taking the minutes of the meetings of the board of directors; and
- (c) keeping the records of the decisions and other policy records of the board of directors;

- (4) In the performance of his or her duties, the Secretary shall report to the Executive Director.
- (5) The Secretary to the Bureau shall possess the relevant professional qualifications.

18. Other staff

- (1) The board of directors may employ officers and employees as may be necessary for the proper and efficient discharge of the objects and functions of the Bureau.
- (2) The officers and employees appointed under this section shall hold office on terms and conditions determined by the board of directors.
- (3) Without prejudice to the general effect of subsection (2), the board of directors may provide for payment to its officers and employees of salaries, allowances, pensions, gratuities or other retirement benefits and may require them to contribute to any pension, provident fund or superannuation scheme.
- (4) Public officers may be seconded to the service of the Bureau or may otherwise give assistance to the Bureau.
- (5) The board of directors may, subject to any conditions and restrictions delegate any of its powers under subsection (1) to a committee of the board of directors, the executive director or any employee of the Bureau.

PART VI - THE DISTRICT AND SUB-COUNTY NON-GOVERNMENTAL ORGANISATION MONITORING COMMITTEES

19. Branch offices of the Bureau

- (1) There is established offices of the Bureau.
- (2) The functions of branch offices of the Bureau are –
- (a) to supervise DNMCs;
 - (b) to maintain a register of the registered organisations and CBOs within the region;
 - (d) to perform any other function that the Bureau shall deem fit and necessary for purposes of giving effect to this Act.

20. District Non-Governmental Organisations Monitoring Committee

- (1) There is established a DNMC in each district.
- (2) The DNMC shall comprise of—
 - (a) the Chief Administrative Officer who shall be the chairperson of the committee;
 - (b) the District Community Development Officer who shall be secretary to the committee;
 - (c) the District Health Officer;
 - (d) the District Internal Security Officer;
 - (e) a representative of organisations in the district;
 - (f) the District Education Officer; and
 - (g) the Secretary for gender and community services.
- (3) The committee may co-opt technical officers to deal with specific issues.
- (4) The functions of the DNMC are to –
 - (a) to consider applications for registration by CBOs;
 - (b) to keep and update the register of CBOs;
 - (c) to monitor and supervise SNMCs;
 - (d) to recommend organisations to the Bureau for registration;
 - (e) to advise the district councils on matters of registration and monitoring of organisations;
 - (f) to monitor and provide information to the Bureau regarding activities and performance of organisations in the district;
 - (g) to guide and monitor CBOs in the provision of their services; and
 - (h) to implement policy guidelines for CBOs.
- (5) Community Based Organisations shall be required to register with the DNMCs.

21. Subcounty Non-Governmental Organisations Monitoring Committee

- (1) There is established a SNMC in every sub-county in Uganda.
- (2) The SNMC shall comprise of –
 - (a) the Senior Assistant Secretary who shall be the Chairperson of the committee;
 - (b) sub county Community Development Officer of the subcounty who shall be secretary to the committee;
 - (c) the sub county health inspector;
 - (d) the Gombolola Internal Security Officer (GISO); and

- (e) a representative of organisations in the subcounty.

- (3) The functions of the SNMC are –
 - (a) to recommend CBOs to the DNMC for registration;
 - (b) to advise the DNMC on matters of organisations and CBOs in the subcounty;
 - (c) to provide the CBOs in the subcounty with guidelines to enable them effectively participate in the implementation, monitoring and evaluation of programmes;
 - (d) to monitor and provide information on activities of the organisations in the subcounty to the DNMC;
 - (e) to report to the DNMC on matters of the organisations in the subcounty; and
 - (f) to perform any other function that the Bureau shall deem necessary for purposes of giving effect to this Act.

PART VII - FINANCIAL PROVISIONS**22. Funds of the Bureau**

- (1) The funds of the Bureau shall consist of money appropriated by Parliament for the purposes of the Bureau.
- (2) All non-tax revenue raised by the Bureau shall be remitted to the consolidated fund.
- (3) The Bureau shall at all times comply with the Public Finance Management Act, 2015.

23. Estimates

- (1) The Executive Director shall, within three months before the end of each financial year, cause to be prepared and submitted to the board of directors for its approval, estimates of the expenditure of the Bureau for the next financial year.
- (2) The board of directors shall within two months after receipt of the estimates referred to in subsection (1) cause to be submitted to Parliament for approval the estimates of income and expenditures approved by the board of directors.

24. Bank accounts

The Bureau shall with the authority of the Accountant General open and maintain such bank accounts as are necessary for the performance of its functions.

25. Financial year of the Bureau

The financial year of the Bureau shall be the same as the financial year of Government.

26. Accounts

- (1) The Executive Director shall cause to be kept,

- proper books of accounts and records of the transactions of the Bureau.
- (2) The board of directors shall cause to be prepared and submitted to the Minister and Secretary to the Treasury in respect of each financial year, statement of accounts which shall include –
- (a) a balance sheet, statement of income and expenditure and a statement of surplus or deficit; and
 - (b) any other information in respect of the financial affairs of the Bureau as the Minister responsible for finance may, in writing require.
- 27. Audit**
- 1) The Auditor General or an auditor appointed by the Auditor General shall, in each financial year, audit the accounts of the Bureau.
 - 2) The Bureau shall ensure that within four months after the end of each financial year, a statement of accounts under section 26 is submitted for auditing to the Auditor General or an auditor appointed by the Auditor General.
 - 3) The Auditor General or an auditor appointed by the Auditor General shall have access to all books of accounts, vouchers and other financial records of the Bureau, and is entitled to any information and explanation required in relation to those records.
 - 4) The Auditor General or an auditor appointed by the Auditor General shall, within four months after receipt of the statement of accounts, under subsection (2) deliver to the Bureau a copy of the audited accounts together with a report on the accounts.
- 28. Annual report**
- (1) The board of directors shall, within three months after the end of each financial year submit to the Minister the annual report of the activities of the Bureau.
 - (2) The Minister shall, within one month after the receipt of the annual report from the Bureau, submit the report to Cabinet.

PART VIII - REGISTRATION AND INCORPORATION OF NON-GOVERNMENTAL ORGANISATIONS

29. Registration of organisations with the Bureau

- 1) Any person or group of persons incorporated as an organization shall register with the Bureau.

- 2) An application made under subsection (1) shall be accompanied by –
 - (a) evidence of statements made in the application as the Minister may prescribe by regulations;
 - (b) a certificate of incorporation;
 - (c) a copy of the organisation's constitution; and
 - (d) evidence of payment of the prescribed fee.

- 3) Upon compliance with the requirements of sub section (2), the Bureau shall register the organisation.

- 4) An organisation that has been registered remains registered until –

- (a) its registration is cancelled in terms of this Act;
- (b) the organisation is voluntarily deregistered; or
- (c) the organisation is wound up or dissolved.

30. Refusal to register

- (1) An organisation shall not be registered under this Act –

- (a) where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda;
- (b) where the application for registration does not comply with the requirements of this Act;
- (c) where the applicant has given false or misleading information in any material particular.

- (2) Where the Bureau refuses to register an organisation under sub section (1), the Bureau shall inform the applicant in writing of the reasons for the refusal within thirty days.

31. Application and issue of permit

- 1) An organisation shall not operate in Uganda without a valid permit issued by the Bureau.

- 2) Subsection (1) shall apply to organisations incorporated or registered under the Companies Act or Trustees Incorporation Act and those that fall within the definition of organisation under Section 3 of this Act.

- 3) An organisation shall apply to the Bureau for a permit, and the Bureau shall, within forty five days issue a permit subject to conditions or directions stipulated by this Act.

- 4) An application made under this section shall be in a form as the Minister may by regulations prescribe.
- 5) An application made under this section shall specify –
- the operations of the organisation;
 - the areas where the organisation may carry out its activities;
 - staffing of the organisation;
 - geographical area of coverage of the organisation;
 - location of the organisation's headquarters; and
 - date of expiry of the previous permit.
- 6) An application made under subsection (2) shall be accompanied by evidence of payment of the prescribed fee.
- 7) Subject to the provisions of this section, the Bureau may issue an Organisation with a permit to operate for a period not exceeding five years at a time.
- 32. Renewal of a permit**
- Subject to section 31, an organisation shall apply for renewal of a permit within six months before the expiry of its permit.
 - An organisation applying for renewal of a permit will comply with subsection (4) of section 31.
 - The Bureau shall renew a permit if it is satisfied that the organisation has complied with the requirements of the permit and this Act.
 - An organisation that wishes to change the conditions of the permit, or the area of focus or the geographical area of focus shall apply to the Bureau to have its permit reviewed.
 - The Bureau may review and renew the permit for an organisation applying under subsection (4).
 - An organisation whose permit expires, but continues to operate without renewal of its permit will be fined ten currency points in case of Community Based Organisation and one hundred currency points for any other organisation, for every month of operation in default of renewal of the permit.
- 33. Grounds for revocation of a permit**
- The Bureau may revoke the permit of an organisation if –
 - the organisation does not operate in accordance with its constitution;
 - the organisation contravenes any of the conditions or directions specified in the permit.
- (2) Before the Bureau revokes a permit under this section, it shall within thirty days from the date of notice in writing request the holder of the permit to show cause why the permit should not be revoked.
- (3) Where the Bureau revokes a permit under this section, it shall inform, in writing, the holder of the permit of the reason why the permit has been revoked.
- (4) Where the Bureau revokes a permit of an organisation under this section, the organisation shall, subject to the conditions for grant of a permit under this Act, be allowed to re-apply for a permit.
- 34. Registration of organisations incorporated outside Uganda**
- Any organisation incorporated outside Uganda which intends to operate in Uganda shall apply to the Bureau to be registered and issued with a permit.
 - An application made under subsection (1) shall be –
 - accompanied by the prescribed fee;
 - a certified copy of certificate of incorporation from the country of incorporation; and
 - a certified copy of its constitution, or charter or documents governing the organisation.
 - Subject to fulfilment of the requirements under subsection (2), the Bureau may proceed to register and issue a permit to such an organization.
- 35. Exemption of organisations**
- The Minister may in an emergency situation, and in consultation with the Bureau, exempt an organisation from the requirements of registration and issue of a permit.
 - Any exemption made under sub section (1) shall not include payment of prescribed fees.
 - Subject to sub-section (1), the minister shall issue a provisional permit for the exempted organisation to operate for a period not more than six months.

PART IX - SELF-REGULATION, ADMINISTRATIVE AND REPORTING OBLIGATIONS

36. Interpretation

For purposes of this part –

- (a) “self-regulatory body” refers to a body set up by registered organisations that have come together and agreed that the body exercises some degree of regulatory authority over them upon consenting or resolving that they would abide by a set code of conduct, rules and procedures; and
- (b) “self-regulatory mechanism” means self-regulatory tools, rules and standards that organisations adopt to govern them in an agreed set up.

37. Formation of self-regulatory body

- (1) Two or more organisations may form a self-regulating body.
- (2) A self-regulatory body shall be registered with the Bureau.
- (3) An application for registration under this section shall be accompanied by –
 - (a) the resolution of each of the organisations forming the self-regulatory body stating its willingness to be part of the self-regulatory body;
 - (b) the code of conduct of the self-regulatory body; and
 - (c) any other information that the Bureau may reasonably require.
- (4) The code of conduct of a self-regulatory body shall be adopted by a special meeting of the policy making organ of the self-regulating body, attended by not less than three quarters of the voting members present.
- (5) A self-regulatory body under this section shall adopt its own structure, rules and procedure for the efficient administration of its activities.

38. Self-regulatory mechanism.

A self-regulatory body that has established a self-regulatory mechanism shall inform the Bureau of its existence and mode of operations.

39. Annual returns, estimates and furnishing of information

- (1) An organisation shall, in accordance with the generally accepted standards of accounting practice –
 - (a) keep accounting records of its income,

- (b) expenditure, assets and liabilities; and
- (b) within six months after the end of its financial year, draw up financial statements.

- (2) An organisation shall within two months after drawing up its financial statements, submit to the Bureau a report stating whether or not –
 - (a) the accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements; and
 - (b) the organisation has complied with the provisions of this Act and of its constitution which relate to financial matters.
- (3) An organisation shall –
 - (a) submit to the Bureau annual returns and a report of the audited books of accounts by a certified auditor;
 - (b) declare and submit to the District technical planning committee, the DNMC and SNMC of the area in which it operates, estimates of its income and expenditure, budget, work plan, information on funds received and the sources of funds; and
 - (c) submit to the Bureau, DNMC and SNMC in the area of operation, any other information that may be required.
- (4) A Community Based Organisation shall –
 - (a) submit to the SNMC in the area of operation, annual returns and a report of the audited books of accounts by a certified auditor;
 - (b) declare and submit to the SNMC its budget, work plan, information on funds received and the sources of funds; and
 - (c) submit to the SNMC, any other information that may be required.

PART X - OFFENCES AND PENALTIES

40. Offences and Penalties

- (1) An organisation or a person commits an offence who –
 - (a) on being required to do so, fails or refuses to produce to the Bureau a certificate, permit, constitution, charter or other relevant document or information relevant for the purposes of this Act;
 - (b) knowingly gives false or incomplete information for the purpose of obtaining a permit or other requirement;
 - (c) operates contrary to the conditions or directions specified in its permit; or
 - (d) engages in any activity that is prohibited by this Act.

- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding seventy two currency points or to imprisonment for a term not exceeding three years or both, and in the case of a continuing offence, to a further fine not exceeding fifteen currency points for each day during which the offence continues after conviction.

PART XI - MISCELLANEOUS

41. Inspection

- (1) An inspector may, at any reasonable time inspect the premises of an organisation and may request for any information that appears to him or her necessary for purposes of giving effect to this Act.
- (2) An inspector may, investigate any matter for the purpose of ensuring compliance with this Act and may subject to the power of the Director of Public Prosecutions under Article 120 of the Constitution prosecute any person for an offence alleged to be committed under this Act.
- (3) Subject to the provisions of this section, the Bureau may designate from among its officers such number of inspectors as are necessary for carrying out the purposes of this section.
- (4) A person designated as inspector, shall be Gazetted in the national Gazette.
- (5) Notwithstanding the powers given to an inspector under this section, no inspection shall be done without prior notice of at least three days being given to an organisation stating the time and purpose of the inspection.
- (6) For purposes of this section, reasonable time refers to hours of 8:00am to 5:00pm on working days.
- (7) A person who –
- without any lawful excuse denies an inspector access to any property, books of account, records, returns, document or information requested for under this section;
 - knowingly presents to the inspector a false or fabricated document or makes a false statement with intent to deceive or mislead the inspector; or
 - without reasonable excuse, refuses or fails to comply with any order or direction of the inspector;

commits an offence and is liable on conviction to a fine not exceeding twenty four currency

points or to imprisonment not exceeding one year, or both.

42. Protection from liability

A member of the board of directors, an officer or an employee of the Bureau or a person acting on the directions of the Bureau is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of the functions of the Bureau.

43. Assistance to the Bureau

Ministries, Departments and Agencies of Government shall afford the Bureau all necessary assistance for purposes of giving full effect to this Act.

44. Special obligations

An organisation shall –

- not carry out activities in any part of the country, unless it has received the approval of the DNMC and Local Government of that area and has signed a memorandum of understanding with the Local Government to that effect;
- not extend its operations to any new area beyond the area it is permitted to operate unless it has received a recommendation from the Bureau through the DNMC of that area;
- co-operate with local councils in the area of its operation and relevant DNMC and SNMC;
- not engage in any act which is prejudicial to the security and laws of Uganda;
- restrict its operations to the area of Uganda in respect of which it is permitted to operate;
- not engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda;
- be non-partisan and shall not engage in fundraising or campaigning to support or oppose any political party or candidate for an appointive office or elective political office, nor may it propose or register a candidate for elective political office; and
- have a memorandum of understanding with its donors, sponsors, affiliates, local and foreigner partners, if any, specifying the terms and conditions of ownership, employment, resources mobilised for the organisation and any other relevant matter.

45. Staffing of organisations

An organisation shall comply with the following in respect to staffing -

- at the time of applying for registration, submit to the Bureau a chart showing its organisational structure as stipulated in its constitution

accompanied by a statement –

- (i) specifying its foreign staff requirements where necessary;
 - (ii) indicating its requirements of Ugandan counterparts of the foreign employees; and
 - (iii) indicating the period for the replacement of its foreign employees with qualified Ugandans;
- (b) comply with any written law in Uganda relating to labour and employment services;
- (c) shall not employ a person who is not a citizen of Uganda unless that person has, before proceeding to Uganda for the purposes of the employment by the organisation, submitted to the Ugandan diplomatic mission in his or her country of origin for transmission to the Government of Uganda for consideration, for his or her suitability for the employment –
- (i) certified details of his or her certificates, credentials and recommendations of his or her academic and professional qualifications and proven work experience; and
 - (ii) a certificate of clearance of no criminal record from his or her country of origin;
- (d) ensure that any remuneration including salaries, allowances, fringe benefits and other terms and conditions of service of the Ugandan employees of the organisation are reasonably comparable to those for the time being prevailing in the employment market in Uganda or reasonably comparable to those of their foreign counterparts.

46. Business operations of organisations

- (1) An organisation or a member or employee of the organisation shall not use the organisation directly or indirectly to engage in any gainful activities for individual interest, except for the economic interest of the organisation or in fulfilling its objectives.
- (2) An organisation shall open and maintain a bank account.
- (3) Where an organisation receives monies in foreign currency, it shall open and operate a foreign currency bank account with a bank in which the currency shall be deposited and through which the transactions shall be conducted.
- (4) Except for fundraising purposes, where an organisation sells any goods or services to the public or to any other organisations, the prices of the goods and services shall be in

conformity with the prices if any, prescribed by the Government for those goods and services or conformity with the open market prices in respect of those goods and services for the time being prevailing in Uganda.

- (5) Any sum of money received from the sale of any goods or services under subsection (4) in excess of the administrative costs incurred in the sale shall be reinvested in the project or as directed by the organisation.

47. Affiliated organisations

- (1) An organisation which is affiliated to another organisation registered under this Act shall not operate in Uganda, unless it has itself been duly registered under this Act.
- (2) For purposes of this section, affiliated organisation means an organisation which is formally or closely connected to or controlled by a nationally or internationally incorporated organisation or group.

48. Dissolution

The dissolution of an organisation may be either -

- (a) voluntary; or
- (b) by order of court.

49. Voluntary dissolution

- (1) Members of the organisation may by resolution in accordance with the constitution of the organisation, dissolve the organisation.
- (2) voluntary dissolution of the organisation shall be taken to have commenced at the time of passing the resolution under sub section (1).
- (3) where an organisation passes a resolution for voluntary dissolution, it shall, within fourteen days after passing the resolution—
- (4) inform the Bureau of the resolution and the reasons for the resolution; and
- (5) publish the resolution in the Gazette and in any newspaper with wide circulation in Uganda.
- (6) A resolution for voluntary dissolution shall be registered with the Bureau and a copy sent to the official receiver within seven days after the date of passing the resolution.
- (7) Where default is made in complying with this section, the organisation and every officer of the organisation who defaults commits an offence and shall be liable to a fine not exceeding thirty currency points.

- (8) An organisation that has made a resolution for voluntary dissolution shall develop and submit to the Bureau and to the official receiver a statement of its affairs showing particulars of assets, liabilities, names, residence and occupation of the creditors and the securities held by them.

50. Dissolution by court

- (1) The jurisdiction in dissolution matters shall be exercised by the High Court.
- (2) Any person, organisation or bureau may apply to court for an order of dissolution of an organisation, on any of the following grounds –
- defrauding the public;
 - threatening national security; or
 - gross violation of the laws of Uganda.
- (3) where a person lodges a complaint against an organisation under subsection(2), court shall inquire into the affairs of the organisation.
- (4) Where an organization is found guilty of any of the grounds stipulated in sub section (2), court shall move to dissolve the organisation.
- (5) It is an offence to cause an organisation, when it is being wound up or dissolved, to transfer its remaining assets otherwise than in the manner contemplated by this Act and the laws of Uganda.

51. Composition or scheme of arrangement

- (1) An organisation that makes a resolution for voluntarily dissolution shall make a scheme of arrangement showing how the organization intends to deal with its assets and liabilities.
- (2) The scheme of arrangement shall be submitted to the official receiver and a copy shall be given to the Bureau.
- (3) For avoidance of doubt the scheme in subsection (1) shall consider the liabilities in accordance with the constitution of the organisation.
- (4) The official receiver shall have powers to vary the scheme where he or she is of the view that the scheme may not meet the needs of all the creditors.
- (5) The official receiver or a person appointed by court shall oversee the disposal of assets and liabilities of the organisation in accordance with the scheme or the direction of court.
- (6) where the organisation has met the requirements of this Act, and the provisions

set out in the scheme of arrangement, the members of the organisation shall apply to court for an order of dissolution.

52. Adjudication and Appeals mechanism.

- (1) A person aggrieved by a decision of the SNMC or DNMC under sections 20 and 21 of this Act, shall appeal –
- from a decision of SNMC to DNMC; or
 - from a decision of DNMC to the Bureau.
- (2) Where the DNMC or Bureau makes a decision against any organisation, it shall in writing inform the organisation of the reason for the decision.

53. Adjudication Committee.

- (1) There is established an adjudication committee to handle appeals by persons aggrieved by a decision of the Bureau.
- (2) The Minister shall constitute the adjudication committee by appointing its members to serve on terms and conditions specified in the instrument of appointment.
- (3) The adjudication Committee shall be constituted as follows -
- a chairperson who shall be an advocate of the High Court of not less than ten years standing;
 - a representative of organisations;
 - a representative of the Bureau; and
 - two senior citizens.
- (4) Upon any complaint or appeal being made to the adjudication committee, the adjudication committee may –
- confirm, set aside, vary or quash the decision in question;
 - require the Bureau to revise or review its decision; or
 - make such other order as may be appropriate in the circumstances.
- (5) A person who is dissatisfied with the decision of the adjudication committee established under subsection (1) may appeal to the High court.
- (6) The Minister shall publish the general rules and guidelines to be used by the adjudication committee in execution of their functions under this Act.

50. Minister's Powers

The Minister may, subject to this Act, give to the Bureau written instructions of a general or specific nature relating to its functions to which it shall be bound to comply.

51. Regulations

- (1) The Minister may, after consultation with the Bureau, make regulations for giving full effect to this Act.
- (2) Without prejudice to the general effect of subsection (1), regulations made under subsection (1) may prescribe the following –
 - (a) the form of application for registration;
 - (b) the form of a permit;
 - (c) the form of application for renewal of a permit;
 - (d) fees for foreign, indigenous, continental, regional and international organisations for purposes of application for registration and application for renewal of permits;
 - (e) the manner in which the organisation shall –
 - (i) be wound up when it ceases to operate;
 - (ii) carry out a search at the Bureau;
 - (iii) self regulate;
 - (iv) acquire tax exemption;
 - (v) submit annual returns;
 - (vi) replace its permit in case of loss or damage; and
 - (vii) notify the board on changes within the organisation and its constitution;
 - (f) terms and conditions that may be specified in the permit;
 - (g) the manner in which the Bureau shall handle complaints;
 - (h) fees for services rendered by the Bureau; and
 - (i) anything that is required or authorised to be prescribed under this Act.
- (3) The Minister may, by statutory instrument amend Schedule I to this Act, with the approval of Cabinet.
- (4) Regulations made by the Minister under this section shall be laid before Parliament.

56. Repeal of the Non-Governmental Organisations Act, Cap. 113 and savings

- (1) The Non-Governmental Organisations Act, Cap. 113 is repealed.
- (2) Any statutory instrument made under the Non-Governmental Organisations Act, Cap. 113, repealed under subsection (1) and which is in force immediately before the commencement of this Act, shall remain in force, so far as it is not inconsistent with this Act, until it is revoked by a statutory instrument made under this Act and until that revocation, shall be deemed to

have been made under this Act.

PART XII - SAVINGS AND TRANSITIONAL PROVISIONS**57. Vesting of assets and liabilities**

On the commencement of this Act -

- (a) all property and assets vested in the Board before the commencement of this Act shall be vested in the Bureau subject to all interests, liabilities, obligations and trusts affecting the property;
- (b) any money held by or on account of the Board shall vest in the Bureau;
- (c) all contracts, agreements and undertakings made by the Board and all securities lawfully given to or by it and in force immediately before the commencement of this Act have effect as contracts, agreements and undertakings by and with the Bureau and may be enforced by and against the Bureau; and
- (d) any proceedings commenced by or against the Board may be continued by or against the Bureau.

58. Continuation of the Bureau and employment of employees of the Board.

- (1) Notwithstanding the repeal in section 56(1), the Board established under the Non-Governmental Organisations Act, Cap. 113, shall continue to operate until the Minister appoints the board of directors, under section 9 of this Act.
- (2) On the commencement of this Act –
 - (a) every person who, immediately before the commencement of this Act was employed by the Board becomes an employee of the Bureau and shall continue to be employed by the Bureau;
 - (b) the terms and conditions, including the salary, on which a person referred to in subsection (1) was employed immediately before the commencement of this Act, shall be no less favourable than those that applied to that person's office immediately before the commencement of this Act; and
 - (c) there is no break or interruption in the employment of such person because of the enactment of this Act.
- (3) Subject to subsection (1) (b), the terms and conditions of any employment referred to in subsection (1) may be varied after the commencement of this Act.
- (4) Nothing in this Act affects the pension rights

under the Pensions Act of any person referred to in subsection (1).

- (5) For purposes of Sections 57 and 58 of this Act, reference to the Board means the Board established under the Non-Governmental Organisations Act, Cap. 113 repealed under Section 56(1) of this Act.

59. Continuation of operation of organisations

An organisation and Community Based Organisation which existed immediately before the commencement of this Act and to which section 2(1) of the Non-Governmental Organisation Act, Cap. 113 applied, before the commencement of this Act, may continue to operate.

SCHEDULE 1

Sections 3, 37

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

SCHEDULE 2

Section 12

MEETINGS OF THE BOARD OF DIRECTORS

1. Meetings of the board of directors

- (1) The Chairperson shall convene meetings of the board of directors who shall meet at least once every three months at such places and at such times as may be decided upon by the board of directors.
- (2) The chairperson or in his or her absence the vice chairperson shall preside at every meeting of the board of directors and in the absence of both the Chair person and vice chairperson; the members present shall elect from among their number, an acting chairperson.
- (3) The Chairperson may, at any time, convene special meeting of the board of directors.
- (4) with the exception of a special meeting, notice of the board of directors meeting shall be given in writing to each member at least fourteen working days before the day of the meeting.

2. Quorum

The quorum for a meeting of the board of directors is five members.

3. Minutes of meetings.

- (1) The board of directors shall cause to be recorded and kept, minutes of all meetings of the board of directors in a form approved by the board of directors.
- (2) The minutes recorded under this paragraph shall be submitted to the board of directors for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson and the Secretary, to the Bureau, in the presence of the members present at the latter meeting.

4. Decision of the board of directors

- (1) All decisions at a meeting of the board of directors shall be by simple majority of the votes of the members present and where there is an equality of votes, the person presiding at the meeting shall have a casting vote.
- (2) A decision reached by the board of directors shall be binding on all members.

5. Power to co-opt

- (1) The board of directors may co-opt any person who, in the opinion of the board of directors, has expert knowledge concerning the functions of the board of directors, to attend and take part in the proceedings of the board of directors.
- (2) A person co-opted under subparagraph (1) may take part in any discussion at the meeting of the board of directors on which his or her advice is required but shall not have any right to vote at that meeting.

6. Disclosure of interest of members

- (1) A member of the board of directors who is in any way directly or indirectly interested in a contract made or proposed to be made by the board of directors, or in any other matter which falls to be considered by the board of directors, shall disclose the nature of his or her interest at a meeting of the board of directors.
- (2) A disclosure made under subparagraph (1) shall be recorded in the minutes of that meeting.
- (3) A member who makes a disclosure under subparagraph (1) shall not-
 - (a) be present during any deliberation of the board of directors with respect to that matter; or
 - (b) take part in any decision of the board of directors with respect to that matter.
- (4) For purposes of determining whether there is a quorum, a member withdrawing from a meeting or who is not taking part in a meeting under subparagraph (3) shall be treated as being present.

7. The board of directors may regulate their own procedure

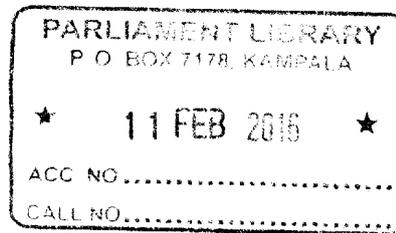
Subject to this Act, the board of directors may regulate their own procedure or any other matter relating to its meetings.

CROSS REFERENCES

Public Finance Management Act, Act. No. 3 of 2015. Pensions Act, Cap. 286



THE REPUBLIC OF UGANDA



This printed impression has been carefully compared by me with the bill which was passed by Parliament and found by me to be a true copy of the bill.

A handwritten signature in black ink, appearing to be "G. S. M. M.", written over a horizontal dotted line.

Clerk to Parliament

Date of authentication: 25th/01/2016

APPENDIX II: HRAPF'S POSITION PAPER ON THE NGO ACT, 2016



POSITION PAPER ON THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016

20th MARCH 2016

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1. Introduction and overview

On 14th March 2016, the Non Governmental Organisations Act, 2016 (The NGO Act) came into force. The Act replaces the Non Governmental Organisations (Registration) Act Cap 113 (NGO Registration Act). The Bill that has now become the Act was introduced before Parliament in April 2015. Civil society organisations lobbied to have the most problematic provisions of the bill dropped. Indeed, the final Act passed in November 2015 does not include most of the draconian provisions. However, there are still some worrying provisions in the NGO Act upon which civil society needs to decide the next steps. These provisions are section 44(d) and (f) which imposes special obligations on organisations not to engage in activities that are prejudicial to the 'security and laws of Uganda', and to the 'interests of Uganda and to dignity of Ugandans' and section 30(1)(a) which allows the NGO Bureau to refuse to register an organisation whose objectives are regarded as being in contravention of the laws of Uganda. HRAPF is of the position that section 44(d) and (f) would have a very negative impact on all organisations as their vagueness can easily be used to clamp down on organisations doing legitimate work. Section 30 would give legal backing to the emerging unlawful practice of denying registration to organisations working on protection of the rights of criminalised minorities. HRAPF formally consulted with LGBTI and sex worker organisations and it was agreed that there was need to bring these concerns to the other civil society organisations and seek their support in opposing these provisions. It was agreed that unilateral action should not be taken that would curtail the other gains that civil society has made, except if mainstream organisations do not take the requisite action. This position paper gives a detailed analysis of the above provisions in light of their practical implications for all organisations, and for those working on LGBTI, sex work and other criminalised minorities.

2. Background

The coming into force of the NGO Act, 2016 is the culmination of a long campaign to more closely regulate and monitor the work of Non-Governmental Organisations in Uganda, and an equally long campaign by civil society organisations to oppose such unconstitutional restrictions. The first substantial changes to the legal regime governing NGOs were first made in 2006 with the passing of the NGO Registration (Amendment) Act, 2006. The Act gave powers to the NGO Board to incorporate NGOs, made it illegal for NGOs that were not registered to operate and also gave the NGO Board wide powers to register and deregister NGOs. The Act was followed by the Non-Governmental Organisations Registration Regulations, 2009 (NGO Regulations, 2009) which had many restrictive provisions that were not even envisaged by the parent Act. These included special obligations on NGOs and the powers of officials of the NGO Board to inspect organisations without notice. Civil society challenged the NGO (Amendment) Act 2006 and the NGO Regulations 2009 in the Constitutional Court, but this petition has been pending since 2009. The NGO Act 2016 was thus introduced to circumvent the petition in court and give the NGO Regulations 2009 the force of law. Indeed most of the Regulations were reproduced in the Bill, and it was only the relentless lobbying of CSOs that ensured that most of them did not make it to the Act. Nevertheless, two provisions remain worrying to all civil society organisations and to organisations working on the rights of criminalised minorities specifically. These are analysed as below:

3. What is wrong with Section 44(d) and (f), and section 30(1)(a)?

Section 44(d) and (f) and section 30(1)(a) have the potential to overturn the gains that civil society made when most of the draconian provisions were not include in the Act. This is for the following reasons:

Section 44 (d) and (f)

Section 44(d)

An organisation shall-

- ...
- (d) not engage in any act which is prejudicial to the security and laws of Uganda;
 - (f) not engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda.

This provision impacts on all organisations regardless of the work that they are engaged in. This is because the words used are broad and undefined, and can therefore be used to wantonly limit the enjoyment of the right to freedom of association. 'Security reasons' have on many occasions been given as a justification to clamp down on freedom of expression and association, and so 'security' can easily be used to further clamp down on the work of organisations. 'Laws of Uganda' on the other hand are many and varied and it must be clear which laws are being prejudiced by an organisation's acts. Indeed, to avoid this vagueness is the very reason why laws including the NGO Act, 2016 itself, have provisions that create offences for violating provisions of that specific law. The term prejudicial contributes to the vagueness more, for it is not clear whether it must be proved that

the action actually led to the insecurity or violated any laws. Prejudicial does not necessarily amount to violation and thus speculation is allowed to prevail which for a penal provision is unacceptable. Any acts can be said to be prejudicial to the security of Uganda or the laws of Uganda depending on who chooses to label them so. For example an organisation can easily be said to be doing something prejudicial to security and to traffic laws when planning to hold a peaceful demonstration, or the government can easily shut down social media on the pretext that they think some organisations may create insecurity just as it was during the elections, or an organisation providing legal services to an LGBTI person or a sex worker may be deemed to be doing something prejudicial to the laws of Uganda, which criminalise same sex relations and sex work.

The section on interest and dignity of Ugandans is equally problematic because it does not define what the 'interests of Uganda' are and neither does it define what the 'dignity of Ugandans' means. Therefore, any work may be interpreted to be prejudicial to the interests of Uganda and to the dignity of Ugandans. It is a statement of ideals, yet, as reflected in Section 40(1)(d), it has the force of penal law as it falls under the category of doing anything that contravenes the Act. It is thus punishable by fines and imprisonment of up to three years. Therefore, many NGO leaders risk jail or fines based on vague provisions.

Vagueness in criminal provisions is unconstitutional. Article 28(12) of the Constitution provides that an offence must be clearly defined. HRAPF notes with concern that these penal provisions on 'security,' 'laws of Uganda,' 'interests of Uganda' and 'dignity of Ugandans' are vague and undefined and are therefore unconstitutional. They are also likely to be abused to clamp down on any organisation which those in authority may decide to be doing work that they do not like.

Section 30. Refusal to register section

Section 30(1) *An organisation shall not be registered under this Act-*

- (a) *where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda;*

While it sounds legitimate that an NGO must have objectives that comply with the law, the events of the recent past show that this provision is going to be used to provide legal backing to the currently unlawful actions of refusing to register NGOs working on LGBTI issues in particular. The Uganda Registration Services Bureau (URSB) which is the entity that will be incorporating NGOs under the NGO Act 2016 has on two occasions in the past two years refused to register organisations seeking to provide health and other services to LGBTI persons on the basis that their objectives are in contravention of section 145 of the Penal Code which criminalises same sex conduct. This has been done with no legal backing whatsoever because otherwise organisations working on criminal defence would all be rendered illegal because they defend persons engaging in acts that are criminal acts. With such a provision in place, organisations working on LGBTI issues, sex worker issues, drug use issues and those advocating for legalisation of abortion would all be likely to be denied registration under this provision.

4. Other concerns: The continued validity of the NGO Regulations 2009

Section 56(2) of the Act saves all regulations that were made under the NGO Registration Act and these certainly include the NGO Regulations, 2009. Though the section requires that for the Regulations to be valid, they should be in line with the NGO Act, 2016, they nevertheless still have the force of law until court pronounces on them or they are revoked. The NGO Regulations, 2009 contain most of the provisions that were left out of the NGO Act, 2016. They therefore do not fulfill the requirements of Section 56(2) and the Minister should immediately revoke them.

5. The above provisions and freedom of association

Apart from the above provisions having very negative implications on the work of civil society organisations, they are also unconstitutional. This is because they violate the right to freedom of association.

All the cited provisions have the effect of eroding the right to freedom of association. The right to freedom of association is protected under Article 29(1)(e) of the Constitution of the Republic of Uganda. In terms of normative content, the right to freedom of association concerns the formation and joining of groups for any purposes- ideological, religious, political, economic, social, cultural, sports or other purpose. In this regard, even organisations whose views may be contrary to the views of the majority are protected.

Uganda heralds itself as a democracy and its democratic values are espoused in its Constitution. As such, the country is supposed to be governed basing on internationally accepted principles of democracy. It is widely

accepted that in democratic societies, civil society manifests the interests and will of the citizens. These opinions are normally criticisms of the ruling governments. Governments are therefore always tempted to try and frustrate the work of civil society by exerting unnecessary control on their operations and narrowing their space. This is however in contravention of internationally accepted human rights standards. People's freedom of association should be protected in democracies where political pluralism is practiced. Divergent opinions are often offensive to ruling governments but the essence of political pluralism is to create space for the public to be able to criticise the government as this acts as a check and implores government accountability. Unreasonably restricting these freedoms is therefore going against all tenets of democracy and internationally accepted human rights standards.

The right to freedom of association is not an absolute right. It is subject to the general limitation in Article 43 of the Constitution. The limitation states that *'In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.'* Clause 2 expounds on the issue of Public interest and states that it shall not permit 'a) Political persecution; b) Detention without trial; and c) Any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.'

In interpreting the extent of the limitation clause, Mulenga JSC in the case of *Charles Onyango Obbo and Anor v Attorney General* [Constitutional Appeal No. 2 of 2002] confirmed that: *The yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society... Limiting their [rights] enjoyment is an exception to their protection, and is therefore a secondary objective. Although the Constitution provides for both, it is obvious that the primary objective must be dominant. It can be overridden only in the exceptional circumstances that give rise to that secondary objective. In that eventuality, only minimal impairment of enjoyment of the right, strictly warranted by the exceptional circumstance is permissible. ... There does indeed have to be a compromise between the interest of freedom of expression and social interest. But we cannot simply balance the two interests as if they were of equal weight.'*

Therefore, freedom of association cannot be limited by considerations other than those legally accepted under the Constitution and international law, and the considerations shown above do not satisfy the test because they completely erode the right.

6. Recommendations

From the above analysis, HRAPF recommends the following:

- i) The Minister of Internal Affairs should as soon as possible come up with Regulations that clearly define the vague terms used in the Act in line with the powers given to her under Section 55(1) of the Act.
- ii) The Minister of Internal Affairs should immediately pass a statutory instrument revoking the NGO Regulations, 2009 which are still in force by virtue of Section 56(2) of the NGO Act, 2016 and yet most of their provisions are inconsistent with the NGO Act, 2016.
- iii) Civil Society Organisations should come up with a joint position paper highlighting these problematic provisions and use it to engage the Minister of Internal Affairs on the need for Regulations that are clearer and that do not disproportionately affect certain sections of civil society.
- iv) If the Regulations that the Minister comes up with do not resolve the vagueness, then Civil Society Organisations should challenge the identified provisions in the Constitutional Court seeking interpretation.
- v) Development partners should engage the government on the need for Regulations that clearly define the meaning of the vague terms in the Act and for the repeal of the NGO Regulations, 2009.

7. Conclusion

While we applaud the legislature and the executive for passing an NGO Act that is progressive and for actively consulting with NGOs, sections 44(d) and (f) and section 30(1)(a) of the Act remain points of concern. These provisions are not only vague and subject to being misused to clamp down on NGOs doing legitimate work, but they are also unconstitutional. They also shall have a disproportionate effect on organisations working on issues that are unpopular in the country such as LGBTI issues, sex worker issues, and issues of abortion. They therefore need to be defined in a way that protects organisations doing legitimate work.

APPENDIX III: PROPOSALS FOR REGULATIONS TO THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016 TO ADDRESS THE CONCERNS OF MINORITY AND MARGINALISED GROUPS



Proposals for Regulations to the Non-Governmental Organisations Act, 2016 to Address the Concerns of Minority and Marginalised Groups

16th September 2016

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1. Introduction and overview

The Non-Governmental Organisations Act 2016 (NGO Act) was promulgated by the Parliament of Uganda in November 2015. The Bill, which eventually became the NGO Act, contained a number of provisions which were deemed draconian and problematic in terms of their anticipated effects on organisations serving minorities and marginalised groups in particular. 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. Many of these provisions were dropped as a result of effective lobbying efforts from civil society organisations. Some of the worrying provisions, however, were retained in the Act. These provisions include section 30(1)(a) which gives the NGO Bureau the discretion to refuse the registration of an organisation if the objectives of the organisation are regarded as being in contravention of the law of Uganda. Section 44(d) and (f), which impose special obligations on NGOs, are also viewed as problematic because they contain vaguely defined terms and can easily be used to clamp down on organisations doing unpopular yet legitimate work.

HRAPF engaged Prof. Christopher Mbazira of the School of Law, Makerere University to draft proposed regulations tailored to address the key concerns of minority and marginalised groups in respect of the Act. The consultant identified all the provisions of the NGO Act which could have a potentially harmful effect on organisations serving minorities and marginalised groups, and developed a first draft of the proposals based on these provisions. This draft was used as a basis for collecting input from members of minority and marginalised groups themselves,¹ and this culminated into the current final draft of the Proposals.

The Proposals sets out each of the provisions of the NGO Act which have been identified as problematic, along with a suggested regulation to address the concerns raised in respect of the provision.

2. Background

The NGO Act, 2016 which was assented to by the President on 30th January 2016, repealed the Non-Governmental Organisations Act, Chapter 113 Law of Uganda (as amended). In total, the Act sets out nine objectives for which it was promulgated. Among these are: to establish a regulatory framework for NGOs; to maintain high standards of governance, accountability and transparency; and to provide an enabling environment for the organisations. This is in addition to strengthening the capacity of the National Bureau for Non-Governmental Organisations, as well as promoting and developing a charity culture.

The Bill from which the Act was promulgated, however, was received with much suspicion,² especially from civil society, both within and outside Uganda.³ This suspicion is partially attributable to a section in the Bill entitled 'Gaps in the existing law', which justifies the introduction of the Bill in the following terms: '[It has been] noted that the rapid growth of Non-Governmental Organisations has led to subversive methods of work and activities'. Generally, the Bill was criticised for seeking to tighten state control over NGOs and weakening them, while giving government agencies undefined and in some cases vague discretion powers.⁴ The Bill was also criticised for thwarting the freedoms of expression and association, as well as the rights to a fair trial and privacy. This was associated with the following: (i) vaguely defined, wide discretionary powers proposed for the NGO Bureau to refuse applications for NGO registration; (ii) decisions made without a procedure that guarantees due process and the right to appeal; and (iii) the powers of the Bureau to inspect the premises of an NGO without notice.⁵ Other areas of criticism included mandatory registration, broad and undefined offences, dual liability of an organisation and its directors, revocation of operating permit, and special obligations

¹ A consultative meeting with 50 members of organisations serving LGBTI persons, sex workers and drug users was held in Kampala; two further meetings were held in Mbale and Kasese respectively with 25 participants attending each.

² Non-Governmental Organisations Bill, Bill No. 10 of 2015, April 2015.

³ See for instance Human Dignity Trust, *Note on the Non-Governmental Organisations Bill* at <www.humandignitytrust.org/note_on_the_NGO_Bill_2015_20150506.pdf> (accessed on 8 August 2016), Human Rights Network Uganda, *Analysis of the Non-Governmental Organisations Bill, 2015* at <www.hurinet.or.ug/ANALYSIS-OF-NGO-BILL.pdf.2015-8-13> (accessed on 8 August 2015). Human Rights Awareness and Promotion Forum *The NGO Bill 2015 and its Practical and Human Rights Implications on Organisations Working on the Rights of Marginalised Persons* <<http://hrapf.org/?mdocs-file=1584&mdocs-url=false>> (accessed on 8 August 2016).

⁴ See for instance Human Rights Awareness and Promotion Forum, n 3 above.

⁵ Human Dignity Trust, n 2 above.

of organisations, among others.⁶

As mentioned above, pressure was exerted on both the Government and Parliament to reconsider some of the provisions of the Bill and when the Bill was passed in December 2015, some problematic provisions had been removed. Among others, the liability of the board members was exempted in cases of good faith action; powers and procedures to appeal decisions of the various regulatory bodies were streamlined and inspection was subjected to notice.

In spite of these positive outcomes, the law maintained a number of troubling provisions. HRAPF released a position paper on the Act in March 2016 in which the remaining problematic provisions are highlighted and critiqued.⁷ As demonstrated in that paper, some of the provisions have the potential to curtail the rights of minority and marginalised groups and those organisations which support them. Areas of concern include section 30(1)(a), under the title 'Refusal to register' and section 44(d) and (f) under the title 'Special obligations'. The import of section 30(1)(a) is that it prohibits the registration of organisations whose objectives contravene the laws of Uganda. On the other hand, section 44(d) requires organisations 'not to engage in any act which is prejudicial to the security and laws of Uganda' while section 44(f) requires organisations 'not to engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda'. The effects of these provisions are discussed in detail in the position paper.⁸

Section 55 of the Act authorises the Minister to make regulations to give effect to the Act.⁹ The matters envisaged to be addressed by the regulations include: the form of application for registration; the form and terms of a permit; the fees for registration and a permit; and handling of complaints by the Bureau. At the time of commencement of this project, the Ministry of Internal Affairs had already embarked on the process of drafting the regulations and had been consulting with civil society under their umbrella body, the National NGO Forum.

3. Analysis of NGO Act and proposals for regulations

This section discusses each of the problematic provisions of the Act and makes a proposal for a regulation to address the concerns raised. The proposals reflect the input from the members of organisations working with LGBTI persons, sex workers and drug users that were formally consulted. It should be noted that HRAPF focused on addressing provisions of the Act which may negatively impact on organisations serving the interests of minority and marginalised groups and as such these proposals are limited to only these provisions:

3.1 Refusal to register an organisation

Section 30(1)(a) of the Act reads:

An organisation shall not be registered under this Act-

(a) where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda

As much as one can easily understand the phrase 'laws of Uganda' and can with the aid of a legal expert establish what the laws are, there is still need for this provision to be clarified. This, as illustrated in HRAPF's position paper on the Act¹⁰, is informed by experience, which shows reluctance on the part of the Uganda Registration Services Bureau (URSB) to register NGOs that are deemed to work for the rights of groups considered to be

⁶ See Human Rights Awareness and Promotion Forum, n 3 above.

⁷ Human Rights Awareness and Promotion Forum *Position Paper on the Non-Governmental Organisations Act, 2016* (March 2016). <<http://hrapf.org/?mdocs-file=1669&mdocs-url=false>> (accessed on 8 August 2016) and page 40 of this issue.

⁸ As above at 3-6.

⁹ Section 55(1).

¹⁰ n 7 above.

criminalised, such as Lesbians, Gays, Bi-sexual, Transgender and Intersexual (LGBTI) people and sex workers.¹¹ This has affected organisations that provide health care services, legal services as well as counselling services to these groups. Also affected are organisations which advocate for review of abortion laws. The authorities have, for instance, argued that the activities of these organisations contravene the penal laws which criminalise same sex conduct, sex work and abortion. The impact of this stance is that the legitimate work of organisations providing the services indicated above and advocating for changes in the law is criminalised. This argument lacks a legal and logical basis considering that no brow is lifted against organisations which exist to provide criminal defence to persons who have committed crimes. It is accepted that access to legal services is a constitutionally protected human right, even for the most abhorrent individuals in society. Equally so, are health care services.

a) *Proposal for regulations*

The regulations can mitigate the negative impact of section 30(1)(a) by clarifying that the provision is not intended to criminalise provision of services allowed under the laws of Uganda. The services can even be listed by way of example to include legal services, health care services, counselling, and advocacy for law reform.

b) *Proposed regulation*

1. *An organisation shall not be refused registration under section 30(1)(a) of the Act only on the ground that its objectives indicate the provision of legitimate services to groups and individuals whose activities are deemed to be against the laws of Uganda.*
2. *The services referred to in regulation ... above include but are not limited to the following:*
 - a) *Provision of health care services;*
 - b) *Provision of legal and related services;*
 - c) *Counselling and related services; and*
 - d) *Advocacy for rights and/or law reform*
 - e) *Education, training and capacity building*

3.2 Special obligations

Section 44(d) and (f) provide:

An organization shall-

...

(d) not engage in any act which is prejudicial to the security and laws of Uganda;

(f) not engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda

Analyses have faulted this provision for its vagueness and the likely risk of abuse. The words in the provision are broad and undefined and can be used to wantonly limit the enjoyment of the right to freedom of association. The phrase 'prejudicial to security' can be used to clamp down on freedom of expression; while the phrase 'laws of Uganda' could be abused, considering the wide array that this phrase covers. These provisions are susceptible to subjective interpretation and application.

In the same vein, the phrases 'prejudicial to interests' and 'dignity of Ugandans' as used in subsection (f) are equally vague and can easily be abused. Almost any activity can be interpreted to be prejudicial to the interests and dignity of Ugandans.¹²

¹¹ One such an instance was the refusal of the URSB to register an organisation called 'Sexual Minorities Uganda', an organisation aimed at the protection of rights of LGBTI persons, on the basis that same sex relations are prohibited by section 145 of the Penal Code Act. See 'SMUG files case against Registrar General' *Kuchu Times* 1 June 2016. Available at <<https://www.kuchutimes.com/2016/06/smug-files-case-against-registrar-general/>> (accessed on 8 September 2016).

¹² HRAPF n 7 above at 5.

a) *Proposal for regulations*

The regulations can be used to narrowly define the above phrases to remove any vagueness and mitigate their potential negative impact and potential abuse. The regulations have to make it clear that activities of organisations which are not illegal in themselves, such as the provision of services to marginalised groups, are not prohibited under this section. An act should not be deemed to threaten security or be prejudicial to the laws of Ugandans simply because it offends or annoys a section of society. In defining the phrase, reference should be made to Article 43 of the Constitution as the parameter against which the extent to which activities of an organisation are prejudicial to security shall be determined.

With respect to 'the interests of Uganda and dignity of the people of Uganda', the regulations could similarly be used to strictly define this phrase in order to remove any risks of abuse. The same parameters indicated above should be used to determine whether something is prejudicial to the interests of Uganda. This is by reference to activities that contravene the laws of Uganda understood in the context of Article 43 of the Constitution. With respect to 'dignity of the people of Uganda', the regulations should give guidance to this phrase by indicating that the phrase will be understood in the context of the meaning ascribed to 'dignity' by Article 24 of the Constitution and does not encompass anything not prohibited under Article 43 of the Constitution.

b) *Proposed Regulation*

Under Section 44(d)

The phrase 'prejudicial to security and laws of Uganda' as used in section 44(d) of the Act shall not include-

- a) any acts done in the furtherance of the mandate and interests of the organisation;*
- b) any acts which simply offend or annoy a section of society;*
- c) any acts of which the limitation or prohibition cannot be justified in accordance with the standard set by Article 43 of the Constitution;*

Under Section 44(f)

- a) The phrase 'interests of Uganda' will be ascribed the same meaning as accorded to 'the public interest' in Article 43 of the Constitution*
- b) The phrase 'dignity' will be ascribed the same meaning as is accorded to it in Article 24 of the Constitution*
- c) The phrases interests of Uganda and dignity of Ugandans shall not include:*
 - i) any acts done in the furtherance of the mandate and interests of the organisation*
 - ii) any acts which simply offend or annoy a section of society shall not be included under the ambit this prohibition;*
 - iii) any acts of which the limitation or prohibition cannot be justified in accordance with the standard set by Article 43 of the Constitution.*

3.3 Decision making powers and functions of the Bureau, DNMCs and SNMCs

The Act has several provisions which give the Bureau, District Non-Governmental Organisations Monitoring Committees (DNMCs) and Subcounty Non-Governmental Organisations Monitoring Committees (SNMCs) the power to make decisions that could affect the operation of organisations. The decisions relate to considering applications for registration and renewal of permits, under sections 6, 20(3) and 21 of the Act. This is in addition to powers of the Bureau to discipline, blacklist or revoke permits of organisations under section 7(1); monitoring of activities of organisations by DNMCs and SNMCs under sections 20(4) and 21(3); and powers of inspection under section 41 of the Act.

One shortcoming with the above provisions is that they do not give guidelines for the Bureau, DNMCs and SNMCs in the exercise of the above powers. Indeed, one would not have accepted this to be done by the Act. This is something that can best be handled by the regulations.

a) *Proposals for regulations*

It is proposed that the regulations define some general principles that could guide the Bureau, DNMCs and SNMCs in discharging their functions and exercising the powers described under the above and other provisions. The proposed principles include fairness, adherence to due process, respect for dignity and rights, promotion of activities of NGOs, developing and promoting civil society in Uganda, creating an enabling environment for organisations, and respect for the Constitution of Uganda. This is consistent with objective (d) of the Act in section 4, which provides that one of the objectives of the Act is to provide the development of strong organisations and to facilitate the formation and effective functioning of organisations for public benefit purposes. This is in addition to objective (g) which is to provide an enabling environment for the organisations sector, as well as objective (i) which is to promote and develop a charity culture that is voluntary, non-partisan and relevant to the needs and aspirations of the people of Uganda. It is also proposed that the regulations stipulate a time period for a notice issued to any organisation disciplined by suspension under section 7(b) of the Act. In this regard, it is proposed that when the Bureau decides to suspend an organisation, such organisation shall be given a 90 day notice of such suspension and may within that period of time appeal its suspension. However, the organisation shall continue to operate even after the 90 days as long as its appeal has not been determined.

b) *Proposed regulation*

1. *In discharging their functions, exercising their powers and making decisions under the Act, the Bureau, DNMCs and SNMCs shall have regard to the objectives in section 4 of the Act and shall be guided by the following principles:*
 - a) *Fairness;*
 - b) *Equality and non-discrimination;*
 - c) *Adherence to due process and respect for the rights to be heard and to legal representation;*
 - d) *Respect for dignity and rights of all without distinction;*
 - e) *Promotion of activities of NGOs;*
 - f) *Developing and promoting civil society in Uganda;*
 - g) *Creating an enabling environment for organisations to function sustainably; and*
 - h) *Respect for the Constitution of Uganda*
2. *The principles mentioned in Regulation ... above shall in addition specifically guide the process of making and content of policy guidelines which may from time to time be issued by the Bureau for the effective and efficient monitoring of organisations by SNMCs and DNMCs and to guidelines that may be issued by DNMCs under section 20(4)(c) and by SNMCs under section 21(3)(c) of the Act.*
3. *A decision by the Bureau to suspend, blacklist or revoke the permit of an organisations under section 7(1)(b) shall only take effect 90 days after such decision has been taken and notice of the same served on the organisations, and if the organisation chooses to appeal the decision, the organisation shall continue to operate until its appeal is determined with finality. In case of a decision of blacklist, such blacklisting shall be effected only in accordance with the provisions of this regulation.*

3.4 Timelines for registration

Section 29(3) of the Act provides that 'upon compliance with the requirements of sub section (2), the Bureau shall register the organisation'. One shortcoming with this provision is that it does not specify the time period within which the organisation shall be registered. The danger with this is that the Bureau may take an inordinately

long period of time to register an organisation, which may delay the work of the organisation. This is more significant for organisations working on marginalised peoples' issues because it would be easy to exploit this gap in the law to inordinately delay their registration. Indeed, the general perception is that it takes an unreasonably long period of time before an NGO is registered in Uganda. This affects the development of civil society in Uganda and discourages the development of the culture of charity.

a) Proposal for regulations

It is proposed that the regulations define a time period within which an organisation should be registered once it has complied with all the registration requirements as indicated in section 29(2) of the Act. It is proposed that this time be set at a period of thirty days. Indeed, there is no reason why it should take only a couple of days to incorporate a company yet take months for an NGO or Community-Based Organisation (CBO) to be registered.

b) Proposed regulation

1. *All applications for registration received by the Bureau under section 29 and by a DNMC under section 20 of the Act shall be dated and serialised in a chronological manner.*
2. *Upon compliance with the requirements of registration in section 29(2), the Bureau shall register an organisation within a period of 30 days.*
3. *The same time period shall apply to DMNCs in the case of registration of CBOs under section 20(4)(a).*
4. *It is the responsibility of the Bureau, DMNCs and SNMCs to advise applicants on the registration requirements and to provide reasonable assistance to enable applicants to meet the requirements of registration as stipulated in the Act.*

3.5 Application for renewal of permit

Section 32(1) of the Act provides that an organisation shall apply for renewal of a permit within six months before the expiry of its permit. However, unlike section 31(3) which provides that an upon application for a permit (the first time), the Bureau shall issue the permit in 45 days, no time period is prescribed within which a permit is to be renewed once applied for in the 6 months before expiry. The danger with this is that the Bureau could sit on the application for over 6 months which results in the expiry of a running permit and failure of the organisation to function. Indeed, section 32(6) provides that an organisation whose permit expires, but continues to operate without renewal, would be fined for every month in operation. Once again, this is more significant for organisations working on marginalised peoples' issues because it would be easy to exploit this gap in the law to inordinately delay the renewal of their permits, such that they end up with huge fines and find themselves unable to operate.

a) Proposal for regulations

To mitigate the risk of organisations operating without permits and being fined as a consequence, and for fairness, a time period should be set within which the Bureau should determine applications for renewal of permits. Since the application is submitted 6 months in advance, it is proposed that it is considered and determined within a period of 30 days from the date of submission. This gives an organisation time to prepare for its next period of operation. It is also fair that an organisation which appeals against a decision by which it is denied a permit or according to which its permit is revoked should be allowed to operate until its appeal is considered to finality.

b) Proposed regulation

1. *Upon receipt of an application for renewal of a permit under section 32(2), the Bureau shall determine such application within a period of thirty days.*
2. *Any organisation which appeals a decision of the Bureau denying it a permit shall continue to*

operate until the appeal is disposed of.

3.6 Appeals from decisions of the Bureau

Section 52 of the Act gives the right to appeal against decisions of the SNMCs to DNMCs and from DNMCs to the Bureau. However, it is not indicated to where the decisions of the Bureau are appealed. This may create the impression that decisions of the Bureau are final. Although section 53(4) gives guidance to the Adjudication Committee on how to deal with decisions of the Bureau, it is not clear whether this is with respect to decisions on appeals from the DNMCs.

Another area of concern is with respect to the composition of the Adjudication Committee, which includes a representative of the Bureau. This is irregular to the extent that the Committee considers appeals from the Bureau. It goes against the principles of natural justice that a representative of the Bureau should sit to consider an appeal of a decision to which he was party to. This is being a judge in one's own cause.

Furthermore, no time periods are indicated within which to consider the various appeals by the DNMCs, Bureau and the Adjudication Committee. The problem with this is that appeal considerations may take long period of time to the disadvantage of organisations and CBOs.

a) Proposal for regulations

In the first place, it is proposed that the regulations clarify the right to appeal from decisions of the Bureau to the Adjudication Committee. However, this should only be the case after review of the Act to remove the representative of the Bureau from the Adjudication Committee. This is something which is beyond the regulations but requires an amendment of the Act itself.

The Regulations should indicate time periods within which appeals should be heard. All appeals should be considered within a period of forty five days after being filed.

b) Proposed regulation

No proposed regulation is made with respect to the membership of the representative of the Bureau on the Adjudication Committee since this requires an amendment of the Act itself.

- 1. Appeals under sections 52 and 53 shall be considered within a period of forty five days from the date of receipt of the appeal by the DNMC, Bureau or Adjudication Committee.*

4. Conclusion

The NGO Act 2016, while in many ways progressive and favourable to the development of the civil society sector in Uganda, contains a number of provisions that could be used to clamp down on NGOs. These provisions are of particular concern to organisation working with unpopular minority groups such as sex workers, drug users and LGBTI persons. The concerns raised in respect of these provisions can be addressed by incorporating the proposed regulations in this document in the regulations to be adopted in terms of section 55 of the Act.





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