



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

Draft. Do not quote

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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,<sup>1</sup> 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 30<sup>th</sup> 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.

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<sup>1</sup> A consultative meeting with 50 members of organisations serving LGBTI persons, sex workers and drug

The Bill from which the Act was promulgated, however, was received with much suspicion,<sup>2</sup> especially from civil society, both within and outside Uganda.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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 of organisations, among others.<sup>6</sup>

As mentioned above, pressure was exerted on both the Government and Parliament to reconsider some 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.<sup>7</sup> 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

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<sup>2</sup> Non-Governmental Organisations Bill, Bill No. 10 of 2015, April 2015.

<sup>3</sup> 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](http://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](http://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).

<sup>4</sup> See for instance Human Rights Awareness and Promotion Forum, n4 above.

<sup>5</sup> Human Dignity Trust, n2 above.

<sup>6</sup> See Human Rights Awareness and Promotion Forum, n3 above.

<sup>7</sup> 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 8 August 2016).

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.<sup>8</sup>

Section 55 of the Act authorises the Minister to make regulations to give effect to the Act.<sup>9</sup> 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 Act<sup>10</sup>, 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 criminalised, such as Lesbians, Gays, Bi-sexual, Transgender and Intersexual (LGBTI) people and sex workers.<sup>11</sup> This has

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<sup>8</sup> As above at 3-6.

<sup>9</sup> Section 55(1).

<sup>10</sup> n7 above.

<sup>11</sup> One such an instance was the refusal of the USB 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

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;*

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General' *Kuchu Times* 1 June 2016. Available at <https://www.kuchutimes.com/2016/06/smug-files-case-against-registrar-general/> (accessed 8 September 2016).

*(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.<sup>12</sup>

*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)*

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<sup>12</sup> HRAPF n7 above at 5.

*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 Sub County 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 DMNCs 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(2), the Bureau shall register the organization’. One shortcoming with this provision is that it does not specify the time period within which the organization 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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