

Analysis of the Restrictive Aspects of the Uganda NGO Registration Act, 1989, the NGO Registration (Amendment) Act, 2006 and the NGO Regulations, 1990

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INTRODUCTION

CIVICUS: World Alliance for Participation is an international alliance based in South Africa, with members in more than 100 countries. CIVICUS works with our members and partners in over 100 countries to support and strengthen civil society and citizen action around the world. CIVICUS works with diverse stakeholders to assist them in ensuring legislation and administrative practices related to civil society comply with best practice around the world.

CIVICUS recognises the constitutional commitment of the Republic of Uganda to guarantee every person, the freedom of association, including the freedom to form and join associations.¹ These rights are also guaranteed to the Ugandan people under international treaties² and other commitments.³ CIVICUS looks towards the Government of Uganda to create an enabling environment for the freedom of association to flourish.

Concerns Regarding the Uganda NGO Registration Act 1989, the NGO Registration (Amendment) Act 2006 and the NGO Regulations 1990

CIVICUS partner organisations in Uganda have expressed concern about the legislative framework governing NGOs in the country and the restrictions it places on their ability to function independently and contribute to national life. Upon close analysis, it is our opinion that the legal framework for the registration and operation of NGOs⁴ reflects a deep distrust of their activities and discounts their vital role in socio-political development. Key provisions in regard to the registration of NGOs create a web of bureaucratic red tape, which constitute a significant hurdle for individuals wishing to form an NGO. Moreover, the functioning of NGOs is impeded by excessive executive interference in their activities. Provisions introducing personal liability for office bearers in addition to organisational liability serve to deter civil society activities. The National Board of Nongovernmental Organisations mandated to oversee NGO activity has an excessively bureaucratic composition including representation from the security organs. Notably, the Ministry for Internal Affairs as opposed to the Ministry for Justice and Constitutional Affairs is charged with the overall regulation of the NGO sector.

The following are some key areas of concern:

¹ Article 29 (1) (e) Constitution of Uganda

² Uganda is a party to the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), African Charter on Human and People's Rights

³ U.N Declaration on Human Rights Defenders, UN Declaration on Social Progress and Development, the New Partnership for Africa's Development (NEPAD) and the Cotonou Agreement.

⁴ Section 1(d) NGO Registration Act, 1989 defines an NGO as an "organisation established to provide voluntary services, including religious, educational, literary, scientific, social or charitable services to the community or any part of it".

Cumbersome registration procedures

Ideally the process of registration should be quick, simple, inexpensive, in line with the law and consistently applied.

Nevertheless, a lengthy and elaborate procedure is prescribed for the registration of domestic NGOs, which serves to obstruct rather than enable the freedom of association. All organisations are required to submit a written work plan to the Ministry of Planning and Economic Development and obtain its approval for the same.⁵ Applications by domestic NGOs must also be accompanied by a written recommendation by two sureties acceptable to the National Board of Nongovernmental Organisations (hereinafter the 'Board').⁶ No criteria are prescribed on what is deemed "acceptable", leaving ample scope for the exercise of discretion by the Board. Furthermore, a written recommendation is required from the chair of the Resistance Committee I which is to be endorsed by the chairs of Committees II and III⁷ as well as by the District Administrator⁸ of the area where the organisation intends to operate.⁹ By prescribing multiple authorities from whom recommendations or endorsements are required, the procedure is made complicated and time consuming, which can be daunting for people who wish to form an NGO but do not ordinarily have access to the bureaucracy or political representatives.

At the time of formation, certificates of registration to NGOs are issued only one year at a time. After the first year, registration is renewed for three years at a time and thereafter every five years.¹⁰ Uncertainty regarding the renewal of registration is a serious deterrent to NGOs wishing to express independent views on contentious political issues and thereby contribute meaningfully to public debates.

Barriers to functioning

The legal framework governing the operation of NGOs should lean towards minimum official interference in their lawful activities.

NGOs are not permitted to operate in Uganda without being duly registered with the Board and without a valid permit issued by the Board.¹¹ Wide discretion is given to the Board to impose "conditions or directions as it may think fit" to insert in the certificate of registration.¹² It is also not permitted for NGOs to engage in any act prejudicial to the "national interest" of Uganda.¹³ It

⁵ Regulation 5 (1) (a) NGO Regulations, 1990

⁶ Regulation 5 (1) (b) (i) NGO Regulations, 1990

⁷ All adults are automatically members of their village resistance council (Resistance Council I) and come together to elect a nine-person Resistance Committee I, which administers the affairs of a village. The nine officials on the Resistance Committee I join with all other village resistance committees in an area to form a Parish Resistance Council (Resistance Council II) and elect nine officials who form the Resistance Committee II. The members of this committee assemble with the other parish committee members in a subcounty to form the subcounty resistance council (Resistance Council III) and elect nine officials who form the Resistance Committee III.

⁸ The District Administrator is appointed by the President as the political head of the district. In addition to providing political direction to the district, the District Administrators are responsible for overseeing the implementation of central government policy, chairing the security and development committees, and organising Resistance Committees.

⁹ Regulation 5 (1) (b) (ii) NGO Regulations, 1990

¹⁰ Regulation 7 NGO Regulations, 1990

¹¹ Section 2 (1) NGO Registration Act, 1989 as amended by NGO Registration (Amendment) Act, 2006

¹² Section 2 (2) NGO Registration Act, 1989

¹³ Regulation 12 (g) NGO Regulations, 1990

is submitted that the term national interest as opposed to 'public interest' is subjective and can be manipulated to suit the politics of the government of the day and prevent NGOs from offering legitimate dissent against official policies.

Furthermore, NGOs are prevented from making direct contact with the people in rural areas unless they have given seven days notice in writing of their intention to do so to the Resistance Committee and the District Administrator of the area.¹⁴ This amounts to excessive supervision and monitoring which can impede day to day project work that requires constant contact with the local population. It can also particularly hamper fact-finding missions on matters of public importance. Additionally, it prevents NGOs from swiftly moving to assist local populations on the occurrence of natural or human induced disasters in the normal course.

NGOs are also required in their operations to "cooperate" with Resistance Councils and Committees in the area.¹⁵ Such a stipulation hinders the independence and autonomy of the NGO sector. Excessive control over NGO activity is reinforced through the requirement to furnish to the District Development Committee in each area of operation, estimates of income and expenditure for consideration and *approval*.¹⁶ This is in addition to the requirement to submit to the Board, a comprehensive annual return indicating the names of the office bearers as well as a list of immovable assets owned or acquired by the organisation as well as the manner in which they were acquired.¹⁷

Excessively bureaucratic composition of the NGO Board

Civil society must have adequate representation and voice on any regulatory body mandated to oversee its functioning. Additionally, the regulatory body should comprise experts and those closely connected with the work of NGOs.

The 13 member National NGO Board only envisages three representatives of the public in its composition.¹⁸ The rest are representatives of various ministries, as well a representative each of the Prime Minister's Office, the Internal Security Organisation and the External Security Organisation. It is highly irregular to have representatives of security organisations to sit on the Board who may have neither the expertise or full comprehension of the full range of civil society activities. Moreover, their inclusion reflects inappropriate official distrust of NGOs and their contribution to society.

Negation of well established legal principles

It is good – and well established - practice to include in legislation, an appeals process for judicial review of executive actions. Furthermore, the principle of limited liability (i.e employees should not be held personally responsible for official acts committed on behalf of their organisations) should inform entities with legal personality.

In contrast, when an organisation contravenes (i) any provisions of the NGO Act or, (ii) operates contrary to conditions or directions specified in its permit or, (iii) carries out any activity without a valid permit or certificate, any director or officer whose act or omission gave rise to the offence

¹⁴ Regulation 12 (a) NGO Regulations, 1990

¹⁵ Regulation 12 (b) NGO Regulations, 1990

¹⁶ Regulation 15 (b) NGO Regulations, 1990

¹⁷ Regulation 15 (a) NGO Regulations, 1990

¹⁸ Section 4 NGO Registration Act, 1989 as amended by NGO Registration (Amendment) Act, 2006

is made personally liable with fine and/or imprisonment, in addition to a fine being imposed on the organisation.¹⁹ Moreover, an organisation is made liable for “all acts of its members and employees”.²⁰ It is unfair and unreasonable to hold an organisation responsible for the private acts of its members and employees.

Notably, the legislative framework provides for an appeal against the decision of the Board to refuse or revoke a certificate of registration to the Minister for Interior Affairs (who also appoints the chair, vice chair and other members of the Board and can give it written directions of a general or specific nature which it is bound to comply with)²¹ but does not envisage an independent appeals process in the courts of law.²²

CONCLUSION

CIVICUS: World Alliance for Citizen Participation respectfully calls upon the Government of Uganda to address the above-mentioned concerns by suitably amending the legal framework governing the registration and operation of NGOs. Any regulatory framework must be equitable, just and fair. In its present form, the framework falls substantially short of these standards.

Such legislation impacts negatively on the work and operations of civil society organisations in Uganda. By legally restricting such groups, many of which are involved in providing vital public services and forums to communities, the government could risk undermining ongoing development efforts in the country. Rather than focusing on the regulation of the sector, the government could benefit substantially by working together with civil society in a constructive manner.

¹⁹ Sections 2 (6) and 2 (5) NGO Registration Act, 1989 as amended by NGO Registration (Amendment) Act, 2006

²⁰ Regulation 12 (e) NGO Regulations, 1990

²¹ Sections 4 and 12 NGO Registration Act, 1989 as amended by NGO Registration (Amendment) Act, 2006

²² Section 9 NGO Registration Act, 1989