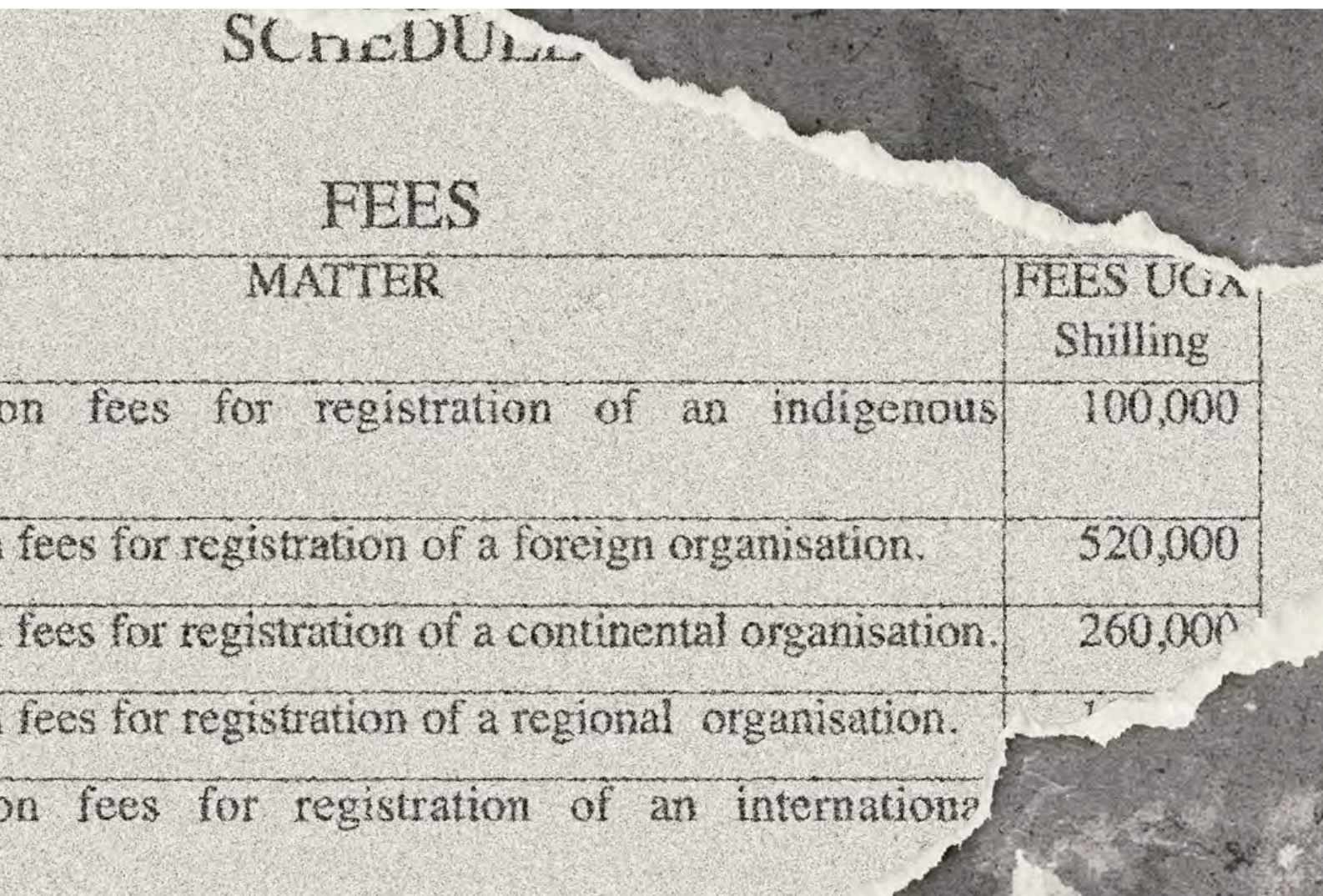


ISSUE PAPER

FEES AND FINES FOR NGOs IN UGANDA



SCHEDULE

FEES

MATTER	FEES UGA Shilling
on fees for registration of an indigenous	100,000
fees for registration of a foreign organisation.	520,000
fees for registration of a continental organisation.	260,000
fees for registration of a regional organisation.	
on fees for registration of an international	

*An analysis of legal and practice concerns on
NGO fees and fines*

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1. INTRODUCTION

Non-governmental organisations (NGOs) in Uganda must pay fees when they apply to register and when they seek other services, such as filing annual returns. The exact amount of fees for the various services are specified in the Non-Governmental Organisations (Fees) Regulations, 2017. The Non-Governmental Organisations Act, 2016 (NGO Act, 2016) further establishes a range of fines for failure to comply with several provisions of the law. The fines are often enforced strictly, with a few exceptions.

This paper examines how the said fees and fines impact NGOs and recommends good practices to align Uganda's NGO fee structure and fines with international and regional standards to promote the freedom of association.

To analyse compliance of the fee structure and fines in the NGO Act, 2016 and the 2017 Regulations, we identify and provide a summary of the fees and fines and proceed to identify emerging concerns. The paper finds that the fees and fines raise financial costs and risks for NGOs that could hinder their registration and operations as guaranteed under the Constitution of Uganda.

The emerging concerns relate to excessive fees especially for new organisations that are setting up, personal liability for fines incurred by NGOs that are duly incorporated as companies, and certain excessive and disproportionate fines.

The paper proposes review of the fees structure to provide for a simple structure that offers incentives for the formation and registration of NGOs, an end to imposing personal liability for fines incurred by NGOs, and a call to end monetary penalties. Where it is necessary to impose fines, the amounts set should be proportionate to the underlying compliance gap.

We hope the paper contributes to honest conversations on the current fees structure and fines in favour of greater respect for the right of individuals to exercise the freedom of association through NGO organizing without financial impediments or fear of personal liability for fines incurred by the organizations.

2. INTERNATIONAL, REGIONAL AND NATIONAL LAW STANDARDS

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has interpreted the International Covenant on Civil and Political Rights (ICCPR) to provide for a ‘simple, non-onerous or even free of charge’ registration process as a standard best practice.¹

The African Charter on Human and Peoples’ Rights (ACHPR) similarly protects the freedom of association. The African Commission on Human and Peoples’ Rights has interpreted the ACHPR to require that ‘a registration fee may be imposed to cover administration fees, provided that this fee is modest and does not have the effect of deterring associations from registering in practice.’²

On fines, international and regional law standards require that monetary penalties shall be avoided to the extent possible. Where associations have failed to comply with a particular state requirement, the remedy shall be compliance with that requirement.

Prior to the imposition of sanctions, a warning shall be issued and a reasonable period of time in which to comply with the regulations in question provided, where circumstances so allow.

The Constitution of Uganda provides for progressive human rights standards that support the international and regional law standards. For instance, it requires that any limitations to the enjoyment of the freedom of association be acceptable and demonstrably justifiable in a free and democratic society. Fees and fines that have the effect of deterring the inherent nature of the freedom of association in practice are likely to run afoul of this constitutional guarantee.

¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, May 2012

² ACHPR, Guidelines on freedom of association and assembly in Africa, See section 18, https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf

3. UNPACKING NGO FEES AND FINES UNDER THE NGO ACT, 2016

3.1. The NGO (Fees) Regulations, 2017

In exercise of the powers conferred upon the Minister of Internal Affairs by the NGO Act, 2016, the Minister made the Non-Governmental Organisations (Fees) Regulations, 2017³ on March 24, 2017. The Regulations establish a Schedule of the various services provided by the NGO Bureau and the fees that must be paid for each service. We reproduce the table below.

NATURE OF SERVICE	TYPE OF ORGANISATION	FEES (UGX)
Fees payable for registration of an organisation	Indigenous organisation	100,000
	Foreign organisation	520,000
	Continental organisation	260,000
	Regional organisation	100,000
	International organisation	800,000
	Community Based Organisation	40,000
	Self-regulatory organisation	60,000
Annual fees payable for issuance or renewal of a permit per year	CBO, indigenous or regional organisations	60,000
	Continental, foreign, or international organisations	400,000
Other fees are payable under the NGOs (Fees) Regulations, 2017	Review conditions of a permit	60,000
	Substitute certificate of registration or permit or any document to register	60,000
	Certified copy of certificate or permit or any document per copy	25,000
	Filing annual returns for organisations other than CBOs	50,000
	Filing annual returns for CBOs	40,000
	Inspection report	50,000
	Search of register and search report (Schedule, Regulation 2, NGOs (Fees) Regulations, 2017 organisation	20,000

³ The Non-Governmental Organisations (Fees) Regulations, 2017, No. 21.
<https://chapterfouruganda.org/sites/default/files/downloads/The-NGO-%28Fees%29-Regulations-2017.pdf>

3.2. Fine for operating with an expired NGO permit

The NGO Act, 2016 requires all organisations to apply for renewal of the NGO operational permit within six months before the expiry of the current permit. Failure to do so exposes the organisation to a fine. Under the law, an NGO whose permit expires but continues to operate without renewal of its permit will be fined one hundred currency points (Ugx. 2,000,000) for every month of operation in default of renewal of the permit. If the organisation is a CBO, the fine shall be ten currency points (Ugx. 200,000) for every month of operation in default of renewal of the permit. In practice, the NGO Bureau imposes the fine on the first day of the month in default.

3.3. Fines for engaging in activities prohibited by the NGO Act

Under Section 40(1), the NGO Act 2016 provides that “an organisation or a person commits an offence where –

- a) On being required to do so, fails or refuses to produce to the NGO 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.”

Where any of the above are contravened, the organisation or person is liable on conviction to a fine not exceeding Ugx. 1,440,000, in addition to possibility of imprisonment for a term not exceeding three years. If the organisation or person continues committing the offence after conviction, a further fine not exceeding Ugx. 300,000 for each day during which the offence continues.

3.4. Fines for obstructing inspection by the NGO Bureau

The NGO Act, 2016 provides for inspection powers. Section 41 states that an inspector from the NGO Bureau may 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 the NGO Act, 2016. The person designated as inspector must be Gazetted in the national Gazette and must give the organisation prior notice of at least three days stating the time and purpose of the inspection.

If the above requirements are adhered to, a person who does any of the following commits an offence and is liable on conviction to a fine not exceeding Ugx. 480,000 or imprisonment not exceeding one year, or both –

- a) Without any lawful excuse denies an inspector access to any property, books of accounts, records, returns, document or information requested for under this section;

- b) Knowingly presents to the inspector a false or fabricated document or makes a false statement with intent to deceive or mislead the inspector; or
- c) Without reasonable excuse, refuses or fails to comply with any order or direction of the inspection.

3.5. Fines for defaulting on voluntary dissolution obligations

The NGO Act, 2016 provides for the right of members of an organisation to voluntarily dissolve the organisation. Section 40 lays out the procedure of voluntary dissolution of an organisation, including the following steps –

- a) Identify the Article in the Constitution or Memorandum and Articles of Association that provides for voluntary dissolution.
- b) Members of the organisation are required to pass a resolution to voluntarily dissolve the organisation at the Annual or Extra-Ordinary General Meeting.
- c) After passing the resolution for voluntary dissolution, inform the NGO Bureau of the resolution and the reasons for the resolution and publish the resolution in the Gazette and in any newspaper in Uganda, within fourteen days after passing the resolution.
- d) Register the resolution for voluntary dissolution with the NGO Bureau and send a copy to the official receiver within seven days after passing of the resolution.

Where default is made in complying with these provisions, the organisation and every officer of the organisation shall be liable to a fine not exceeding Ugx. 600,000.

4. EMERGING CONCERNS AND IMPLICATIONS ON NGO ORGANIZING

4.1. Concerns of excessive fees

Under human rights standards, NGO registration procedures should be simple, expeditious, and inexpensive or even free of charge.⁴ The African Commission recommends that if registration fees are required, they be set no higher than the administrative cost to the state of registering an NGO.⁵ In contrast, NGOs in Uganda are subject to a complex fee structure consisting of varying registration fees for five categories of NGO.⁶ NGOs may find it difficult to easily determine which fee they must pay based on this multi-tiered fee structure. Further, while the fees prescribed in the NGO Act 2016 are not exorbitant, some NGOs – especially those that are new or lack financial resources – may find it difficult to pay even modest fees. This impedes the ability of individuals or groups to register organisations.

4.2. Personal liability for fines incurred by an NGO

Under the NGO Act, 2016, individuals may be subject to personal liability for fines incurred by an NGO for certain administrative violations.⁷ The African Commission has guided that ‘offenses committed by an association, for instance through decisions of its officers, should not be imputed to members of the association who did not take part in the offenses in question.’⁸ It has to be noted that one of the key reasons to formally register an organisation with the state, whether it is an NGO or a commercial entity, is to shift the risk of financial and contractual liability from the individuals comprising the organisation to the organisation itself. This principle of limited liability incentivizes people to form organisations to pursue their goals.

4.3. Certain fines are excessive and disproportionate

The NGO Act, 2016 levies substantial fines for offenses listed in the Act. For instance, the maximum fine of seventy-two currency points (UGX 1,440,000) for violations of Section 40 constitutes more than forty percent of the estimated Gross National Income per capita (about UGX 3,350,700).⁹ Many individuals would be unable to pay such a fine. The fine of Ugx. 2,000,000 for operating with an expired permit per month (even if they default by just a day) is excessive and disproportionate. The risk of having to pay a burdensome fine deters individuals and organisations from exercising their right to form an NGO or renew their NGO operation permits due to the risk of the prohibitive fine.

⁴ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, para. 18; UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, May 2012, A/HRC/20/27, para. 57.

⁵ African Commission, supra note 2, para. 18.

⁶ The categories are indigenous, foreign, continental, regional, and international NGO. The NGO (Fees) Regulations, 2017 also set out registration fees for community-based organisations (CBOs) and self-regulatory organisations.

⁷ See, e.g., Section 40(2) of the NGO Act.

⁸ African Commission, Guidelines, supra note 2, para. 57.

⁹ World Bank, “GNI per capita, Atlas method (current US\$),” available at: <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>.

5. CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The legal framework for NGO organising in Uganda is littered with excessive, disproportionate and unnecessary fees and fines. This paper documents multiple sections of the NGO Act, 2016 that impose fines for overly broad and basic administrative lapses. It is evident that the fees and fines have an effect of impeding the ability of individuals and groups from exercising the freedom to register or renew NGO operation permits. This paper presents good practices for consideration.

5.2. Recommendations

To the Parliament of Uganda:

- Amend the NGO Act, 2016 to provide for modest registration fees. At a minimum, registration should be inexpensive so as not to deter NGOs with few resources from registering. While the fees set by Uganda's NGO Act are not exorbitant, the framework could be improved by instituting a procedure for the waiver of fees if an organisation is unable to pay them.
- Amend the NGO Act, 2016 to remove individual liability for financial and contractual obligations incurred by the organisation they are associated with. The organisation alone is liable for such obligations. The idea behind this common legal principle, as reflected in Uganda's 2012 Companies Act, is to incentivize organisational activity.
- Amend the NGO Act, 2016 to reduce or remove monetary fines for non-compliance. Where an organisation fails to comply with an obligation, the remedy should be compliance.¹⁰ For example, if an NGO fails to supply a document that has been legitimately requested by the NGO Bureau, the remedy should be providing access to the document. However, where it is necessary to impose them, fines should be proportional to the underlying offense. As described above, the fines set out in the NGO Act are likely excessive and should be reduced to ensure they do not undermine NGOs' financial viability and operations.

¹⁰ African Commission, Guidelines, supra note 2, para. 57(b).

To the NGO Bureau:

- Grant waivers on fines to minimise negative impacts on NGO organising.

To Civil Society / NGOs:

- Document experiences and challenges faced by organisation and individuals in relation to fees and fines.
- Continue to advocate for amendments of the NGO Act 2016 to provide for lower registration fees, waivers on payment of fees, and replace fines with compliance as a remedy for non-compliance.



Chapter Four Uganda

Plot 2 Wampewo Close, Kololo

P.O Box 33159 Kampala

Phone: +256 200 929 990

Email: info@chapterfouruganda.org

www.chapterfouruganda.org

