



chapter four

PROTECTING CIVIL LIBERTIES &
PROMOTING HUMAN RIGHTS **FOR ALL.**

**An Analysis of the Human Rights and Constitutional
Implications of the Non-Governmental Organisations
Bill, 2015**

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Table of Contents

Introduction	3
Overview of Recognized Human Rights Standards	4
Thematic Review of the Provisions of the NGO Bill	6
Other Critical Matters Raised by the Bill	13
Conclusion	15

1. Introduction

The government of the Republic of Uganda placed the Non-Governmental Organisations (NGO) Bill in the *Uganda Gazette* on 10th April 2015. This signified the official proclamation of the government's position on the regulation of NGO activity in Uganda. The Bill, which is intended to replace the current NGO Registration Act, primarily seeks to provide a conducive and enabling environment for the NGO sector.¹

Indeed, a progressive legal regime that regulates operations of NGOs is necessary; and the NGO Bill largely addresses critical concerns for the NGO sector. Specifically, the NGO Bill establishes a full-fledged institution of the National Board for NGOs (herein after referred to as the Board), providing for its financial security by anchoring it in the Parliament and compliance with the Public Finance Management Act, 2015.² The Bill, further, establishes a level of clarity as regards the registration and incorporation of NGOs, laying out the process, documentation and considerations the Board is required to take in appraising the applications of NGOs.³

Despite the notable strides observed above, the NGO Bill is majorly problematic; and is littered with several troubling provisions that follow the global trend of regressive legislation towards NGO activity and general civic space.⁴ Critically, the impending NGO legislation would join and be a pivotal part of the recent illegitimate laws coerced through parliament normally through bribery, intimidation and blackmail. These include, the Public Order Management Act (POMA) – 2013, and the annulled Anti Homosexuality Act (AHA) – 2014, which legislations potentially create difficulty for the effective democratic engagement in the country. The government has created a clear systemic architecture for repression.

This negative tenor of the Bill is anchored in a perceivable mistrust by the government towards the activities of NGOs. Specifically, the Memorandum to the NGO Bill states that, *"It has however been noted that the rapid growth of Non-Governmental Organisations has led to subversive methods of work and activities, which in turn undermine accountability and transparency in the sector . . ."*⁵ The clear suspicion towards NGO activity displayed herein, accounts for the thrust and ethos of the proposed NGO law.

The proposed NGO legislation raises concern particularly with regard to the rights to freedom of association and expression. It further raises issues on matters of criminality and the principle of legality, which require urgent scrutiny and consideration. Critically, it engages the important matter of *regulation* versus *control*; with these legislative efforts clearly indicating a thrust for the control of NGO and civic activities, disguised as the regulation of the same.

¹ The Non-Governmental Organisations Bill (herein after referred to as the *NGO Bill*), Bill No. 10 of 2015, Memorandum, Principals of the Bill, No. 1.

² The NGO Bill, Section 22.

³ The NGO Bill, Sections 31, 32.

⁴ See Report entitled *Defending Civil Society*, Second Edition, June 2012, co-authored by the International Center for Not-for-Profit Law (ICNL) and the World Movement for Democracy Secretariat at the National Endowment for Democracy (NED).

⁵ The NGO Bill, Memorandum, Gaps in the existing law, No. 2.

This analysis, therefore, seeks to review major constitutional and human rights infractions caused by the Bill and highlights the adverse legal implications of the impending legislation. The analysis is divided into the three broad thematic areas of Expression and Association; Criminality and the Principle of Legality; and the Judicial Oversight Role. The appraisal of Bill is based on international human rights standards, adopted by Chapter Four of the Constitution of the Republic of Uganda, 1995.

2. Overview of Recognized Human Rights Standards

2.1 International Human Rights Standards

Several international human rights treaties that Uganda has ratified are very instructive on matters of civil and political rights standards. As an anchor to the rights regime, the Universal Declaration of Human Rights (UDHR) guarantees the rights to freedom of opinion and expression, and peaceful assembly and association.⁶ The UDHR also upholds the principle of legality and stipulates the need for effective judicial processes.⁷

Additionally, the International Covenant on Civil and Political Rights (ICCPR) delves into the details of these freedoms. It provides that, “*Everyone shall have the right to freedom of expression; [and that the] right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers . . .*” The ICCPR further indicates that, “*The exercise of the rights provided . . . [carry] with [them] special duties and responsibilities . . . but these shall only be such as are provided by law and are necessary . . . For the protection of national security or of public order (ordre public), or of public health or morals.*”⁸

With regard to association, the ICCPR provides that, “*Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*” It also explains that, “*No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are 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.*”⁹

On the matter of criminality and the principle of legality, the ICCPR provides that, “*No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.*”¹⁰ Underlying this provision is the fundamental principle of *nullum crimen sine lege* that points to the requirement for a crime to be clearly prescribed by the law. Penal laws must clearly define what acts amount to crimes and what sanction is available for those contravening the specified rules.

Finally, with regard to judicial processes, the ICCPR guarantees the need for a fair and public hearing by a competent, independent and impartial tribunal.¹¹ In espousing the contours of this right, the United Nations Human Rights Committee on Civil and Political Rights (HRC) explains that the concept encompasses judicial procedures aimed at determining rights and obligations and equivalent notions in the area of administrative

⁶ The Universal Declaration of Human Rights (1948); Articles 19, 20.

⁷ UDHR, Articles 11, 10, respectively.

⁸ ICCPR, Article 19 (2), (3).

⁹ ICCPR, Article 22 (1), (2).

¹⁰ ICCPR, Article 15 (1).

¹¹ ICCPR, Article 14.

law.¹² It is therefore critical that proper judicial oversight is afforded where the rights of persons are in question, and where administrative bodies are granted disciplinary and other related powers and functions.

2.2 Regional Human Rights Standards

At the regional level, the African Charter on Human and Peoples' Rights (ACHPR) establishes the protection of the freedom of association by stating that, "*Every individual shall have the right to free association provided that he abides by the law.*"¹³ This freedom is further buttressed by the African Charter on Democracy, Elections and Governance which provides that all state parties shall deliberately, "*Create conducive conditions for civil society organisations to exist and operate within the law,*" and proceed to, "*[Foster] popular participation and partnership with civil society organisations.*"¹⁴

The African Commission on Human and Peoples' Rights in a resolution on the right to freedom of association observed that, "*The Competent authorities [the State] should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards.*"¹⁵ The resolution further provides guidance to states that, "*In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom.*"¹⁶ Indeed, any regulation of this freedom, according to the Commission, should be "*consistent with State's obligations under the African Charter on Human and Peoples' Rights.*"¹⁷

At the Sub-Regional level, the Treaty of the East African Community (EAC) provides for Fundamental Principles that govern the achievement of the objectives of the Community.¹⁸ Specifically and importantly in this regard, it states that the principles include, "*good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.*"¹⁹

2.3 The National Context

The Constitution of the Republic of Uganda expressly provides for the protection of the freedoms of expression and association under Article 29. It states that "*Every person shall have the right to — . . . freedom of speech and expression . . . freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.*"²⁰ The constitutional provisions for civic rights and activities further bolster this, as thus, "*Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations.*"²¹

¹² General Comment 32, CCPR/C/GC/32, para. 16.

¹³ African Charter on Human and Peoples' Rights (1981), Art. 10 (1)

¹⁴ African Charter on Democracy, Elections and Governance (2011); Articles 12, 27, 28.

¹⁵ ACHPR Resolution 5 (XI)/1992 on the Right to Freedom of Association

¹⁶ Ibid

¹⁷ Ibid

¹⁸ EAC Treaty, 1999, Article 6.

¹⁹ Ibid.

²⁰ Article 29 (1) (a), (e).

²¹ Article 38 (2)

The National NGO Policy, 2010, maintains this spirit of the respect of fundamental rights and freedoms.²² Further, the Checklist for Compliance with Human Rights in Policy, Bills, Budgets, Government Programmes and all Business Handled by Parliament specifically provides that parliament must “*ensure and determine that a rights-based approach informs the work and is reflected in Bills . . . and other government policies.*” Specifically, *number 18* of the Check-list, lays down the parameters for the assessment of the human rights compliance of Bills related to civic rights and activities; among others, requiring the Parliament to assess whether the Bill, policy or programme facilitates the public to participate in affairs of government.

Although the Constitution²³ anticipates that some of these rights may require some limitations by providing the same under Article 43, it explicitly provides that ‘public interest’ shall not permit ‘political persecution’ or ‘any limitation of enjoyment of the rights and freedoms prescribed by Chapter Four (Bill of Rights), beyond what is acceptable and demonstrably justifiable in a free and democratic society. The idea is that any such limitation must be clear and withstand the prescribed scrutiny.

In this regard, therefore, the wider principle of legality (not *nullum crimen sine lege*) in human rights is instructive. The Constitution’s reference to the preference for limitations that are acceptable and demonstrably justifiable in a free and democratic society means that the limiting legislation must be clear. Therefore, provisions with broad applicability, and insufficient guidance on what is, and what is not, permitted, cannot be acceptable nor justifiable in a free and democratic society.²⁴

Finally, the Constitution of the Republic of Uganda also guarantees the principle of legality in the area of criminality (*nullum crimen sine lege*),²⁵ and the need for proper judicial oversight and the necessary procedural guarantees when dealing with matters associated with the rights and obligations of any person.²⁶

3. Thematic Review of the Provisions of the NGO Bill

3.1 Expression and Association

The NGO Bill contains provisions that infringe upon the rights of freedom of expression and association, and seek to control the activities of NGOs. These provisions are exemplified by the employment of overly broad, ambiguous and vaguely worded powers and obligations as well as the inclusion of laborious registration processes and highly intrusive measures that can be exercised by the Board.

²² The National NGO Policy, p. 19.

²³ Article 43.

²⁴ See Uganda Supreme Court decision in *Charles Onyango Obbo and Another V. Attorney General* (Constitutional Appeal No.2 of 2002).

²⁵ Article 28 (7), (8).

²⁶ Article 28 (1).

Mandatory registration through a laborious process

Under Section 31²⁷, registration is mandatory and no organisation shall “*operate in Uganda, unless it has been duly registered with the Board.*” The NGO Bill further grants the NGO Board power to decline to register an organisation if: its objectives are “*in contravention of the law*”; “*where the application for registration does not comply with the requirements of [the] Act*”; “*where the applicant has given false or misleading information in any material particular*”; “*where it is in the public interest to refuse to register the organisation*”; or “*for any other reason that the Board may deem relevant.*”²⁸

Whereas a legal regime to provide for a robust and conducive environment for the exercise of these freedoms is not contested or resisted, the law should provide for an easy, smooth and non-discriminatory registration process, which takes the “*notification procedure*”²⁹ rather than the “*prior authorization procedure*”. In the event that government feels it cannot grant registration status to a group of people seeking to associate, it must provide legally justified grounds for such position and provide for judicial appeal. The state does not have the capacity to ban or sanction associations for failure to register³⁰ although it should be noted that registered associations attract certain privileges and benefits under the law.

Notably, the same tenor of operational control is intrinsic in the mandates granted to the District Non-Governmental Organisations Monitoring Committee (DNMC), specifically under Sections 20 (4) (a), (d) and (5), and the Sub-county Non-Governmental Organisations Monitoring Committee (SNMC) under Section 21 (3) (a).

Furthermore, under section 40 (a), (b), the NGO Bill requires a registered organisation “*not to carry out activities in any part of the country*”, nor “*extend its operations to any new area*” unless it has clearly 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.*” These provisions negate the very essence of the freedom to associate without requiring mandatory registration, permits or legal status pegged on *approval* rather than a *notification* approach.

Troubling broad and vaguely worded provisions

The Bill is littered with broad and vaguely worded provisions, which open the door to the control and silencing of peaceful government critics and activists.

²⁷ NGO Bill, 2015

²⁸ Section 31 (4).

²⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, paras 57-58, 60.

³⁰ Report of the SR on the right to freedom of peaceful assembly and of association, Maina Kiai, A/ HRC/20/27, para 56; Also see African Commission Communication No. 101/93 (1195), para 15; See United Nations General Assembly, “Lebanon,” Report of the Human Rights Committee: Volume 1 (A/52/40) (1997), paragraphs 357 – 358; United Nations General Assembly, “Lithuania,” Report of the Human Rights Committee: Volume 1 (A/53/40) (1998), paragraph 177. United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, A/HRC/26/29, April 2014 [“UNSR Report”], para.55.

Of specific concern is the reference to the ‘public interest’; a notion that is not defined in the Bill, but used severally as a basis for far-reaching decisions by the Board that infringe on the right to expression and association. Under Section 31 (4) of the Bill, an organisation shall not be registered where “*it is in the public interest to refuse*”. Further, under Section 33 (1) of the Bill, the Board may revoke a permit where “*in the opinion of the Board, it is in the public interest to do so.*” Additionally, with regard to dissolution of an organisation, Section 44 (3) (d) provides that the Board may dissolve an NGO “*for any other reason the Board considers it necessary, in the public interest.*” Extinguishing the freedom of persons to associate through non registration, permit revocation, and dissolution of NGOs on a vague and unexplained notion of ‘public interest’, falls short of the principle of legality with regard to limitations and thus violates the right to association.

Secondly, the use of the phrase, “*for any other reason that the Board may deem relevant*”, is problematic due the overly broad and undefined power it grants the Board. Specifically, Section 31 (4) stipulates such as a reason for the non-registration of an organisation under the law. It should be noted that this reason is preceded by the vague provision on ‘public interest’. Further, as observed above, Section 44 (3) (d) of the NGO Bill provides, in addition to the ambiguous matter of ‘public interest’, for dissolution of an organisation “*for any other reason the Board considers it necessary . . .*” This ambiguous form of legislation opens the door to far-reaching and potentially adverse actions by the Board that could infringe on the right to the freedom of association. There is a clear disregard for the principle of legality with regard to the limitation of the right to association; the broad language grants the Board the capacity to do away with any NGO or form of association for any reason imaginable.

Finally in this regard, under the provisions on special obligations,³¹ an organisation is required “*not [to] engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda.*”³² This is another broadly worded provision that does not clearly define nor give parameters of the interests of Uganda; it does not provide and clear benchmarks regarding the ascertainment of the dignity of the people Uganda, particularly in view of the vast cultural diversities existent in the country.

Being a special obligation, which could attract criminal liability in case it is breached (*see Section 31 (10), (11)-NGO Bill*), it places an unnecessary burden on the organisation to discern these standards. The lack of clarity and the vast potential for abuse makes this provision hugely problematic for the effective enjoyment of the right to expression and association. It will be difficult for an organisation to operation without the fear of criminal and penal sanction for the violation of the abstract norms of Uganda interests and the dignity of the people of Uganda.

Highly intrusive powers of inspection

The NGO Bill, under Section 37, provides for an officer of the Secretariat authorised by the Board, “*at any reasonable time [to] inspect the premises of an organisation and [...] request for any information that appears to him or her necessary for purposes of giving effect to [the] Act.*” The highly intrusive nature of this provision lies in the undefined time for inspection, coupled with the power to look at any documentation in organisation.

³¹ Section 40, NGO Bill.

³² Section 40 (f) NGO Bill.

The danger is that this provision permits the Board to rein in on NGO offices without prior notice, search, confiscate and obtain information without any form of warrant or clear authorisation presided over by, or in the knowledge of, a proper court. Such form of intrusion is usually reserved for criminal investigation, and points to the intention to make NGO operations difficult because of the fear of sudden, unsubstantiated searches and confiscation of documentation.

In sum, the ability to freely engage, and exercise the right to association is severely hampered by such highhanded intrusive measures that bear the tenor of criminal and prosecutorial investigation. Additionally, the vague and unclear reference to ‘any reasonable time’ with regard to the intrusion on the exercise of the freedom of association raises issue with regard to the principle of legality in limiting the enjoyment of the right.

Prohibition of partisan engagement

NGOs under the Bill would be required to be “*non-partisan*”, and not to engage in active fundraising or campaigns for any political party or candidate.³³

While, it is uncontested that NGOs should not be involved in seeking elective positions, or actively campaigning for particular candidates or political parties, the language of the Bill is much too broad to address that mischief. This is particularly critical, in light of the vast NGOs in the country that focus on issues with political implications.

The danger of this provision is the possibility of its wide interpretation to include activities critical of the government. In many instances, the Opposition Parties in Uganda and the NGO community will rally behind the same matters of governance and civic awareness. The involvement in such activities by NGOs could be misconstrued as partisan and could therefore attract sanction by the law. With the growth of NGOs focusing on issues (*arguably political issues*) like anti-corruption, shrinking civic space, electoral reforms, the state of public health and education, and so on; the possibility of the broad use of such an unclear, but sensitive provision, will infringe on civic rights and the broad right to freedom of association.

3.2 Criminality and the Principle of Legality

The NGO Bill contains provisions that raise issue with regard to matters of criminality and the requirement for penal legislation to define clearly the nature, parameters and contours of a crime. The principle of legality or *nullum crimen sine lege* is the moral principle in criminal law and international criminal law that a person cannot or should not face criminal punishment except for an act that was criminalized by law before he or she performed the act. The principle requires crimes to be declared in an unambiguous statutory text.

Therefore, the provisions of the NGO Bill that create penal sanction are ambiguous and violate the principle (*nullum crimen sine lege*), which is a sacred notion enshrined in both local, regional and international human rights instruments. In failing to clearly define the crimes that the Bill seeks to create, it contradicts the principle of legality in criminality

³³ Section 40 (g) NGO Bill.

and violates the need for a person not to be “*charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.*”³⁴

The other matter of concern under criminality is the tendency of the NGO Bill to criminalize the exercise of legitimate freedoms. In placing extreme punitive criminal measures on the exercise of the right to freedom of association and expression, the law contradicts the Uganda Constitution and violates universally recognized human rights standards.

Criminalizing legitimate freedoms

Under Section 31 (10), (11), the Bill seeks to criminalize legitimate behaviour of people exercising their freedom to associate. The section provides that any organization that “*contravenes any provision of [the] Act*” commits an offence and is liable, on conviction, to a fine of up to four million shillings.

The wording of this provision when interpreted in line with subsection 11 (a) can be used to activate all the provisions of the NGO Bill into potential criminal sanctions against individuals working in the NGOs. Section 31 (11) provides for up to four years imprisonment terms for directors or officers of organizations in contravention of any provision of the law, with the possibility of paying a fine as well of up to two million shillings.

The Section further criminalizes the right to freedom of association by providing that it is an offence to carry out any activity “*without a valid permit*” or to deviate from “*the conditions or directions specified*” in the permit. Therefore, criminal sanction is created for both the organization and persons working within the NGO, with the individuals facing the penalty of up to eight years imprisonment, with the possibility of a fine of up to four million shillings.

The NGO Bill heaps massive criminal sanction on NGOs and individuals and creates a tenor of repression (repressive control) and not regulation. The criminal provisions overstep any standard of limitation required for the exercise of fundamental freedoms. It is pivotal, therefore, that criminal sanctions are not smuggled into a law that seeks to regulate the exercise of legitimate human freedom and rights.

Unclear criminal and penal sanction

Further scrutiny of Section 31 (10), (11) reveals a violation of the principle of legality with regard to criminality as enshrined in the Constitution and human rights instruments. The Section places criminal and penal sanction for contravention of “*any provision of the Act*”. With such criminalization, extreme penalties are imposed, with the possibility of an individual being imprisoned for four years and paying a fine of two million shillings.

This means that one can serve such serious sentences for the contravention of literally anything and everything in the impending legislation. The Bill is littered with numerous broad provisions particularly on special obligations; and all these provisions attract criminal sanction. This turns the entire supposed regulatory framework of the law into a penal law, akin to the Penal Code Act. There is no clarity as to what exactly amounts to a

³⁴ The Constitution of the Republic of Uganda, 1995, Article 28 (7).

crime and the broad stroke of Section 31 violates the need for a crime to be clearly and specifically defined.

In sum, the broad and unclear nature of this penal sanction worsens the already existing infringement of the Bill on the rights to freedom of expression and association. An accurate interpretation of the law would require NGOs to literally do nothing, in order to avoid penal fines and the incarceration of its employees. Penalizing any form of activity that an NGO could potentially get involved in, is very repressive and clearly violates the civic rights and the freedom of association enshrined in the Uganda Constitution.

Overly broad disciplinary powers

Section 7 of the NGO Bill grants the NGO Board broad controlling powers to suspend permits, expose “affected” organizations to the public, black list organisations, or to do “*any other disciplinary actions that the Board may deem fit*”. This disciplinary sanction is not premised on any particular activities or actions that could attract such measures. It is unclear as to what exact actions of the NGO could attract disciplinary action. In tandem with unclear penal sanction discussed above, the NGO Bill creates a disciplinary regime without clear definition of what engages it. It could be a contravention of any provision of the law; but again there is already a broad penal law that seems to cover that. In all, these penal and disciplinary provisions create a framework of “double jeopardy” where one can either be disciplined or prosecuted for the contravention of any provision in the law.

Furthermore, the extreme nature of the disciplinary actions coupled with their lack of exact premise makes the law more and more repressive. Blacklisting, exposure, or anything the Board decides to do, are quite extreme for a law that seeks to regulate and not stifle the enjoyment of recognized rights and freedoms.

With specific regard to administrative processes, the Constitution of Uganda is very clear; “*Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.*”³⁵ Due to the administrative nature of disciplinary proceedings, it is critical that this process is fair and just. The lack of clarity as to what warrants such a process coupled with the extreme nature of the actions that can be taken, makes the law fall far short of the required standard. It perpetuates the extreme, high-handed tenor of the law that is a clear violation of the rights involved; particularly expression, association and civic engagement.

Personal liability and the benefits of legal status of an association

The legal principle that informs the need for associations and other entities to register and acquire legal status is anchored on the legal dividend of protection of individuals from personal liability; liability that could accrue from contractual or other related activities in the operations of an entity. This is the thrust of the concept of corporate legal personality.

Under Section 31 (6) of the Bill, it is provided that an organisation registered shall be “*a body corporate with perpetual succession and with power to sue and be sued in its corporate name and*

³⁵ Article 42.

shall be issued with a certificate of incorporation by the Board". The Bill then goes particularly silent on any other privileges associated with legal entity status.

However, within the same Section, it goes ahead to propose criminal liability for directors and officers of organizations, while curiously shielding NGO Board directors and staff in similar situations. The Bill should proceed to guarantee the key benefits or legal status such as preferential tax treatment, ability to contract as an organisation, personal immunity from liability for founders, officers and directors of such organizations, and so on.

It is quite clear that the Bill bears the tenor of a *witch-hunt*; seeking to incarcerate individuals working within NGOs for anything considered to be a contravention of any part of the proposed legislation. This is a grave affront on the individual freedom to associate and runs the risk of gagging individuals from freely expressing themselves on matters of good governance and accountability in the country.

3.3 The Judicial Oversight Role

The NGO Bill does not provide for clear judicial oversight and this further raises issue with regard to the constitutional principle and human rights requirement of fair hearing under Article 28 (Constitution of Uganda). It is critical that the processes highlighted in the Bill are buttressed in the need for proper judicial procedural guarantees.

Importantly, as highlighted previously, it is imperative that as an administrative body or authority, the NGO Board is subjected to proper judicial scrutiny by the formal courts of judicature in the country. It has to be guaranteed that any person (*whether corporate or individual*) appearing before the Board, or being impacted by its actions, has a right to be treated justly and fairly, and also have a right to apply to a court of law in respect of any administrative decision taken against them.³⁶ Such judicial guarantees are glaringly absent from the NGO Bill and therefore make it easy for the Board to infringe on rights without the opportunity for any recourse of those affected, to a court of law.

Under Section 7 of the NGO Bill, there is no clear reference to the judicial oversight role of the Courts of Law with regard to the administrative disciplinary processes of the NGO Board. The far-reaching measures hereunder, that can be taken by the Board, against an NGO have to be checked by a proper judicial process. If an NGO is bound to be blacklisted or exposed, there has to be an avenue for such decisions to be tested in a proper court of law, otherwise the Board runs the risk of being repressive and not regulative.

Further, with regard to the revocation of permits by the Board under Section 33, there is again, no clear reference to role of the regular courts with regard to exercise of judicial oversight. The revocation of a permit, according to the Bill, means that an NGO cannot continue to operate. In sum, the Board can achieve the cessation of the engagement in legitimate civic activity of an NGO, very easily without its decision being subjected to a court of law. This is a clear infringement on the right to freedom of association and civic activity.

³⁶ See Article 42 of the Constitution of the Republic of Uganda, 1995.

Additionally and very importantly, is the matter of the dissolution of an NGO. Under Section 44, the NGO Board can order the dissolution of an NGO; however, this power is not stated to be subject to any form of judicial scrutiny. Section 45, which attempts to provide some form of oversight, with regard to a decision by the Board, places appeals to the Minister. This simply cannot suffice; such far-reaching decisions by the Board have got to be subjected to the scrutiny of the regular courts of judicature. The extinction of an NGO through dissolution implies the extinction of a particular avenue for individuals to associate and voice their concerns about civic issues. If this is done by the Board, without recourse to a court of law, the Board will be in clear violation and infringement of peoples' rights to the freedoms of expression, association and civic engagement.

4. Other Critical Matters Raised by the Bill

There are other critical issues raised by the Bill that may possess peripheral human rights issues. Nevertheless they require revisiting in the NGO Bill, so that the new law is insulated from matters that could cause it to be a negative tool, in view of the history of civic engagement in the country. It is important that the law is sensitive to the realities of the context to which it relates and seeks to provide regulation (and not control).

4.1 Curious Inclusion of Security Agents and Resident District Commissioners

The NGO Board curiously includes persons with proven experience of ten years in the field of security matters.³⁷ Further down the line, the District NGO Committee and the Sub-county NGO Committee both include security agents in their set-up.³⁸

This inclusion of security agents highlights the suspicious approach the government has towards NGOs, perceiving them as a security threat or concern. However, NGOs and the civil society in general, have had a very unfavorable relationship with the security machinery in Uganda. Security agents have been used by the State to repress and stifle civic engagement. With such a background, the inclusion of security agents in the DNA of the NGO system of Uganda warrants re-consideration.

With regard to Resident District Commissioners (RDCs), their inclusion raises issue with regard to the operation of organizations that focus on aspects that are critical of the government. The RDC is the President's representative at the District level. Their chairing of both the District and Sub-county NGO Committees³⁹ means they will have direct control over any organization that operates or seeks to register and operate at the District and Sub-county level. This very direct influence of the President on the operations of organizations at the District and Sub-county level spells doom and repression for those involved in civic activities and issues that are critical of the government (for example; corruption, electoral reforms, and so on.).

There is a need for a re-construction and re-constitution of these committees, so that they are impartial and not prone to being tools of control and repression of fundamental freedoms and liberties.

³⁷ Section 9 (3) (e), NGO Bill.

³⁸ Sections 20 (2) (d) and 21 (2) (d) respectively.

³⁹ Sections 20 (2) (a) and 21 (2) (a) respectively.

4.2 The Fund for NGOs

Section 27 of the NGO Bill establishes a fund for organizations. The Fund will consist of money appropriated by Parliament; and of grants, gifts or donations from the Government. The Board is responsible for issuing guidelines on how organizations may access the Fund.

This clearly goes against the very nature of an NGO; the fact that is ‘non-governmental’ (not of government). This necessarily means that NGOs should be financially independent from the government.

NGOs by their nature are meant to be independent of governmental interference; they are meant to be independent avenues where persons can freely exercise their freedoms of speech and association. Dangling money and government favor for specific NGOs will compromise the authenticity of the NGO sector and negatively impact the nature of civic engagement. Money, being the most effective instrument of control, could give the government leeway to restrict and control engagement to what is in tandem with the existing political sympathies and agenda.

In terms of proper governance and effective public financial accountability, this Fund raises major questions about the expenditure of taxpayers’ remittances. There needs to be in-depth engagement and clear justification for the use of tax payers’ monies to facilitate the functioning of independent, non-governmental entities.

4.3 The Mandatory Application for Re-registration by all NGOs

Under Section 51 of the NGO Bill, all NGOs are required to apply for registration within six months after the commencement of the law. This means that all NGOs will not be recognized entities for purposes of their engagements, on the expiry of the prescribed time period.

This by many standards bears sinister and unfavorable ramifications for the operations of NGOs. Common practice with regard to enactment of new legislations does not require entities under the old legal order to re-apply or re-institute their status. Their status is automatically recognized by the new legal order and as such the new rules then apply to the entity. The requirement by the NGO Bill for re-registration curiously goes against the usual practice and implies an intention to categorically and specifically exclude some NGOs from continued operation and engagement. Indeed, such a framework runs the risk of preventing persons from continuing to exercise their civic rights through these NGOs.

Pivotaly, the international human rights standard with regard to the registration of NGOs requires a *notification* rather than an *approval* approach. Therefore the suspension of the operation of NGOs pending their registration under the new law clearly goes against these established standards that seek to promote the right to freedom of association.

In sum, this framework for re-registration runs the risk of impeding persons from freely associating and continuing to engage civically in matters of governance and democracy in the country.

5. Conclusion

Despite the notable strides that the NGO Bill takes to improve the framework for the functioning of the NGO sector; the Bill is majorly problematic. It is littered with several troubling provisions that follow the global trend of regressive legislation towards NGO activity and general civic space.

The proposed NGO legislation raises concern particularly with regard to the rights to freedom of association and expression. It further raises issues on matters of criminality and the principle of legality, as well as the place for judicial oversight and scrutiny, which require urgent consideration.

This analysis, therefore, has sought to review major constitutional and human rights infractions caused by the Bill and has highlighted the adverse legal implications of the impending legislation. The Bill is largely retrogressive and spells danger for the NGO sector in the country. It is abundantly clear, that the impending legislation seeks to *control* rather than *regulate* the activities of NGO and civil society.

There is therefore an urgent need for a re-visit of the entire Bill to ensure its conformance and compliance with human rights standards and the Constitution of Uganda. It is important that the Bill enables, facilitates and regulates the operation of NGOs. The impending legislation should not repress or stifle the engagement of the rights to freedom of expression, association and civic engagement; these being critical enabling rights for democracy and good governance in a civilized state.