

A Position Paper¹ and Clause by Clause Analysis of the NGO Bill 2015

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1. Introduction

On 10th April, Government gazetted the Non-Governmental Organisations Bill, 2015. The Bill is being presented to repeal the Non-Governmental Organisations Act (as Amended in 2006). This will be the second time in seven years that the NGO legislation will have been reviewed. In principle, there is nothing wrong with amending legislations for as long as it seeks to positively address gaps in existing laws. The proposed Bill states this gap as: ‘... the rapid growth of non-governmental organizations has led to *subversive* methods of work and activities, which in turn undermine accountability and transparency in the sector.’

Seen from a positive lens and in principle, the process to amend the current NGO legislation is welcome. This is because NGOs have major concerns with it. Sad to note however, is that the draft Bill is littered with problematic clauses that undermine the very essence of some of the stated positive objectives of the proposed law.

In its current form, the NGO Sector cannot support the bill. The analysis that informed this position is collated from consultations with representatives from NGOs and networks² across the country that met for two days in a retreat and went through the bill clause by clause. It is also informed by work done on the NGO legislative reform undertaken over the last 15 years as well as written submissions made by some NGOs³ on this current bill. Using a colour code to determine all key provisions in the proposed law, we conclude that the bill requires ‘major surgery’ if it is to support the nurturing of a publically accountable NGO sector as envisaged in the NGO Policy. From our analysis 47% of the provisions in the bill fall in the **RED** category which means, they should either be deleted or completely overhauled. 27% of the provisions fall in the **ORANGE** category which means that with some amendment, they can be retained and finally 26% of the provisions of the bill in its current form are in the **GREEN** category meaning they are ok and can be passed as they are. Some specific analyses have also been done by NGOs working in various human rights fields and their conclusions are similar and in some cases even more far reaching⁴.

2. The NGO Sector in Context

The NGO Sector in Uganda is a young and growing one with the age of the average Ugandan NGO being 11 years (Barr, et al, 2004). From a little less than 200 NGOs in 1986, the official NGO Registry at the Ministry of Internal Affairs shows that by close of 2009, there were 8,385 registered NGOs in Uganda and about 12,500 by the end of 2013.

Despite its infancy the NGO sector in Uganda is an important contributor to the health and wellbeing of Uganda. NGOs work in a multitude of sectors in Uganda, with the highest sector of concentration being education & training (Barr, et al). While historically predominant in the service delivery sphere, from the mid 90’s several NGOs became active in advocacy, policy influencing and rights work. In practice the operating environment for NGOs in Uganda is reasonably tolerable. Externally, the key constraint to NGO work is inadequate funding and interference to some of their work especially by state security groups.

There are two main characteristics that distinguish NGOs from other organizations or similar establishments: First that NGOs are not motivated by the search for monetary profits; and secondly, they have a charitable purpose that leads them to fundraise from the public or grant institutions. Like firms, NGOs are organizations that are working towards specific goals. They mobilize resources including human and financial in order to produce ‘services’, which are typically not sold to beneficiaries. The following discussion further illuminates the 2 fundamental points above.

² See attached list of organisations that attended the write and analysis retreat in Jinja

³ Western Ankole Civil Society Forum (WACSOF), Advocates Coalition on the Development and the Environment (ACODE), World Voices Uganda, Chapter Four, Development Network of Indigenous Voluntary Associations (DENIVA) and the Federation of Women Lawyers in Uganda (FIDA Uganda), among others.

⁴ See for instance: Human Rights Watch’s ‘Bill Threatens Rights, Independent Groups: Would impose overwhelming governmental control’, the Foundation for Human Rights Initiative (FHRI) Memorandum on the NGO Bill, Human Rights Awareness and Promotion Forum (HRAPF) and Human Dignity Trust, UK.

NGOs have their roots in **voluntarism and philanthropy**. This is to say that they are founded to serve the needs of poor people and marginalized groups. In fact in the USA, they are commonly referred to as Private Voluntary Organizations (PVOs). Most were founded by individuals or groups of people giving of their time and money for a certain cause. For example, World Vision was started by a certain Rev. Bob Pearce, who as a journalist, he was moved by the plight of Korean orphans and wrote back to his church in the States to say he was issuing a cheque and they had to ensure it does not bounce. That effort to stop Pearce's cheques from bouncing marked the beginning of a now world-famous NGO which is one of the leading agencies in development and humanitarian relief operations in all the continents of the world. Back at home, UWESO was formed as an effort by Uganda women to save orphans. TASO was formed as a support mechanism for persons living with HIV/AIDS. The story goes on. NGOs mobilize millions of people to give of their time and money to help others, rebuild or strengthen communities, their coping mechanisms and resilience. In this country, people infected and affected by HIV/AIDS owe their support mechanisms to the philanthropy of NGOs.

A central strength and distinguishing characteristic of NGOs is **additionality**, or their ability to mobilize and bring in additional financial, technical and sometimes political resources, particularly where the state is weak or absent (Narayan et al 2000). Globally, NGOs shift as much as US\$5 billion (Kaldor et al 2003). In this country, NGOs bring in as much money as what the World Bank brings annually; or what is forgiven in debt relief initiatives. This is mostly seen in complex humanitarian disasters, such as wars, droughts, floods, etc. They provide emergency relief and rehabilitation giving food, provide or fix water and sanitation systems, offer health care, reconstructing infrastructure, etc. In Uganda, it is estimated that NGOs, mainly are faith-based organizations, provide up to 40% of health services which amounts to about \$6 per capita out of the \$12 spent on health per person. These 'fire-fighting' services/interventions are critical to re-establishing lifelines (lifeline Sudan is a name of an emergency relief operation by NGOs) and setting the stage for making long-term development possible. Evidence suggests that there is high level of funding channeled through NGOs.

NGOs have acquired the reputation of being "**carers of last resort**" (Lewis and Wallace 2000), operating in marginal areas geographically and socially, providing such services as micro-finance, conflict resolution and peace-building. In this respect, research has shown that in some areas, NGOs reach people which are not being reached effectively by either the state or the market – a situation commonly referred to as state and market failure. The state can fail due to poor governance, lack of resources, or other reasons. Market can fail due to poor infrastructure, poverty (which drastically reduces profitability which diminishes the market motive for providing goods and services). In Uganda services to minorities such the Batwa are provided almost exclusively by NGOs (ADRA and Oxfam in the case of the Batwa). In some case, however, NGOs can be providers of first preference, particularly where some NGOs command more resources than official agencies/government departments. In this country, there are NGOs which have annual budgets larger than those of Government ministries and are often turned to by those departments for help. This is true in emergency relief, among others.

The other distinguishing characteristic is that **NGOs make development participatory**. Wide and inclusive participation, despite being costly in terms of resources, has a lot of intrinsic value: it increases ownership which results in more, as well as better quality services from service providers; it informs decision making, making more responsive to the needs and expectations of the poor, it identifies resources available locally that can be put to better use. The Uganda Participatory Poverty Assessments (PPAs) resulted in a better understanding and an enriched definition of poverty beyond income, they helped communities develop and implement community action plans for poverty reduction.

Advocacy for better and just policies, programmes and practices

Progressively NGOs have come to the realization that the way they have been approaching development can at best be described as achieving limited results. "They have come to the sad realization that, although they have achieved many ... successes, the systems and structures that determine power and resource allocations – locally, nationally and globally – remain largely outside their sphere of influence" (Nyamugasira 2000). Their work was likened to patching up wounds without addressing the root causes of the problem. A debate about how to engender social economic transformation has since been raging (Eade 2000). Issues of justice have replaced welfare. A new

orthodoxy has emerged: the need to change power relations, policies at local, national and international levels. NGOs are now active in trade, putting a human face to globalization and structural adjustment policies, campaigns for debt relief, gender and the girl-child, landmines, land, dams and rivers, legal aid, guarantees/protection for human rights, the rights-based approach to development, etc.

This way, NGOs are trying to make state power and market forces work to the advantage of poorer groups. They are reclaiming benefits that ordinarily go to middlemen. They build more social capital, exploring alternative models of production and exchange that are less costly in terms of the environment and promoting social values in the market setting. They talk of double bottom lines for businesses: do well and do good, have socially responsible bottom lines, give back to the community, support men and women to combine their market and non-market (unpaid work) roles to redistribute profits with social purpose (Lewis and Wallace 2000: 3). This way they are increasing / leveraging for development. The growth of NGOs has changed the character of international relations, broadening their scope, multiplying the number of participants and sometimes outflanking the formal protocols of international diplomacy (Caldwell 1990). According to Edwards (1993), “if it were possible to assess the value of all such reforms, they might be worth more than their financial contributions.

Leveraging Public Opinion

According to Clark (1992) the combined influence of NGOs and public opinion has initiated major policy changes on several issues including the production of a code of conduct for marketing baby milk, the drafting of an international essential drugs list, global warming, debt relief, modification in structural adjustment regimes. NGOs have been strategic and effective in lobbying IFIs, the monitoring of international commitments such as MDGs; the democratization process. They are also effective at providing civic education that enables ordinary people to know and demand for their rights and entitlements.

Another distinguishing characteristic of NGOs is that in many regions, the strongest of them have **religious affiliation**. Traditionally the majority of health facilities, educational programmes, orphanages etc, are associated with churches or mosques. In Uganda over 40% of health services are still provided by Churches. As a matter of fact, some of the church buildings also double as sites of charity. They often provide refuge for the poor. Such groups tend to be more able to respond better to local priorities than government structures or officials; their staff members are also viewed to be more compassionate because they are value-driven.

A number of attempts to document the contribution of NGOs to development have been made. Most notably, Nyangabyaki, et al (1999), writing for the John Hopkins Comparative Non Profit Sector Project, estimated that civil society in Uganda in 1998 alone accounted for about \$89 million in expenditures, an amount equivalent to 1.4% of GDP that year, it found out that the sector employs over 230,000 workers representing 2.3% of the country’s economically active population and 10.9% of its non-agricultural employment. Civil Society was estimated to be one-and-a-half times that of the public sector workforce and over half as large as that in the fields of manufacturing combined. Other researches include Kwesiga and Ratter 1994⁵ (supported by the Ministry of Finance, Government of Uganda); Riddell, Gariyo and Mwesigye 1998⁶; and Barr, Fafchamps and Owens 2003⁷ and more recently DENIVA 2006 under the CIVICUS Global Civil Society Index Project highlight important trends and dynamics in the civil society sector in Uganda.

The importance of an independent and autonomous NGO sector has been widely recognised in Uganda. For instance, the National Development Plan states that: “It is essential for the development of civil society that its actions are not planned or dictated by government. Moreover, the National Objectives and Directive Principles of State Policy of the Constitution provide that “the state shall guarantee and respect the independence of non-governmental organisations which protect and promote human rights and “civic organisations shall retain their autonomy in pursuit of declared objectives”

⁵ Kwesiga J.B. and Ratter A. J. 1994: Realising the Development Potential of NGOs and Community Groups in Uganda

⁶ Riddell, Gariyo and Mwesigye 1998: Review of National Policy on Non-Governmental Organisations for Uganda

⁷ Barr, et al 2003: Non-Governmental Organisations in Uganda

3. The Wider Context at National, Regional and Global Level

It has been observed in several previous analyses, most notably all the list of readings provided at the end of this paper, that the quality of legislation concerning NGOs is intricately linked to the quality of governance in any particular context. In other words, NGO legislation is all but a subset of the wider political and governance context.

Secondly, it is important to look at a wider trend and examine other legislations that have and or are being considered, all of whose intent, to a large extent aim to narrow the space for independent civil society and control public and civic engagement. Such legislations have some very draconian clauses and provisions and they include the Public Order Management Act, the Police Act, Traditional and Cultural Leaders Act, Anti-Homosexuality Act, Anti-Terrorism (Amendment Bill), Anti-Pornography Act and now the proposed 'Anti-Terrorism (Amendment) Bill, 2015'. While some of these legislations appear useful, they represent a reversal in some areas of the law thus lending themselves to the impression that they desire to create a situation that replaces 'rule of law' with 'rule by law'.

Thirdly, it may be important to discern a regional trend to this. In a remarkable collection of analysis of NGO legislations in Africa, featuring 8 countries, including Uganda, the Southern Africa Trust in a book titled, (Dis) Enabling the Public Sphere in Africa, reveal that a lot of NGO legislations' primary intent is to control civil society.

Fourth and finally from a global perspective, the World Movement for Democracy and the International Centre for Non-for-Profit Law (ICNL) argue in their report, 'Defending Civil Society' argue that most of these draconian legislations are in fact a backlash against democracy rather than just an attack on civil society space.

4. NGO Engagements in Historical Perspective

NGOs have engaged in the legal reform and advocacy for a better legal regime in Uganda for the last 2 decades if not more. Several processes and tactics have been used, issues generated and lessons learnt as summarised below.

From a **process** perspective, while not much documentation is available for the pre-1989 period, there is anecdotal information available in the Hansard of the NRC suggests that the NGO Statute of 1989, the parent legislation for which all the amendments have since emanated was contested by some sections. In 1994 there were efforts by DENIVA to support the NGO Registration Board to better service the NGO sector by providing some basic office needs but this offer was not taken then. The most intensive and widely documented engagement was from 1999, when the first amendment to the 1989 NGO Statute was proposed. NGOs under various coordination mechanisms, including CONOB (Coalition on the NGO Bill) and the Uganda National NGO Forum did analysis, lobbied Parliament and worked with donors in an attempt to influence the proposed amendment bill then.

Between 1999 and 2014, NGOs had worked with 4 different Ministers of Internal Affairs so far on the same issue from Hon Sarah Kiyingi, Rt. Hon. Ruhakana Ruganda, Hon. Kirunda Kivejinja, Hon. Hillary Onk and now General Aronda Nyakairima. In short, different Ministers, same story of some supportive rhetoric but no substantive reform. We have also worked with 2 different NGO Boards over the same issues and while there are noticeable differences since the current Board was inaugurated in October 2010, again not much change in fortune for NGOs.

In 2004, following frustrations with all analysis provided and little change, NGOs even produced an Alternative Bill under the auspices of Coalition on the NGO Bill (CONOB). But this too did not prevent or meaningfully change the character of the final NGO Act that was passed in April 2006 under questionable circumstances in Parliament. The constitutionality of the current NGO Act is being challenged in the Constitutional Court by a group of NGOs under the leadership of the Human Rights Network (HURINET).

From a more positive note, in 2010/11, NGOs under the auspices of the National NGO Forum, worked very closely with the NGO Board and the Office of the Prime Minister to develop a national

NGO Policy which is relatively progressive, compared to the law at least. A key difference with the NGO Policy process appears to be in the manner in which the process was led by an Independent Consultant, who tried to listen as much to government, as much as it did to NGOs. And finally, most recently, again under the auspices of the National NGO Forum countrywide consultations with over 600 NGO representatives from all over the country were held and a Consolidated Memorandum was prepared and submitted to the National NGO Registrations Board to kick-start the amendment to the current legislation. From reading the draft NGO (Amendment) Bill 2013, it is clear that not much of what NGOs suggested was considered.

In terms of the **key issues** raised over time, they have essentially been the same, reflecting an adamant stance by the framers of the NGO Act. There have been about 7-8 key points of contention: first and most fundamentally, has been **the purpose of the law** which should focus on creating an enabling environment. But the purpose seems to always be about control as stated in the memorandum preceding the current NGO Bill which refers to NGOs being subversive. For as long as this remains the overall intent of the law, everything else that follows is unlikely to be progressive.

The second has been the **role, composition and location of the NGO Board**. On the role, calls have been made that it should play a more promotional than surveillance role, working with NGO umbrella organisations to ensure a publically accountable NGO sector that is delivering well on development goals is achieved. We have drawn examples in this case from bodies such as the Export Promotions Board. However, as we shall see in the next section, the proposed role is one of being an agent to control and monitor NGOs. On **composition**, we have asked for representation of the sector on the Board so that it benefits from resident knowledge. We have also asked for a more democratic and accountable way of determining NGO representatives on the NGO Board. Finally on location, calls have been made to shift the NGO Board from a security focussed Ministry to a more development focussed one in line with what NGOs do and proposals have previously included the Ministry of Gender, that of Justice, Finance and even the Office of the Prime Minister.

Third has been contentions around **many ambiguous terminologies** used that could be subject to abuse: terms such as 'public interest', 'interests of Uganda', 'engaging in politics' and much more - all without consensus on what they really mean. Fourth has been a **laborious registration process** that makes it very difficult to register an NGO and get a certificate. Fifth has been a **dual liability principle** where both staff and the NGO are punished for the same offense and without provisions for lifting corporate veil as is in the company and other laws. Six has been a strong criticism of the **NGO law being against the spirit of the East African Community** and several democratic gains, including in the Uganda Constitution.

And finally, there has been the **contention around how the QuAM**- an NGO developed and managed self-regulation and quality assurance mechanism is reflected in the law with NGO preference being to maintain the QuAM as a voluntary self-regulatory instrument while the NGO Act desires to make a compulsory and state controlled mechanism.

In terms of lessons from the past and perhaps ongoing engagements, a number can be discerned:

- a) the tide against the progressive legislation is too strong as it is connected to a wider governance trend, for which effort is needed to reverse rather focusing on only the NGO law;
- b) as a result of (a), it is very much unlikely that the fundamental character of the law can change, no matter what engagements are put in;
- c) there is a lot of rhetoric when engaging with government. All the ministers we have engaged with have openly assured the NGO sector that a positive law would be passed but in reality this has never happened and so the gap between rhetoric and reality is very wide;
- d) public perception (at least of the talking public) of the work of NGOs, while improving from the 1999 period, still remains generally negative;
- e) the knowledge about the provisions of the law itself not as widespread, including amongst NGOs especially upcountry and much less the Local Government, partly because of a poor reading culture in Uganda, but also the fact that there are far too many other laws and administrative instruments

that can be used to curtail the work of NGOs and this list continues to grow with the recent legislations passed;

- f) internally within the sector, owing to poor documentation and learning, there is very little compelling information about the value of the sector to Uganda's economy and other such important development dimensions and as such, the sector is often dismissed as 'noise makers'. We need to do more to document and showcase our work;
- g) and finally, there is a reality that NGOs are part of the very society that is seen to be in a moral or ethical crisis and so unethical conduct among some NGOs and lack of accountability therein, 'soils' the image of the sector and makes some provisions in the NGO legislation appear justified.

5. Contentious Provisions in the NGO Bill, 2015

On the positive side, one of the functions of the Board is to establish an 'NGO consultative and dialogue platform', and an 'NGO fund' (with money from Parliament, government and donors). Also while NGOs must disclose their sources of funding, and have MoUs with their donors, there is no restriction on the sources of funding (i.e. no limitation on foreign funds like in Ethiopia).

However, a closer inspection of the proposed bill reveals that it is a roll-back on the Constitution and major human rights guarantees and its intentions are largely to control rather than facilitate the NGO sector. A detailed Clause by Clause analysis is provided for in the annex to this brief but purposes of this section, one can see and say that all the provisions we opposed from the previous engagements right from the spirit of the law right to the implementation arrangements remain intact, but some 'new' elements have been introduced, the most notable being:

- The definition and categorizations into: a) foreign NGO; b) international NGO; c) partnership NGO; regional NGO from the surface, one may think of it as a normal distinction but reading between the lines, motive is questionable. It is likely that the sector may not act as one because of likely differentiated implications of the law ranging from payment of fees to other incentives or disincentives.
- Ensuring that existing law is in line with the NGO Policy had been presented as the main reason for legislation by the NGO Board. However, this rationale is not evoked in the NGO Bill. In fact, the NGO Policy, is not mentioned at all in the proposed law.
- The tone and spirit of the NGO Policy is starkly different from the proposed law: for instance the NGO Policy explicitly recognizes the contribution of NGOs/CBOs beyond service delivery in areas such as policy advocacy, human and gender rights, good governance and accountability etc; the Policy emphasizes the constitutional rights of NGOs (freedom of association, autonomy etc) and one of its stated aims is to strengthen the role of NGOs in citizen and community participation and 'empowerment'. None of this is retained in the proposed law.
- Objectives: Although the 'Objectivess of the Bill' are stated as 'developing a voluntary, non-partisan charity culture', 'providing an enabling environment for sector', 'promoting a spirit of cooperation, mutual partnership and shared responsibility between NGOs and government', 'promoting the capacity of the sector to be sustainable and deliver services professionally', there are hardly any provisions in the law to operationalize these aspirations.
- Definition of NGO: The definition seems to limit the scope of NGO activity: 'a private grouping of individuals or associations, including religious bodies, established to provide voluntary services including education, literacy, scientific, social or charitable services to the community or any part, but not for profit or commercial purposes'. Research and policy advocacy are not explicitly excluded, but it will be a question of interpretation for the Board.
- Single legal regime and requirement for all NGOs to re-register: The law establishes a single legal regime for the registration of NGOs with the Board (incorporation and then permits). This abolishes the role of the Registrar of Companies. The law actually compels all NGOs, whether they are currently registered as companies limited by guarantee (under the Companies Act) or registered by the NGO Board, to apply for registration afresh within 6 months of the law coming into effect (while being allowed to continue their work).
- Powers of the Minister: However, the NGO Board is not independent or even autonomous, in that the Minister appoints members of the board (the governing body of the NGO Board) and can fire

them on grounds such as ‘incompetence’. The Minister also sets their remuneration. The Minister also appoints the Executive Director who heads the Secretariat of the Board. Most importantly, appeal of Board decisions is only with the Minister, and the Minister can give binding instructions of a ‘general or specific nature’ to the Board.

- Composition of the Board (9 in total). The board (of the NGO Board) is appointed by the Minister with the approval of Cabinet (not Parliament, like the EC or UHRC). Members need to have experience of 10 years in a list of fields, including law, security, public finance, local governance, organization regulation, and IR. There is no requirement for anyone on the Board to have experience with civil society, and there is no consultative mechanism the Minister has to follow.
- The key role of RDCs and DRDCs who chair the DNMC and SNMCs respectively highlights the primacy of security concerns in the proposed law. RDCs are the President’s representatives in districts, and one of their primary responsibilities is to chair the district Security Committee. They are also political appointees, reporting directly to the Office of the President. This negates the non-partisan/non-political context in which NGOs have to operate.
- NGOs have to have the approval of both the DNMC and the local government to operate in a given district. This includes having a signed MOU with local government. The DNMC, based on its monitoring of NGO activities and performance, advises the national NGO Board concerning the permit that is to be given to NGOs to allow operations in a given district. In effect, there is authorization required from three entities (the DNMC, the local government and the NGO Board). The DNMC also makes recommendations to the NGO Board for registration of NGOs.
- An NGO cannot extend to a new area unless it has received permission to do so. It is unclear whether this must be reflected in the permit issued by the Board, in turn based on recommendation of the DNMC of that area and a signed MoU with the local government or whether a ‘recommendation of the Board through the DNMC of that new area’ can suffice (Art 40 (b))

Other Constricting Provisions in the NGO Bill

Mandatory registration through a laborious process

Under Section 31⁸, registration is mandatory and no organisation shall “operate in Uganda, unless it has been duly registered with the Board.” Bill further grants the NGO Board power to decline to register an organisation if its objects are “in contravention of the law” or “where the application for registration does not comply with the requirements of this Act,” or if the NGO Board thinks it is in the “public interest” or “any other reason that the Board may deem relevant.”

Whereas a legal regime to provide a conducive environment for the exercise of these freedoms is not contested, the law should provide for an easy and non-discriminatory registration process which takes “the form of notification”⁹ rather than authorization approach. 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 register¹⁰ although it should be noted that registered associations attract certain privileges and benefits under the law.

Operating Permits & Involuntary Dissolution

Under section 40 (a)(b), the Bill requires a registered organisation “not to carry out activities in any part of the country” unless it has received “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. The Bill further provides the Board with powers to suspend operating permit or to involuntarily dissolve an

⁸NGO Bill, 2015

⁹Report of the SR on the right to freedom of peaceful assembly and of association, MainaKiai, A/HRC/20/27, paras 57-58, 60.

¹⁰Report of the SR on the right to freedom of peaceful assembly and of association, MainaKiai, A/ HRC/20/27, para 56; Also see ACHPR Communication No. 101/93 (1195) Parag 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.

organisation. These drastic measures must only be exercised when there is a “a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law.”¹¹

Troubling Broad & Vaguely Worded Provisions

The Bill is littered with broad and vaguely worded provisions which open the door to silence peaceful government critics and activists. Provisions such as “public interest,” “act which is prejudicial to the security of Uganda and the dignity of the people of Uganda,” “at any reasonable time,” “opinion of the Board,” “for any other reason that the Board may deem relevant,” “any other disciplinary action that the Board may deem fit” violate the principles which guide establishment of limitations to the freedom of association and other related human rights.

Special Obligations

Under section 40, the Bill seeks to create ambiguous “special obligations” for all organisations that have successfully acquired registration status. The section further demands that all organisations must “co-operate” with local councils in the area of operations. This raises questions on the principle of autonomy. Section further demands that no organisation shall engage in “any act” which in the opinion of the Board is “prejudicial to the interests of Uganda and the dignity of the people of Uganda”.

These vague provisions violate the requirement of “prescribed by law” doctrine as provided in the ICCPR.¹² It fails to provide clear knowledge of when one may violate the law and opens up for unfair and subjective treatment.

Criminalising Legitimate Freedoms

Under section 31 (10)(11), the Bill seeks to criminalise legitimate behaviour of people exercising their freedom to associate. The section provides that any person who “contravenes any provision of this Act” would amount to a criminal offence and is liable, on conviction to a fine of up to 4 million or imprisonment of up to 4 years or both. The wording of this provision when interpreted in line with subsection 11(a) can be used to activate all the provisions of this bill into potential criminal sections. Section further provides for up to 8 years imprisonment terms for directors or officers of organisations.

The section further criminalises right to freedom of association by providing that it is an offence to carry out any activity “without a valid permit” or deviate from “the conditions or directions specified” in the permit. The section places personal liability for insignificant administrative actions or omissions committed during official duties yet at the same time, penalises the organisation by revoking the permit or ordering for its dissolution. The offences that this section seeks to criminalise are civil in nature and must not be subjected to the criminal code. If any individual commits a cognizable criminal offence, the established criminal legislation can deal with that more effectively. Criminal sanctions must not be smuggled into a law that seeks to regulate exercise of legitimate human freedom.

Section 7 of the Bill grants the NGO Board powers to suspend permits, expose “affected” organisations to the public, black list organisations, or “any other disciplinary actions that the Board may deem fit”. This section violates Article 22 of the ICCPR and Article 42 of the Constitution of Uganda in as far as the right to just and fair treatment in administrative decisions is concerned. The Bill does not provide for clear judicial oversight and this further negates the Constitutional principle of fair hearing under Article 28.

Dangers of Dual Liability

The legal principle of requiring associations and other entities to register and acquire legal status is anchored on the legal dividend of protection of individuals from personal liability accruing from contractual or other related liability in the operations of an entity. Under section 31 of the Bill, its 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 shall be issued with a certificate of incorporation by

¹¹A/HRC/20/27, para 75. For more on the inappropriate dissolution of associations, see *Interights and Others v Mauritania*, Comm No 242/2001 (2004), paras 80-84; the case concerns a political party, but the caveat relative to dissolution.

¹²Art. 22

the Board”. The Bill then goes silent on any other privileges associated with legal entity status. It instead returns to propose criminal liability for directors and officers of organisations while shielding NGO Board directors and staff. 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 organisation et cetera.

The analysis of the rights to freedom of association and expression is premised on the principle of legality, nondiscrimination, appreciating limitations and their legitimate aims, and the principle of necessity in a democratic society. Any attempt by a law to limit the fulfillment of these rights without providing a compelling argument to satisfy the above named principles is an affront to these freedoms and should be challenged to the level of its inconsistency with the Constitution and Human Rights standards to give birth to a progressive legal regime for operations of nongovernmental organizations.

6. Conclusion and Implications

In its current form the NGO Bill, if passed into law will greatly undermine the growth and development of a publically accountable NGO sector in in Uganda. Its passage will have serious implications, most of which are negative.

First, as stated in previous sections and in particular the discussion of the bigger picture, it is clear that the real challenge and struggle should not be about the text of the Bill or legal details for while these are important, the more fundamental focus should be on the systemic challenges of governance and constitutionalism that the country faces today. **Second**, the overall intent of the law is negative and while there are some elements that appear positive like the need to strengthen a previously poorly facilitated NGO Board, increased support to it will be for all the wrong reasons or surveillance and control agenda of the state. Further, a close watch must be made of the evolving role of the NGO Board and its implications on the role that Umbrella Organisations like the National NGO Forum and Networks play. Could the NGO Board in fact become the foisted mouthpiece of the sector, even when its role and support to the sector is contested?

Third, the NGO sector is still viewed as a threat and that must be controlled rather than allowed to flourish. The security mind-set that informed the maiden 1989 NGO Statute remains the same today, without concomitant evidence that the sector really poses such a threat to the state. **Fourth**, this spirit of this legislation, if not altered is likely to even worsen NGO transparency records as many will try to become ‘creative’ to survive and this will further tarnish the credibility of the sector. Related to this, we are likely to see even stronger moves towards self-censorship by NGOs.

The NGO sector is at present opposed to the NGO Bill in its current form. Over 70% of the provisions need reconsideration, with many requiring major overhaul. If passed in its current form, the sector will challenge the law in courts of law, among other important lawful actions.

Important (further) Reading

Development Law Associates (--): Memorandum on proposed amendments to the Non-Governmental Organisations Act, 2013

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Larok, Arthur (2007): Civil Society and Politics - A Niche for Civil Society Organisations in the Revived Multiparty Political System in Uganda. National NGO Forum Working Paper, No.1

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National NGO Forum and Deniva (2006): Narrowing the Space for Civil Society Operations in Uganda - An Analysis of the implications of the 2006 NGO Registration [Amendment] Act

National NGO Forum (2011): Towards a Supportive Legal Environment for Publically Accountable NGOs in Uganda - A Consolidated NGO Memorandum for the Review of the NGO Act CAP113 (as Amended)

Government of Uganda (National Planning Authority): The National Development Plan (NDP), 2010/2011 to 2014/2015

Southern Africa Trust (2011): (Dis) Enabling the Public Sphere. Civil Society Regulation in Africa

The NGO QuAM Working Group (2006) - Our Code of Honor: The NGO Quality Assurance Certification Mechanism, Part 1: What the QuAM is and how it Works

The NGO QuAM Working Group (2006) - Our Code of Honor: The NGO Quality Assurance Certification Mechanism, Part 2: The QuAM Standards

The NGO QuAM Working Group (2008) - Our Code of Honor: The NGO Quality Assurance Certification Mechanism, Part 3: Implementation Guidelines