

ISSUE PAPER

NOTIFICATION -V- AUTHORISATION REGIME

Act

Non-Govern

(2) The Minister shall, within one
annual report from the Bureau, submit the repo

PART VIII—REGISTRATION AND INCORPORATION OF NON-GOVERNMENTAL ORGANISATIONS

29. Registration of organisations with the Bureau

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

(2) An application made under subsection (1)
accompanied by—

(a) evidence of statements made in
Minister may prescribe by reg

*An analysis of legal and practice concerns on NGO registration
requirements and processes*

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Chapter Four Uganda is an independent non-partisan, not-for-profit organization dedicated to the protection of civil liberties and promotion of human rights in Uganda.

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1. INTRODUCTION

The Non-Governmental Organisations Act, 2016 (NGO Act 2016) establishes the legal regime for the registration of non-governmental organisations (NGOs) in Uganda. In this paper, we briefly review the international, regional and national law standards on registration of NGOs as defined under the NGO Act 2016 and proceed to analyse the four key pillars that are central to the NGO registration regime in Uganda.

On the law standards, the paper notes that a ‘notification’ rather than the ‘authorization’ regime best promotes the formation and registration of organisations. This standard is premised on the inherent nature of the right to freedom of association and the limitations on any restrictions of the freedom. After describing this framework, the paper reviews legal provisions in the NGO Act 2016 that provide for mandatory registration, registration requirements, procedural issues, and power to register an organisation.

A critical review of the foregoing reveals how the law on NGO registration in Uganda under the NGO Act 2016 presents concerning obstacles to the exercise of the freedom of association. Key concerns include how the current legal regime criminalises informal associations and loose coalitions; how the multiple clearance levels and onerous list of requirements establish an ‘authorisation’ rather than the ‘notification’ regime on NGO registration; and the overly broad powers for the National Bureau for NGOs (NGO Bureau) to reject applications for registration of organisations.

The paper concludes by offering recommendations that call for an end to criminalisation of informal associations and loose coalitions that pursue lawful activities, respect of the right of individuals to determine the nature and form of registration of their association. While the law remains in its current state, we call for respect of the 14-day timeline within which the District NGO Monitoring Committee (DNMC) and line ministry of government agency are required to issue letters recommending organisations for registration.

We hope the paper contributes to honest conversations on legislative amendments and changes in practice in favour of greater respect for the right of individuals to easily form organisations for their declared objectives.

2. NGO REGISTRATION: UNPACKING LEGAL REQUIREMENTS AND PROCEDURES

2.1. International, Regional and National Law Standards

The International Covenant on Civil and Political Rights (ICCPR) provides that any limitations on the freedom of association must be ‘prescribed by law’ and ‘necessary in a democratic society.’ The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has interpreted this to mean that registration procedures for associations should be “simple, non-onerous or even free of charge... and expeditious.’

To accomplish this, the Special Rapporteur recommends that States adopt a ‘notification procedure’ rather than a ‘prior authorization procedure’ on grounds that a notification procedure provides a framework that complies with international human rights law. Under a notification procedure, associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization has been created.

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 registration procedures for associations to be ‘simple, clear, non-discriminatory and non-burdensome.’ In line with this approach, ‘[r]egistration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification.’¹

The Constitution of Uganda provides for progressive human rights standards that support the international and regional law standards. For instance, in addition to providing for the freedom of association, it provides for the right of civic organisations to retain their autonomy in pursuit of their declared objectives, the independence of NGOs. More fundamentally, Article 20(1) of the Constitution guarantees that ‘fundamental rights and freedoms of the individual are inherent and not granted by the State.’ Any limitations of the enjoyment of the freedoms must not be beyond what is ‘acceptable and demonstrably justifiable in a free and democratic society.’

2.2. Mandatory registration

The NGO Act, 2016 defines an ‘organisation’ as a ‘legally constituted non-governmental organisation under this Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes.’

¹ ACHPR, Guidelines on freedom of association and assembly in Africa, See section 13, https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf

Under Section 31(1) of the NGO Act 2016, the law provides for mandatory registration and a permit requirement for NGOs before commencing any operations in Uganda. The section states, ‘an organisation shall not operate in Uganda without a valid permit issued by the Bureau.’

To ensure the law captures all non-profit organisations, Section 31(2) of the NGO Act 2016 further states that the preceding section ‘shall apply to organisations incorporated or registered under the Companies Act or Trustees Incorporation Act and those that fall within the definition of organisation’ as defined above. This means that all non-profit organisations engaged in activities that are similar to those carried out by NGOs must register with the NGO Bureau.

2.3. Requirements for NGO registration

The NGO Act 2016 requires that while filing an application for NGO registration at the NGO Bureau, specific documents, including the ones listed below, are attached:

- a) Evidence of statements made in the application as the Minister may prescribe by regulations;
- b) A certificate of incorporation;
- c) A copy of the organisation’s constitution; and
- d) Evidence of payment of the prescribed fee.

The clause on ‘statements’ is expounded in the Non-Governmental Organisations Regulations, 2017. Regulation 4(1) expands the above list to include the following documents:

- a) A certified copy of a certificate of incorporation;
A copy of the organisation’s constitution or governing document;
- b) A chart showing the governance structure of the organisation;
- c) Proof of payment of the prescribed fee;
- e) Source of funding of the activities of the organisation;
- f) A copy of valid identification document for at least two founder members (who must sign on the application documents);
- g) Minutes and resolutions of the members authorizing the organisation to register with the Bureau;
- h) A statement complying with Section 45 of the Act (on staffing of the organisation); and
- i) A recommendation from the District Non-Governmental Organisations Monitoring Committee (DNMC) where the headquarters are located and a letter from the responsible ministry or ministries or a government department or agency.

Under Regulation 45, the NGO Bureau periodically asks for additional information / documents to be attached in applications for NGO registration. At the time of drafting this paper, the additional documents required include the following:

- a) Filled Form A for registration and Form D for the NGO operation permit;
- b) A cover letter requesting for registration and a permit addressed to the Executive Director of the NGO Bureau;
- c) Annual work plan and budget for the number of years applied for the permit; Passport size photograph of at least two founder members;
- d) Signed attendance list of the meeting that passed the resolution to register the organisation; and
- e) Commitment letter from the organisation committing to submit a copy of the certificate of registration from the Data Protection Office within one month from the date of picking the NGO permit.

2.4. Procedure for NGO registration

The NGO Act 2016 provides for several procedural steps that have to be taken leading up to the registration of the NGO. The major preliminary steps which are mandatory include the following:

- a) Incorporating a company limited by guarantee under the Companies Act or securing registration under the Trustees Incorporation Act.
- b) Seeking a letter from the DNMC where the organisation will be headquartered recommending the organisation to register as an NGO.
- c) Seeking a letter from the line ministry or ministries or government agency or department recommending the organisation to register as an NGO.

The three preliminary steps usually take between three to six months to complete, depending on when the DNMC will convene to consider the request or the procedure at the government ministry, department or agency.

After acquiring the certificate of incorporation, the two recommendation letters, and other required documents as listed above, the promoters of the organisation are required to compile the documents and submit their application for registration and issuance of a permit to operate an NGO.

2.5. Refusal to register an NGO

The NGO Act 2016 provides for the following circumstances under which the NGO Bureau can refuse to register an NGO:

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

The law further requires that where the NGO Bureau refuses to register an organisation, it shall inform the applicant in writing of the reasons for the refusal within thirty (30) days of the decision to reject the application.

3. EMERGING LEGAL CONCERNS AND IMPLICATIONS ON NGO ORGANIZING

3.1. Criminalising informal associations and loose coalitions

The mandatory registration of non-profits under the NGO Act 2016 is problematic on two fronts – first, the law compels associations to register in order to be allowed to exist and operate freely. It therefore criminalises informal (de facto) associations on the basis of their lack of formal (de jure) status.

Second, the law compels associations that have fully registered under other laws for purposes of carrying out non-profit activities to register with the NGO Bureau. This requirement renders formal entities such as companies limited by guarantee and trusts invalid and illegal even if they are fully established under one of the laws of Uganda.

In the process, the provision creates dual and burdensome layers of registration requirements that raise the cost of NGO registration and seeks to undermine the fundamental right of individuals and associations to operate using their certificate of incorporation and registration under the law that regulates trusts.

The provision on mandatory registration is being enforced by the NGO Bureau, with devastating effect on the freedom of association – particularly ‘loose coalitions’ of NGOs and those that are already incorporated as companies limited by guarantee. For example, on October 29, 2021, as Uganda prepared for the General Elections, the NGO Bureau disbanded² the newly formed National Election Watch – Uganda (NEW-U), a loose coalition formed by 60 NGOs to monitor the 2021 General Elections, on the basis that the coalition “commenced operations without incorporation, registration and permission to operate within the laws of Uganda.” On July 30, 2021, Justice Ssekana dismissed an application filed by the Centre for Constitutional Governance seeking to challenge the impugned actions of the NGO Bureau. The Court held that the NGO Bureau was ‘right-legally to halt the operations of National Election Watch-Uganda (NEW-U) ...’³

3.2. NGO Registration: ‘Notification v Authorization regime’

The long list of requirements and complex procedures for NGO registration effectively establish an ‘authorization regime’ for NGO registration in Uganda. This whittles away the legal effect of the inherent nature of the right to freedom of association, particularly the right to form or join an NGO. The authorities have a multitude of opportunities to frustrate individuals from registering an NGO under the law. For instance, the process can be stalled by refusal to register the organisation at the time

² The New Vision, NGO body disbands newly formed NEW-U, <https://www.newvision.co.ug/articledetails/79481>

³ Centre for Constitutional Governance (CCG) v National Bureau for Non-Governmental Organisations, Miscellaneous Cause No. 374 of 2020, <https://www.spyuganda.com/wp-content/uploads/2021/07/Ruling-No.2-Centre-for-Constitutional-Governance-v-National-Bureau-for-NGO-1.pdf>

of incorporating a company at the Uganda Registration Services Bureau (URSB). An organisation can also fail to register because the DNMC or line ministry has declined to recommend the organisation to the NGO Bureau for registration.

3.3. Analysing the power to refuse to register an NGO

Whereas the law may authorise the registration authorities to reject an application for NGO registration, the law must do so on the basis of a limited number of 'clear legal grounds, in compliance with regional and international human rights law.'⁴

Under the NGO Act 2016, the NGO Bureau has powers to refuse to register an organisation. The law provides three circumstances under which this power can be invoked. A critical analysis raises questions on the legality of the grounds. Some of the provisions are vague and overly broad in a manner that opens the door for the refusal to register an organisation for pursuing objectives considered undesirable by the authorities.

For instance, what amounts to a 'material particular' in a law that contains a long list of obligations? Under what circumstances can an objective be considered to be in contravention of the law? Under human rights standards, associations have the autonomy and independence in determining their purposes and activities freely. 'Any limitations imposed by states must be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society.'⁵

Recent practice further indicates that organisations working on human rights issues are increasingly facing impediments in registration processes. Some organisations have been asked to clarify which 'human rights' they are working on while others have been given NGO operating permits for fewer years than what they applied for simply because of their stated objectives.

⁴ ACHPR, Guidelines on freedom of association and assembly in Africa, See section 13, https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf
⁵ Ibid

4. CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

This paper examines the legal concerns and implications of the mandatory and burdensome reporting obligations for NGOs in Uganda. On the legal concerns, it exposes where legal provisions fall short of international, regional and national law standards. The Constitution of Uganda provides for inherent freedom of association, which aligns with international and regional standards of notification rather than the current authorization regime of NGO registration. This whittles away the fundamental freedom that all individuals in Uganda have under the law. The long list of requirements that result in multi-layered protracted processes compound the problem. The restrictions placed in the NGO Act 2016 to limit the exercise of freedoms of individuals to register NGOs are inconsistent with the principle of legality, are unnecessary, and are not proportionate means of achieving the purpose of a register of NGOs in a free and democratic society.

4.2. Recommendations

To the Parliament of Uganda:

- Amend the definition of the word “organisation” to mean a non-profit organisation duly registered under the NGO Act, 2016. The definition should recognise other forms of non-profit formations such as companies limited by guarantee incorporated at URSB.
- Amend the requirements for NGO registration to provide for a simple notification regime like that reserved for companies at the URSB. Specifically, repeal section 4(1)(i) which requires recommendation letters from the DNMC and a line ministry or ministries or a government department or agency.

To the NGO Bureau:

- Respect the right of organisations to determine their objectives as long as they are not in contravention with the law. There is no legal provision requiring organisations to be very specific, for instance, to state the nature of human rights targeted in their objectives.

To the Local Government Authorities:

- Ensure that requests for recommendation letters for NGO registration are processed within 14 days as required by the current law.

To Civil Society / NGOs:

- Document and report their experiences and challenges faced by individuals in the process of registering their organisations.
- Continue to advocate for amendments of the NGO Act 2016 to provide for a notification regime instead of the authorization regime.
- File reports on unjustified registration-related restrictions to: (1) the African Commission on Human and Peoples' Rights – through the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa, and the Special Rapporteur's Support Group for the promotion and effective implementation of the Guidelines on Freedom of Association and Assembly in Africa; and (2) the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.



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