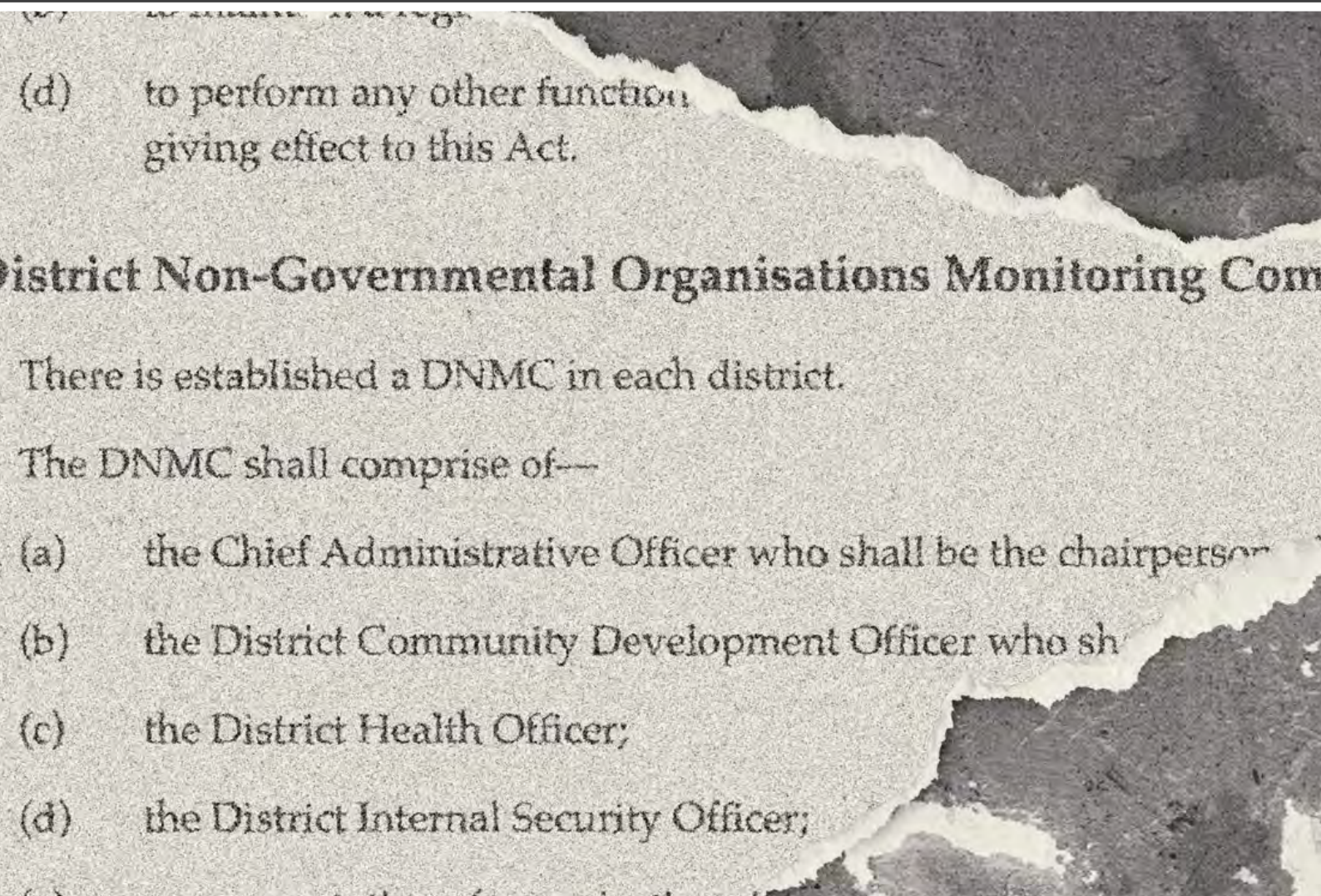


# DECENTRALISED BOTTLENECKS



*An analysis of legal concerns and practice implications of local government committees on NGO registration and operations*

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# 1. INTRODUCTION

The Non-Governmental Organisations Act, 2016 establishes and provides extensive powers to the local government authorities in Uganda. The two key committees established under the law in each district are the District Non-Governmental Organisations Monitoring Committee (DNMC)<sup>1</sup> and the Sub-County Non-Governmental Organisations Monitoring Committee (SNMC).

The composition of these committees and functions are all set out in the law. Under the leadership of the Chief Administrative Officer (CAO) at the district level, the seven-member DNMC is required under the law, among other functions, to recommend organisations to the National Bureau for NGOs (NGO Bureau) for registration. In the absence of such a recommendation, an organisation cannot obtain registration status in Uganda and proceed to operate.<sup>2</sup>

The five-member SNMC, on the other hand, is chaired by the Senior Assistant<sup>3</sup> Secretary. Among other functions, the SNMC has the mandate to ‘monitor and provide information on activities’ of NGOs in the sub-county to the DNMC.<sup>4</sup>

Whereas the need for a district level coordination mechanism for the NGO sector, as espoused in the National NGO Policy of 2010,<sup>5</sup> is positive; the current legal provisions that empower the committees with the mandate to veto registration of an NGO or renewal of an operation permit by simply declining to grant a recommendation letter is concerning.

This paper illustrates the threat the current legal framework possesses to the exercise of the freedom of association as guaranteed under the Constitution of Uganda and applicable international and regional law standards.

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<sup>1</sup> See Section 20 of the NGO Act, 2016 [Laws of Uganda]. [https://ulii.org/akn/ug/act/2016/5/eng%402016-03-03#part\\_VI](https://ulii.org/akn/ug/act/2016/5/eng%402016-03-03#part_VI)

<sup>2</sup> In a City, the City Clerk of Executive Director for the case of Kampala is the member and Chair of the DNMC.

<sup>3</sup> See Section 21 of the NGO Act, 2017 [Laws of Uganda]. [https://ulii.org/akn/ug/act/2016/5/eng%402016-03-03#part\\_VI](https://ulii.org/akn/ug/act/2016/5/eng%402016-03-03#part_VI)

<sup>4</sup> A Sub-County is equivalent to a Division in a City or Municipality. This means that in a Division, the Town Clerk is a member and Chair’s the SNMC.

<sup>5</sup> The National NGO Policy (2010).

[https://www.ngobureau.go.ug/sites/default/files/laws\\_regulations/2021/04/National%20NGO%20Policy%2C%202010.pdf](https://www.ngobureau.go.ug/sites/default/files/laws_regulations/2021/04/National%20NGO%20Policy%2C%202010.pdf)

## 2. COMPOSITION AND FUNCTIONS OF THE DNMC

### 2.1. Composition of the DNMC

On the composition of the DNMC, Section 20(2) of the NGO Act 2016 lists the following members.

- a) The Chief Administrative Officer (CAO), 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 (DISO);
- e) A representative of organisations (NGOs) in the district;
- f) The District Education Officer; and
- g) The Secretary for Gender and Community Services.

The law further grants the DNMC powers to co-opt any other technical officer to deal with specific issues.

### 2.2. Functions and powers of the DNMC

Under Section 20(4), the NGO Act 2016 sets out the functions and powers of the DNMC. Among others, they include the following:

- a) To monitor and supervise SNMCs.
- b) To recommend organisations to the NGO Bureau for registration.
- c) To advise the district councils on matters of registration and monitoring of organisations.
- d) To monitor and provide information to the NGO Bureau regarding activities and performance of organisations in the district.

Under Section 40(3), the NGO Act 2016 provides for more functions of the DNMC. These include the following:

- a) To receive estimates of income and expenditure, budget, work plan, information on funds received and the sources of the said funds from all NGOs in the district / city.
- b) To ask an NGO operating in the district to submit 'any other information that may be required'.

The NGO Act, 2016 further provides under Section 44 for the 'special obligations', which provide for the following mandate for DNMCs:

- a) After NGO registration, to review the application to operate in the district and exercise the powers to grant or deny permission for the organisation to operate in the district.
- b) To exercise the power of whether or not to sign a memorandum of understanding (MOU) with the organisation operating in the district.
- c) To block NGOs from operating in a new area beyond its permitted area of operation (as stipulated in the NGO permit).
- d) To require all NGOs in the district to 'co-operate' with the local government in the district.

## 3. COMPOSITION AND FUNCTIONS OF THE SNMC

### 3.1. Composition of the SNMC

On the composition of the SNMC, Section 21(2) of the NGO Act 2016 lists the following members.

- a) The Senior Assistant Secretary, who shall be the chairperson of the committee;
- b) The Sub-County Community Development Officer, who shall be secretary to the committee;
- c) The Sub-County Health Inspector;
- d) The Gombolola Internal Security Officer (ISO); and
- e) A representative of NGOs in the sub-county.

Unlike the DNMC, the SNMC has no express powers under the law to co-opt any other technical officer to attend the committee meetings to deal with specific issues.

### 3.2. Functions and powers of the SNMC

Under Section 21(3), the NGO Act 2016 sets out the functions and powers of the SNMC. Among others, they include the following:

- a) To advise the DNMC on matters of NGOs in the sub-county / division.
- b) To monitor and provide information on activities of the NGOs in the sub-county to the DNMC.
- c) To report to the DNMC on matters of NGOs in the sub-county.

The law provides for a legal obligation for NGOs to report to the SNMC on an annual basis. Section 39(3) of the NGO Act 2016 requires NGOs to adhere to the following obligations:

- a) To receive estimates of income and expenditure, budget, work plan, information on funds received and the sources of the said funds from all NGOs operating within the Sub-County.
- b) To ask an NGO operating in the sub-county to submit 'any other information that may be required'.

## 4. EMERGING LEGAL AND PRACTICE CONCERNS

### 4.1. Unjustifiable limitations

International, regional and national law standards provide that the freedom of association is an inherent right. On the legality of personality of associations, States are required not to compel associations to register in order to be allowed to exist and to operate freely. This is in tandem with the legal protection for informal (de facto) associations.

Human rights standards further require registration of organisations to be by notification rather than requiring prior authorization from the State. Any limitations imposed by the State must be in accordance with the principles of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society.<sup>6</sup>

In providing a legal requirement for all associations intending to register as NGOs to obtain a recommendation letter from the district or city of operations, the law creates an unnecessary preliminary registration procedure and sets in motion the criminalisation of informal associations. In the event that an association fails to obtain that recommendation letter, it cannot register as an NGO. This is in contravention with the inherent nature of the freedom of individuals to association.

### 4.2. Unnecessary administrative procedures

Under Section 20, the NGO Act 206 establishes a seven-member committee that is chaired by the Chief Administrative Officer or City Clerk. The law envisions that the committee must have meetings to consider applications received from associations and those that qualify, a minute is issued approving issuance of the recommendation letter.

In practice, associations are required to compile voluminous documents for consideration by the committee. In many instances, some members of the committee, usually the District Internal Security Officer (DISO), often carry out their own parallel assessment before the vetting of the committee.

These unnecessary and burdensome administrative procedures lead to protracted processes. In some cases, the local authorities decline to grant the letters of recommendation unlawfully, simply because the individuals seeking to register the organisation have been profiled as critical voices. While it is necessary to engage the district local authorities during the NGO registration process, the law should require the accounting officer of the district, in this case the Chief Administrative Officer, to be notified and proof of notification obtained.

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<sup>6</sup> For more, see the 'Guidelines on Freedom of Association and Assembly in Africa'.  
<https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa>

### **4.3. Opaque DNMC and SNMC operation processes**

While the NGO Act, 2016 establishes the composition of the committees, it does not provide clear guidelines in how the DNMCs and SNMCs should operate. As a result, each committee determines its own procedures, resulting in multiple negative consequences for associations. For instance, some committees require the members or directors of the associations to appear to justify their application for a recommendation letter. During the meetings, promoters of the associations are put to task to explain their previous work and conduct, particularly that which appeared to be very critical of the government and government officials.

# 5. CONCLUSION AND RECOMMENDATIONS

## 5.1. Conclusion

Whereas it is important for local government authorities to take note of the registration of NGOs in Uganda, it is important to emphasise that human rights law does not permit an authorization regime.<sup>7</sup> The procedure of new associations engaging with local governments during the formation stage should be governed by notification regime, instead of the current authorization regime. It is also important that the notification regime at the local government levels be guided by a clear procedure detailed in the NGO Regulations.

## 5.2. Recommendations

### ***To the Parliament of Uganda:***

- Amend Sections 20 and 21 to do the following:
  - i. repeal the establishment of the DNMC and the SNMC and place the responsibility of engaging with NGOs under the administrative role of the Chief Administrative Officer / City Clerk.
  - ii. during formation of an NGO, repeal the authorization regime that requires a recommendation letter and provide for a simple notification regime by way of letter.

### ***To the Minister of Information and Communications Technology:***

- Amend the NGO Regulations, 2017 to provide for clear guidelines on procedures to be adopted by the Chief Administrative Officers / City Clerks in effecting the notification regime at the local government level during the formation of NGOs.

### ***To the NGO Bureau:***

- While Section 20 and 21 remain in force, consider applications for registration of NGOs with or without the recommendation letter from the local government.

### ***To Civil Society Organisations / NGOs:***

- Document challenges experienced in accessing recommendation letters from the local governments, and advocate for a notification regime during formation of NGOs.

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<sup>7</sup> That is, a regime under which an association must obtain authorization from the government before being allowed to legally exist and operate.



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