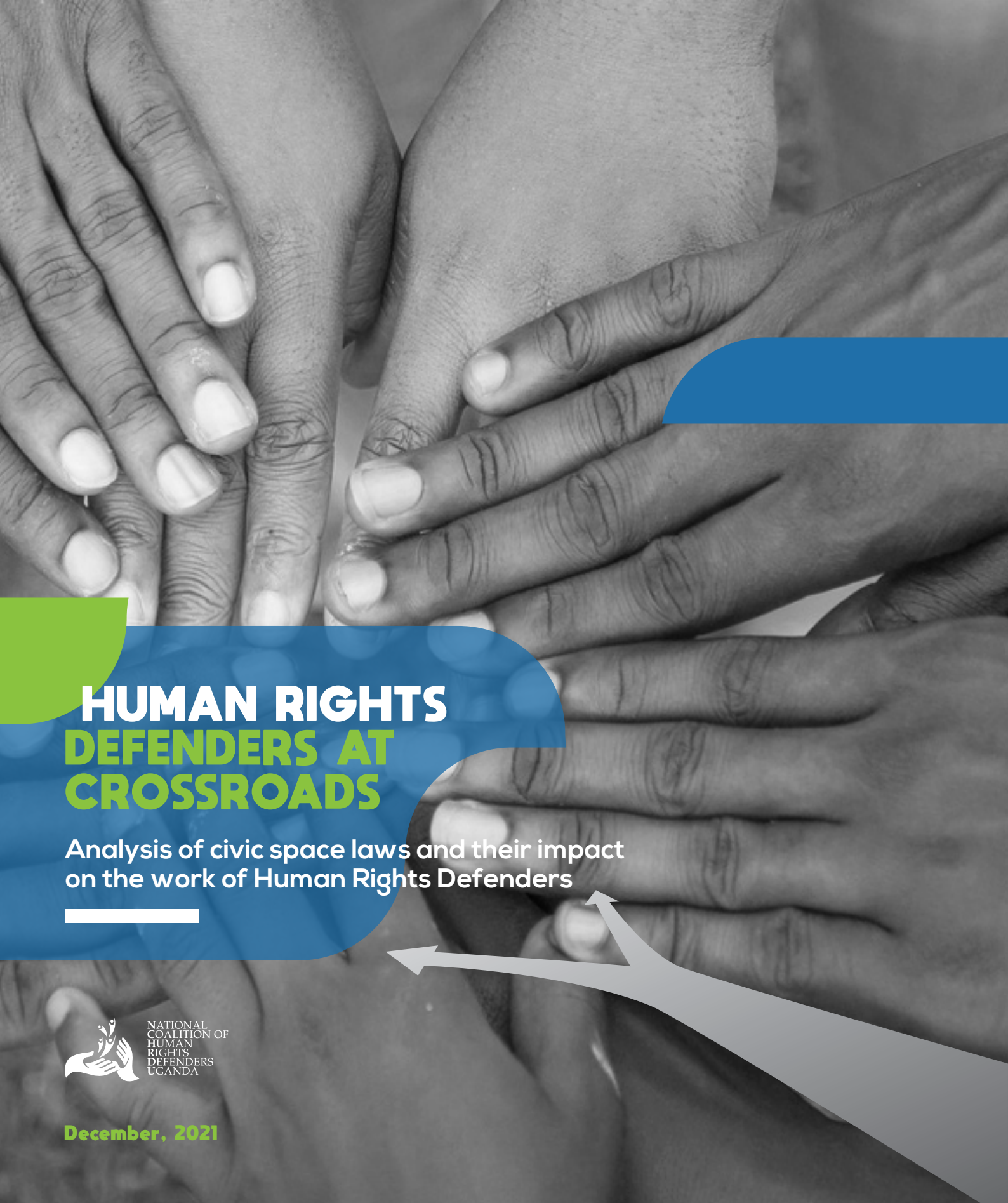


HUMAN RIGHTS DEFENDERS AT CROSSROADS

Analysis of civic space laws and their impact on the work of Human Rights Defenders

NATIONAL COALITION OF HUMAN RIGHTS DEFENDERS UGANDA

December, 2021

A Legal Analysis of Laws Affecting Civic Space in Uganda

Published in December 2021
Volume 1

A publication of:

National Coalition of Human Rights Defenders Uganda (NCHRDU)
Plot 148 Ssemawata Road, Ntinda
P.O Box 302, Ntinda
Kampala, Uganda
Phone: +256-414-699373
Email: info@hrdcoalition.ug

This publication is available online at www.hrdcoalition.ug/resources

Published with the financial support of Dan Church AID

DCA
actalliance

NATIONAL COALITION OF HUMAN RIGHTS DEFENDERS UGANDA

Acknowledgments

Over the past decade, there has been a proliferation of laws on civic space that have an impact on the operating environment of human rights defenders and civil society organisations. It was therefore an honour to be invited to provide leadership on the analysis of the laws to assess the relevant legal framework and propose legal, policy and advocacy recommendations for progressive legislation and enforcement.

At the onset, it was clear to the research team that simply outlining or analysing the black letter of the law without contextualising or interrogating it would subconsciously reinforce the legal framework, including the repressive sections and enforcement practices. As a result, the sections that were identified for analysis were informed by an analysis of the context. Laws and sections that are seen as having a significant impact were preferred over progressive legislation or that which is least repressive. This report is therefore not a simplification of laws.

Under the leadership of the consultant, Ms. Catherine Anite, the research team painstakingly analysed the laws leading to the publication of this report. We thank Mr. Anthony Masake and Mr. Oscar Taremwa for providing extensive research support in review of laws, relevant literature and field data collection.

This analysis and report would not have been possible without the generous support of the National Coalition of Human Rights Defenders Uganda (NCHRDU) who engaged the consultant and challenged the team to the task. In particular, the wise counsel of Mr. Robert R. Kirenga, Executive Director of the Coalition was helpful. Ms. Sharon Nakanwagi, Mr. Edward Serucaca and Ms. Prossy Babirye also provided invaluable input to the study.

We appreciate all the human rights defenders and civil society leaders who offered their time during this busy season to complete the questionnaire. This report would not be the same without the invaluable information on the context.

It is our sincere hope that this report will provide the much-needed analysis to trigger genuine conversations towards legislative and practice reform for a robust and progressive legal framework for civic space in Uganda.

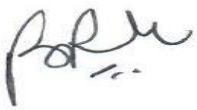
Foreword

The ability of the National Coalition of Human Rights Defenders to advocate for a conducive working environment for our clients requires to have evidence based data that cannot be easily challenged or its credibility dismissed. To this effect we undertake studies to inform the decisions that drive our advocacy agenda both national, regional and international level.

One of the key challenges affecting the working environment of HRDs is some provisions within different pieces of legislation that are in operation. Therefore the research on the legal and policy framework governing civic space will go along way in amplifying our advocacy voice in as far as these laws and policies are concerned.

We urge government to take keen interest in these reports as they are attempt to fulfill their tripartite obligations of respecting, protecting and fulfilling human rights in the country.

I wish to thank our partners Dan Church Aid who have supported this intense study. It is going to inform our next programming interventions on advocacy and I believe it'll be an important resource for all the other stakeholders.



Robert. R. Kirenga

Executive Director

Abbreviations

HRDs	Human Rights Defenders
NGO	Non-Governmental Organisations
CBO	Community Based Organisation
URSB	Uganda Registration Services Bureau
FIA	Financial Intelligence Authority
NPO	Non-Profit Organisations
TF	Terrorism Financing
FATF	The Financial Action Task Force
POMA	Public Order Management Act, 2013
AMLA	Anti-Money Laundering Act, 2013
LGBT	Lesbian, gay, bisexual and transgender people

Contents

Summary

Over the past decade, there have been a proliferation of laws that have an impact on civic space in Uganda. While a number of the laws are generally progressive and appear to give effect to the human rights and freedoms guaranteed under the Constitution of the Republic of Uganda, 1995 (as amended), a number of them contain repressive provisions that undermine the ability of human rights defenders, civil society organisations and political opposition groups from exercising the freedoms of association, expression, peaceful assembly and other civic space rights.

This analysis reviews the legal framework of the identified laws and relevant court decisions on the laws. To further aid the analysis, commentary from selected human rights defenders was sourced to get opinions to contextualise the analysis. The questionnaire was distributed to 40 human rights defenders during the month of November 2021. Interviewees included journalists, lawyers, and staff of NGOs in Uganda.

Over the past five years, the Ugandan government has enacted and begun to enforce several provisions that significantly narrow civic space, especially for political opposition, critical civil society organisations and independent media. The six notable laws and rules for this present analysis include the Non-Governmental Organisations Act, 2016; Anti-Money Laundering Act, 2013; Companies Act, 2012; Public Order Management Act, 2013; Uganda Communications Act, 2012; and the Public Health (Control of Covid-19) Rules.

The Non-Governmental Organisations Act, 2016 has been used, through the National Bureau for NGOs (NGO Bureau), to exert control over NGOs and companies limited by guarantee by increasing bureaucratic requirements and strict timelines for organisations. The law provides for a range of vague and repressive provisions and criminalises administrative lapses with potential prison terms of up to three years for NGO officers and staff. The NGO Bureau has gone ahead to summon several NGOs over apparent lapses and publicly indefinitely suspended and halted operations of at least 54 organisations, including those that are not registered with the NGO Bureau as NGOs. The actions of the NGO Bureau are not consistent with the guarantees under the Constitution of Uganda which emphasises the freedom of association and places strict circumstances under which the freedom can be justifiably limited.

The Anti-Money Laundering Act, 2013, which was enacted to prevent money laundering, has been used to further place burdensome requirements on NGOs as “accountable persons” under the law. The law requires NGOs, which are mostly managed by volunteers, to meet the same registration and reporting obligations as those reserved for forex bureaus and other financial institutions. The law has also been cited in the arbitrary and unjustified freezing of bank accounts of at least ten NGOs in Uganda and the arbitrary arrest and harassment of some human rights defenders.

The Companies Act, 2012 is largely a progressive law. The law has also been enforced generally fairly by the Uganda registration Services Bureau (URSB). It provides for the legal framework for the incorporation of companies limited by guarantee and other forms of incorporation of companies. Whereas the law has largely been progressive, several concerns have been raised by human rights defenders especially in

relation to name reservation. Section 36 (2) of the Act provides that no name shall be reserved and no company shall be registered by a name, which in the opinion of the registrar is undesirable.

In *Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Warry v Uganda Registration Services Bureau*,[1] the Applicants filed an application in the High Court to challenge the decision of Uganda Registration Services Bureau (URSB) to reject to reserve the name "Sexual Minorities Uganda" on February 16, 2015 on grounds that the name was undesirable and un-registrable because the proposed company was to be formed to advocate for the rights and well-being of lesbians and gay persons, among others (LGBTIs), who are engaged in activities labelled criminal acts under Section 145 of the Penal Code Act. On June 27, 2018, Hon. Lady Justice P. Basaza – Wasswa held that the URSB was justified in rejecting the name in public interest. This case illustrates the challenges of the overly broad powers of the Registrar of Companies.

The URSB has also invoked its powers to carry baseless investigations to interrupt the work on civil society organisations on the orders of a minister. On July 3, 2015, the Minister of Internal Affairs demanded URSB conducts urgent investigations leading up to possible de-registration of the Great Lakes Institute for Strategic Studies (GLISS) on the grounds that the organisation was "de-campaigning government programs". In response, the Registrar General of URSB appointed inspectors under Sections 173 and 174 of the Companies Act, 2012 and endless frivolous investigations ensued.[2] These two incidences illustrate how the law can be enforced to interrupt and impede the work of human rights defenders and civil society organisations.

Since its enactment of the Public Order Management Act, 2013, there have been endless debates on whether the police have powers to block or disperse a peaceful assembly. This is premised on the fact that the law appears to establish a notification regime rather than a "permission" regime, provides for spontaneous peaceful assemblies, and provides for legal process to challenge any unfair decision by the police to block assemblies. Therefore, on the face of it, the law appears well intentioned. However, a detailed analysis reveals the insidious re-introduction of unconstitutional police powers of the Police Act.[3] Section 8 of the Act provides for police powers to stop or prevent the holding of a public meeting, including orders for dispersal of the peaceful assembly, "as are reasonable in the circumstances". Section 8 of the Act was put to the test in *Human Rights Network Uganda & 4 Others v Attorney General*[4] and in a 4 – 1 decision, the Constitutional Court found it unconstitutional. The government has since appealed against the decision of the court in the Supreme Court. Before the outbreak of Covid-19 pandemic, the law was extensively used to extinguish peaceful assemblies across the country.

Following the outbreak of the Covid-19 pandemic, President Yoweri Museveni has issued several presidential directives and the minister of health has also issued a number of Statutory Instruments under the Public Health Act, with significant consequences on civic space. While a number of the measures are understandable in as far as slowing the spread of the coronavirus is concerned, some of the measures especially restrictions on movements, curfew, and public gatherings/meetings have significant impact on the work of human rights defenders and civil society organisations. For example, environmental human rights defenders in Adjumani could not move to monitor and advocate against illegal logging in Zoka

Central Forest Reserve, lawyers would not move to access their clients to provide legal representation, and accused persons in detention facilities were denied access to their lawyers and were only produced in court where virtual means were possible. Other human rights defenders such as journalists and health workers who were recognised as essential workers also reported a wave of attacks by the police. Some NGO leaders during the validation exercise for this report also reported finding challenges in processing their documents to file annual returns and apply for renewal of their NGO permits during the total lockdown and enforcement of night-time curfew. Overall, Covid-19 pandemic worsened the operating environment of human rights defenders and created new avenues for further violation of human rights.

The analysis of the Uganda Communications Act, 2013 further presents a number of challenges for the operating environment of journalists as human rights defenders. Notably, Section 31 provides that a person shall not broadcast any programme unless the broadcast or programme complies with minimum broadcasting standards. Under Schedule 4, the standards require that a broadcaster or video operator shall ensure that broadcasts are not contrary to "public morality", does not promote the "culture of violence", is not "likely to create public insecurity or violence", and news broadcasts must be free from "distortion of facts". These standards contain vague provisions have been enforced subjectively, selectively and in an overbroad manner. Indeed, the standards have been invoked to bar live broadcasts of incidents of police brutality, demonstrations and riots beyond what is demonstrably justifiable in a free and democratic society.

Recommendations

To the President of Uganda

a) Direct all government ministries, departments, agencies and public officials to recognise human rights defenders and civil society organisations as partners and take necessary action to provide for a conducive working environment, including lifting of the ban on the sector's largest donor, the Democratic Governance Facility (DGF).

b) Direct the Attorney General and other government agencies to implement the decision of the constitutional court in the *Human Rights Network Uganda & 4 Ors v Attorney General* case in compliance with the Constitution of Uganda.

c) Formally recognise human rights defenders who work with human rights organisations, including lawyers, as essential workers in the event of any future emergency restrictions to deal with Covid-19 or any other pandemic.

d) Ensure that all emergency powers and rules imposed in pandemic are gender sensitive, proportionate, necessary and non-discriminatory, and that they are enforced in a fair manner.

e) Direct the Minister of Health to immediately repeal all Covid-19 emergency Orders and Rules to end restrictions on public gatherings and the night-time curfew, especially during this time when the country has access to sufficient supply of Covid-19 vaccines.

To the Parliament of Uganda

a) 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.

b) Amend the definition of the word "community based organisation" to provide for geographical coverage of a district instead of sub-county as it is now.

c) 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 responsible ministry or ministries or a government department or agency.

d) Repeal section 29 (1) to stop compelling companies limited by guarantee from mandatory

registration with the National Bureau for NGOs. The Bureau should register NGOs and respect other forms of association as provided by other laws.

e) amend section 7 (1) (b) to provide for clarity on what disciplinary issues can lead to sanctions listed thereunder to avoid imposition of excessive sanctions.

f) Amend section 7 (2) to provide for clear fair hearing procedure to avoid any ambiguities.

g) Repeal the multiple reporting obligations and provide for only annual reports to be filed only with the National Bureau for NGOs. Other government agencies and departments that need information about a specific organisation can apply for a search at the Bureau for necessary information.

h) Amend section 32 (6) to remove the prohibitive monthly penalties for organisations that operate without a valid permit. NGOs should pay monthly penalty of five currency points (Ugx. 100,000) for operating without the permit while CBOs should not be subjected to any fines.

i) Repeal all criminal offences and penalties under the NGO Act, 2016.

j) Repeal section 44 on "special obligations" for organisations.

k) Amend the NGO Act, 2016 to provide for formal recognition of loose coalitions formed by registered organisations for specific purposes in compliance with the Constitution of Uganda and international and regional human rights law standards.

l) Amend section 36 (2) to provide for clear circumstances under with a registrar may decline to register a name of an intended company. The law should clarify that LGBTI individuals shall not be discriminated against in the exercise of freedom of association on the basis of their gender identity or sexual orientation.

m) Amend the Second Schedule to the Anti-Money Laundering Act to remove NGOs and charities as accountable persons. Where necessary, the organisations should be provided with a different legal framework for NPOs that do not include the complex set of obligations that are also reserved for financial institutions, forex bureau and other related entities.

n) Amend section 17A (3) of the Anti-Terrorism (Amendment) Act, 2015 to provide for a strict requirement for the Director of Public Prosecutions to apply to court for an order on freezing or seizing of funds within 72 hours from the time the FIA takes action to freeze the bank account.

o) Repeal section 8 of the POMA and enact provisions that are in compliance with the constitutional court decision in the cases of *Muwanga Kivumbi v Attorney General* and *Human Rights Network Uganda & 4 Ors v Attorney General.*

p) The restrictions on fundamental human rights and freedoms should be imposed with the oversight of the Parliament of Uganda.

q) Ensure that all emergency powers and rules imposed in pandemic are gender sensitive, proportionate, necessary and non-discriminatory, and that they are enforced in a fair manner.

r) The Parliament of Uganda should review and amend Schedule 4 of the Uganda Communications Act, 2013 to provide for minimum broadcasting standards that are consistent with the Constitution of Uganda and obligations under international and regional human rights standards.

To the Minister of Internal Affairs and the National Bureau for NGOs

a) Immediately lift the ban on all the 54 NGOs and companies limited by guarantee that were affected in the August 2021 decision and provide a timeframe for them to submit any missing documents without any further harassment.

b) The Minister of Internal Affairs should immediately suspend the enforcement of section 32 (6) on monthly penalties of Ugx. 2,000,000 for NGOs that operate without a valid permit to allow time for the prohibitive provision and fee to be reviewed.

c) The National Bureau for NGOs should respect the autonomy and independence of other government agencies such as the URSB and the FIA.

d) The minister should immediately appoint the Board of Directors of the National Bureau for NGOs and the Adjudication Committee in line with the NGO Act, 2016.

To the Uganda Registration Services Bureau

a) Ensure that the powers provided under section 36 (2) are exercised judiciously and are not used to promote discrimination.

b) Exercise the powers under sections 173 and 174 of the Companies Act, 2012 judiciously, fairly and independently without influence from other individuals and government departments or agencies.

To the Uganda Communications Commission

a) The UCC should exercise restraint in enforcement of the minimum broadcasting standards to avoid watering down the independence and editorial freedom of the press, beyond what is demonstrably justifiable in a free and democratic society.

To the Financial Intelligence Authority, Bank of Uganda and FATF

a) The FIA should exercise its powers under section 17A of the Anti-Terrorism (Amendment) Act, 2015 judiciously, fairly and lawfully.

b) The Central Bank / Bank of Uganda should exercise its powers under section 118 (1) of the Financial Institutions Act, 2004 and the Micro Finance Deposit-Taking Institutions Act, 2003 judiciously, fairly and lawfully.

c) The FATF should urgently investigate the application of Uganda's anti-money laundering and terrorism financing laws and take appropriate action to send a strong message that misapplication of the laws to target NPOs will not be tolerated.

To the Director of Public Prosecutions

a) Ensure that all powers and functions under section 17A (3) of the Anti-Terrorism (Amendment) Act, 2015 are exercised within less than 72 hours to apply to court for an order on freezing or seizing of funds from the time the FIA takes action to freeze a bank account.

To the UN Special Procedures

a) Request for an official visit by the Special Rapporteurs on the following freedoms:
    a. Promotion and protection of the right to freedom of opinion and expression;
    b. The rights to freedom of peaceful assembly and of association.
    c. On the situation of human rights defenders.

b) Request for official visits by the Working Group on enforced or involuntary disappearance; and the Working Group on arbitrary detention.

c) Engage more in advocacy and issue public calls to the government on key human rights concerns on civic space.

To other international development partners

a) Publicly speak out on the need for Uganda to respect its regional and international obligations on freedom of expression, association and peaceful assembly.

b) Urge the Ugandan government to provide an enabling environment for human rights defenders

and the civil society sector by implementing the recommendations listed in this analysis and other progressive amendments.

c) Increase support to Ugandan human rights defenders and civil society organisations as they protect the gains and navigate the closing civic space.

To civil society organisations

a) Conduct legal compliance trainings to enhance the capacity of human rights defenders to navigate the current legal framework as efforts to challenge them take root.

b) Engage the Minister of Internal Affairs and the regulators to suspend enforcement of repressive provisions such as the monthly fine of Ugx. 2,000,000 for NGOs that delay to renew their permits, to provide time for a review of the sections.

Methodology

This report is informed by four research approaches aimed at facilitating a qualitative study. At the onset, desk review was conducted to establish a theoretical framework on which the analysis of laws is based. The framework established standards of the three core civic space freedoms – the right to freedom of expression, peaceful assembly and of association.
After establishing the standards, a review was conducted to appraise the legal framework that relate to laws that impact civic space rights of human rights defenders and civil society organisations that operate in Uganda. The objective was to identify 6 laws that have the most significant impact on the operating space. The following laws were identified:

- Order and Rules made under the Public Health Act (Control of Covid-19).
- The Non-Governmental Organisations Act, 2016.
- The Companies Act, 2012.
- The Anti-Money Laundering Act, 2013 (as amended).
- The Public Order Management Act, 2013.
- The Uganda Communications Act, 2013.

The laws were placed under scrutiny of constitutional standards, recent court decisions, and State obligations of Uganda under international and regional human rights law. The identification of sections to analyse in the respective laws was informed by a scan of the context and identification of the provisions that mostly affect the work of human rights defenders and civil society organisations.

Desk review further involved a review of secondary sources, including civil society reports, news articles and court records. The researchers also used the observation approach to identify trends and patterns on the impact of the impugned laws on civic space in Uganda.

A total of 130 respondents were contacted physically, by email and phone calls to share opinions and brief commentary on the identified provisions under the 6 laws. The questionnaire was structured, covering strategic provisions that seen to be having an impact on the operating environment of the respondents. Over 93 percent of the respondents identified for this study are members of the National Coalition of Human Rights Defenders Uganda (NCHRDU). The analysis further benefited from feedback of 30 human rights defenders who were invited from across the country to participate in a half-day validation workshop in Kampala.

All respondents were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would be used. They were further advised that they could decline to participate at any time without any negative consequence. The respondents were not provided with compensation in exchange for an interview. Participants of the validation meeting received transport refund to cater for expenses incurred in accommodation and travelling to and from the venue.

CHAPTER ONE: INTRODUCTION

1.1. Background

Globally, civic space is under attack. Freedom House data shows that, between 2006 and 2019, associational and organizational rights have eroded significantly in 43 countries, while improving in only 16.[5] A November 2018 CIVICUS report found that civil society was under serious attack in 111 countries – with restrictions often taking the forms of new NGO legislation, counterterrorism measures, and administrative rules.[6]

In 1995, Uganda ushered in a new constitutional dispensation. The 1995 Constitution provided a progressive Bill of Rights under Chapter Four by guaranteeing fundamental human rights and freedoms that are established under the international and regional human rights law.

The 1995 Constitution requires the Parliament of Uganda to enact laws to operationalise the various Articles in the supreme law of the land. As a result, the Parliament has enacted a number of laws such as the Non-Governmental Organisations Act, 2016; the Anti-Money Laundering Act, 2013 (as amended); the Public Order Management Act, 2013; the Companies Act, 2012; and the Uganda Communications Act, 2013 (as amended). In 2020 and 2021, the minister of health has further issued Statutory Instruments

under the Public Health (Control of Covid-19) Rules in an apparent attempt of slowing the spread of the virus.

Whereas the above laws have provided important sections that enable the enjoyment and exercise of the human rights and freedoms as envisioned by the framers of the 1995 Constitution, a number of the laws contain repressive provisions that claw back on the freedoms guaranteed in the Constitution and established under international and regional human rights law. The Covid-19 pandemic triggered the emergency of very restrictive rules and directives that have shaped civic space over the past two years.

Increased restrictions on the right of access to resources by NPOs has also presented new challenges to civic space. For example, the continued closure of the Democratic Governance Facility (DGF), Uganda's largest donor for civil society organisations and a number of government programs, continues to affect communities and beneficiaries in Uganda.[7]

This report presents a theoretical grounding upon which an analysis of the legal framework that impact civic space in Uganda is based, brief reflections on contextual issues, and at the end of a review of each law, a set of specific recommendations are proposed for consideration.

1.2. **Defining civic space and national law standards**

Civic space is a broad term that is generally used to describe associational and organisational rights. According to the UN Human Rights Office civic space means an environment that enables civil society to play a role in the political, economic and social life of our societies.[8]

Civic Space Watch defines civic space as the political, legislative, social and economic environment which enables citizens to come together, share their interests and concerns and act individually and collectively to influence and shape their societies.[9]

Relatedly, CIVICUS defines civic space as the bedrock of any open and democratic society where citizens and civil society organisations are able to organise, participate and communicate without hindrance.[10] CIVICUS further defines civic space to include the freedom of peaceful assembly, association and expression.

Under Uganda's laws, civic space is not defined. However, civic space can be observed through the various relevant fundamental human rights and freedoms provided under Chapter Four.

Under Article 38, the Constitution of Uganda provides for civic rights and activities. The Article guarantees that every Ugandan citizen has the right to participate in the affairs of government individually or through his or her representatives and the right to participate in peaceful activities to influence the policies of government through civic organisations.

The realisation of the civic rights and activities guaranteed under the above Article are realised through

the exercise of fundamental human rights and freedoms provided under Article 29 (1). The Article provides for the freedom of speech and expression which shall include freedom of the press and other media; freedom of thought, conscience and belief; freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and the freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

On limitations of the freedoms, the case of *Charles Onyango Obbo and Anor v Attorney General*[11] is instructive. In that case, Justice Mulenga, J.S.C. noted;

> *"The yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. This is what I have referred to as "a limitation upon the limitation". The limitation on the enjoyment of a protected in defence of public interest is in turn limited to the measure of that yardstick. In other words, such limitation, however otherwise rationalised, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society... [P]rotection of the guaranteed rights is a primary objective of the Constitution. Limiting their enjoyment is an exception to their protection, and is therefore a secondary objective. Although the Constitution provides for both, it is obvious that the primary objective must be dominant. It can be overridden only in the exceptional circumstances that give rise to that secondary objective. In that eventuality, only minimal impairment of enjoyment of the right, strictly warranted by the exceptional circumstance is permissible."*

1.3 Civic space: International and Regional Law Standards

The fundamental human rights and freedoms that are central to civic space are well established under the international and regional bill of rights.

In addition to the general standards set hereunder, it is instructive to note that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) require all State Parties, including Uganda, to "take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."[12]

At the regional level, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa requires State Parties to "take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures..."[13]

The right to freedom of expression

The right to freedom of expression is guaranteed under Article 19 of the Universal Declaration of Human

Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The Article, under the UDHR, provides that, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The general interpretation guidance provided under General Comment No. 34 on freedom of expression and the media is also instructive. It is noted a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. A free press and other media should be able to comment and cover public issues without censorship or restraint and to inform public. The public also has a corresponding right to receive media output. State parties, including Uganda, are required to ensure that public broadcasting services operate in an independent manner and that the independence and editorial freedom of the press is guaranteed.[14]

The Human Rights Council has recognized freedom of expression on the internet as a human right. On July 5, 2012, the Council approved a resolution affirming that, "The same rights that people have offline must also be protected online."[15]

The right to freedom of assembly

The right to freedom of peaceful assembly and to petition is guaranteed under Article 20 (1) of the UDHR and Article 21 of the ICCPR which provides that: "The right of peaceful assembly shall be recognized." The right is further guaranteed under Article 15 of the International Convention on the Rights of the Child.

At the regional level, the right to freedom of assembly is guaranteed under Article 11 of the African Charter and Article 8 of the African Charter on the Rights and Welfare of the Child.

In General Comment No. 37, the UN Human Rights Committee (HRC) elaborates on the right to includes the non-violent gathering by persons for specific purposes, principally expressive ones. It therefore constitutes an individual right that is exercised collectively. However, a single protester is also protected under the right.

The law protects assemblies everywhere – including outdoors, indoors, in public or private spaces, online or a combination thereof. Such assemblies may take the form of demonstrations, protests, meetings, processions, rallies, candlelit vigils, sit-ins, flash mobs, marches, or any other such peaceful gatherings.

The State has a corresponding obligation to respect and ensure exercise of the right to peaceful assembly without discrimination. For the right to peaceful assembly to have meaning, other overlapping rights such as the freedom of association, freedom of expression and political participation must be adhered to.

The HRC has further guided that the right of peaceful assembly entails a two-stage process namely the requirement that the participation amounts to participation in a 'peaceful assembly' and whether any

restrictions applied to the exercise of the right are legitimate in the prevailing context.

Peaceful assemblies are often organized in advance to allow time for organizers to notify authorities and take the necessary actions to prepare for a successful assembly. However, the right also protects spontaneous assemblies where the gathering is responding to current events. The law further protects peaceful counterdemonstrations.

In defining what amounts to 'peaceful', it should be noted that it does not mean the absence of 'violence' which typically entails the use of physical force against others. The HRC has guided that: "Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to "violence". Where the violence originates from outside of the peaceful assembly as a result of the actions of the police or authorities or a group opposing the assembly, the assembly should not be declared non-peaceful. Instead, the police should take action to protect the peaceful protesters from the attack. Isolated instances of violence should not taint an entire assembly as violent.

It is fundamental principle of the right that there is a presumption in favour of considering assemblies to be peaceful. Isolated acts of violence by a few participants of the assembly does not and should not be attributed to the organisers or other participants at the assembly or render the assembly violent. The individual(s) who are involved in violent actions or any other criminal acts should be safely removed from the crowd and allow the peaceful assembly to proceed.

Where a notification system is established under the local laws to regulate assemblies, the HRC has guided that the procedures should be transparent, include only proportionate demands, free of charge and not unduly bureaucratic. A failure to notify the authorities of a planned assembly should not render the assembly illegal.

The right to freedom of association

The right to freedom of association is also guaranteed under Article 20 of the UDHR and Article 22 of the ICCPR, Article 15 of the International Convention on the Rights of the Child, Article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women, Article 15 of the 1951 Convention Relating to the Status of Refugees, Article 24 (7) of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 29 of the Convention on the Rights of Persons with Disabilities.

At the regional level, the right to freedom of association is guaranteed under Article 10 of the African Charter, Article 8 of the African Charter on the Rights and Welfare of the Child, and Articles 12 (3), 27 (2) and 28 of the African Charter on Democracy, Elections and Governance.

Whereas this right is not absolute, there are strict grounds under which it may be restricted under the law as detailed by article 22 (2) of the ICCPR. It is provided 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 or others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right."

"National security" and "public safety" refers to situations involving an immediate and violent threat to the State. The right must create a real and significant risk to the safety of persons or property. Therefore, limitations imposed on the basis of merely an isolated incident that can be contained by the law enforcement agencies cannot be justified.

The HRC has guided that "public order" refers to the sum of rules that ensure the proper functioning of society, which also entails respect for human rights. "Public order" and "law and order" are not synonyms, and therefore the prohibition of public disorder should not mean undue restrictions on freedom of association.

"Public health" on the hand may permit restrictions to be imposed in exceptional circumstances, for example, where there is an outbreak of an infectious disease such as Covid-19 pandemic. The freedom of association may also be restricted for "the protection of morals." The HRC has guided in General Comment No. 37 that such restrictions should not include discriminative practices such as restrictions against the exercise of the right of the freedom of association by LGBTIQ+ individuals.

The interpretation of article 22 (2) of the ICCPR and the HRC is further supported by the Siracusa Principles that stress that any limitations imposed on freedom of association must not be used as a pretext for imposing vague and arbitrary limitations, or for suppressing opposition and perpetrating repressive practices. They also make clear that the burden of justifying restriction of a right guaranteed by the ICCPR lies with the state imposing that restriction.[16]

CHAPTER TWO: ORDERS AND RULES MADE UNDER THE PUBLIC HEALTH ACT (CONTROL OF COVID-19)

2.1 Introduction

In December 2019, the novel coronavirus outbreak was identified in Wuhan, Hubei Province in China. On March 11, 2020, the World Health Organization (WHO) declared the coronavirus disease (COVID-19) a pandemic.[17] On March 18, 2020, the government of Uganda, through presidential directives, imposed the first emergency measures to stop or slow the spread of a virus. To clothe the declarations of President Yoweri Museveni, the Minister of Health invoked her powers under sections 10, 11 and 27 of the Public Health Act, Cap. 281 to issue Orders and Rules aimed at recognizing the pandemic and combating it in Uganda.

The Public Health (Notification of Covid-19) Order, 2020[18] was issued to declare Covid-19 a notifiable disease to which the provisions of prevention and suppression of infectious diseases under the Public Health Act apply. This paved way for the minister to make rules for control of the spread of the disease, order for quarantine of infected or suspected persons, disinfect premises, and other emergency measures.

To date, several other Orders and Rules have been issued by the Minister of Health to slow the spread of the virus. While the necessity of most of the rules is apparent, there have been concerns on some extreme rules and high-handed enforcement which have negatively impacted on civic space in Uganda. The following sections interrogate the impact of the various Covid-19 prevention and control of Covid-19

pandemic Orders and Rules.

2.2. A crisis in a pandemic: Impact of Covid-19 on civic space

Since the outbreak of Covid-19 pandemic in Uganda in early 2020, a number of Orders and Rules have been issued by the Minister of Health in an apparent attempt to slow the spready of the coronavirus. The rules, especially those that affect public gatherings and movement present significant challenges to the work of human rights defenders and civil society in general.

The first Rules that directly impacted the right to freedom to assemble was the Public Health (Control of Covid-19) Rules, 2020.[19] The said rules imposed restrictions on public gatherings, suspended public meetings, ordered for closure of schools and institutions of higher learning, bars and cinemas, among others. Several subsequent rules were issued by the minister to imposing total lockdown for months, suspending flights by stopping operations at the airports, and regulating the number of people who can participate or attend a public gathering or meeting.

These restrictions affected the ability of human rights defenders to convene or attend conferences and other public gatherings. Whereas it can be argued that these restrictions were generally necessary to slow the spread of the virus, there are concerns that public gatherings of a restricted number depending on the space of the venue should be allowed provided the standards operating procedures are observed.

The restrictions on public gatherings have also been used as an excuse for violent dispersal of peaceful assemblies. Journalists who are covering the assemblies have also been brutalized by security forces. Excessive use of force has also been applied resulting in extrajudicial killings.

During the enforcement of total lockdown and enforcement of the curfew, several human rights defenders including lawyers were not recognised as essential workers. This affected their ability to carry out their crucial work so as to guarantee that the non-derogable right to a fair hearing and the right to an order of habeas corpus; and the right to apply for bail amidst a pandemic. For instance, lawyers failed to travel to police stations, courts of law and prisons to meet and represent their clients. Prisoners were also not being produced in court physically, and yet few courts have the ability to use the virtual court sessions. This situation prevailed at a time the police had ramped up arrests and detentions.

In an effort to salvage the situation, human rights defenders and civil society organisations petitioned the government for the classification of legal services as essential services amidst the lockdown. The petition was not considered.[20] When the government relaxed the conditions a little, they provided car stickers to only 30 lawyers to move during the lockdown and curfew hours.[21] This was in line with a court order in *Turyamusiima Geofrey v Attorney General and Dr. Jane Ruth Aceng*[22] that required the government to provide for modalities of travel only "in deserving cases". This could not address the problem in a country that has thousands of lawyers and litigants have a right to seek the services of a lawyer of choice.

This affected the ability of lawyers to represent their clients to ensure that their right to a fair hearing is guaranteed.

Other human rights who work in the communities also faced challenges during the total lockdown and night curfew hours. For instance, environmental human rights defenders in Adjumani reported having challenges in monitoring the movement of illegal loggers who carried out illegal logging activities in Zoka Central Forest Reserve during hours where movement was restricted.

detention facilities were denied access to their lawyers and were only produced in court where virtual means were possible.

Some human rights defenders, who were considered essential workers and therefore free to move during the total lockdown and night-time curfew, also reported a wave of police attacks. Reporters Without Borders (RSF) and the Human Rights Network for Journalists (HRNJ) report at least four journalists were attacked by police officers while they caried out their work during night-curfew hours. For example, two journalists working with *Radio Elgon FM* and *Radio Ankole* were attacked by police while covering the enforcement of the night curfew. On the evening of July 30, 2021, police officers attacked Scovin Iceta, a reporter for *NTV Uganda* and the *Daily Monitor* newspaper for taking photos of police officers using force to disperse people at the start of the night curfew enforcement in Adjumani town. Scovin was wearing a very identifying him as a journalist but this did not save him from police brutality. On August 1, 2021, a police officer intercepted Patrick Bukenya, a journalist working with *Radio Mityana* FM for moving at night. The officer accused him of violating the night curfew. Bukenya tried to explain that he is a journalist but instead of being let go, he was punched in the face.[23]

At the height of reporting on Covid-19 pandemic and the management of resources, the media was also targeted. For example, in April 2020, the Arua District Covid-19 Task Force, a task force convened to coordinate the government response to the pandemic in the district, banned the media from attending its weekly meetings on accusations that they may feed the public with wrong information. “Mr. chairman from the next meeting we shall not have the media sit with us, it does not matter what happens, we shall give them press briefings because in meetings like these we may have diversionary discussions but at the end of it we come up with conclusions but our friends in the media, they pick those which are negative,” Mr. Sam Wadri Nyakua, District Chairman noted. In response, Mr. Clement Aluma Aribo, the Chairman of the West Nile Press Association noted, “what is it that they don’t want the public to know, I have confidence in our reporters and are all responsible, you cannot just say that we are irresponsible simply because we reported something which you never liked.”[24]

In a related incident, police officers in a police patrol pickup rounded up and brutality assaulted a Ms. Ruth Nabwire, a health worker at Busia Health Centre IV for being found walking during curfew hours, despite being dressed in uniform and identifying herself as a medical officer. “They became so brutal. They descended on her. They were six people (on the police pick-up patrol vehicle) – men in uniform, others were just laughing. They were just cheering the other ones (to brutalise the nurse). That is abetting crime,”

Dr. Abdulhu Byakatonda, Workers MP. "I am still in pain. The ear and this eye (left eye) – in fact even my sight I am not seeing well with the right eye. This ear (left ear) I don't hear anything. I am just there. As if it has pus inside. The way I feel, I am just in my own world," Ms. Nabwire explained.[25]

In Arua district, Doris Okudinia, a nurse working at Ediofe Mission Health Centre was summoned and harassed in April 2020 for wheeling a patient for about 2 kms to Arua Regional Referral Hospital for emergency medical care. Doris says she requested for an ambulance but after waiting for over four hours in vain, she had to find other means to deliver the patient to the hospital. The district authorities accused the nurse of turning the image of the district.[26]

The LGBT community have also been targeted during the enforcement of the Covid-19 rules. Shelters for homeless people have been raided by the police under the pretext of enforcing Covid-19 presidential directives and rules. On March 29, 2020, at least 23 people were arrested at a shelter serving LGBT people in Kampala. The police accused them of engaging in a "negligent act likely to spread infection of disease," and "disobedience of lawful orders." While at the time, there was a ban on public gatherings of more than 10 people, this was a private shelter or home. The homeless youth were indoors at a shelter in Nsangi, near Kampala. Th shelter is managed by an NGO. The police had earlier raided another LGBT shelter where 16 people were arrested, subjected to forced anal examinations after which the cases were later dropped. Therefore, Covid-19 pandemic was simply a pretext for the raids on LGBT shelters.[27] UN human rights experts condemned the raids and expressed concern on the use of Covid-19 emergency laws to target LGBT people.

> *"We are deeply concerned about a raid on an LGBT shelter in Kyengera on 29 March and the arrest and detention of 19 people perceived to be LGBT persons... Emergency powers to combat crises, such as COVID-19, derive their strength and legitimacy from strict adherence to their object and purpose... Any emergency response linked to COVID-19 must be proportionate, necessary and non-discriminatory... When authorities use emergency powers for different purposes, they are acting arbitrarily," UN human rights experts said.*[28]

Two years on, and at a time when the virus is generally under control and the number of people being vaccinated increasing, human rights defenders continue to find difficulties in convening and holding public gatherings. For instance, a number of local government leaders still require human rights defenders to go through a laborious process of seeking permission from public officials before they can hold public gatherings. These restrictions continue to impede the ability of defenders to convene and attend conferences by raising the costs of convening public gatherings and maintaining unjustifiable limitations.

2.4 Recommendations

a) Formally recognise human rights defenders who work with human rights organisations, including lawyers, as essential workers in the event of any future emergency restrictions to deal with Covid-19 or any other pandemic.

b) Ensure that all emergency powers and rules imposed in pandemic are gender sensitive, proportionate, necessary and non-discriminatory, and that they are enforced in a fair manner.

c) The restrictions on fundamental human rights and freedoms should be imposed with the oversight of the Parliament of Uganda.

d) Immediately repeal all Covid-19 emergency Orders and Rules to end restrictions on public gatherings and the night-time curfew, especially during this time when the country has access to sufficient supply of Covid-19 vaccines.

CHAPTER THREE: THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016

"My expectation was that this law [NGO Act, 2016] was to faciliate NGO work in harmony with the government and all stakeholders including our operation constituencies but we seem not to be in agreement and understanding with each other." William Amanzuru, environmental human rights defender working with Friends of Zoka.[29]

1.1 **Introduction**

On January 30, 2016, President Yoweri Museveni assented to the Non-Governmental Organisations Act, 2016[30] (NGO Act, 2016) following the passing of the Bill by the Parliament of Uganda in December 2015. The objective of the law is to repeal and replace the Non-Governmental Organisations Act Cap. 113, to provide a conducive and an enabling environment for non-governmental organisations, to strengthen and promote the capacity of non-governmental organisations and their mutual partnership with the government, make provision for special obligations of non-governmental organisations and to provide for other related matters. From the onset, the law appears well intentioned. However, the analysis reveals a law with repressive provisions that are increasingly being enforced with significant negatives impact on the work of human rights defenders and existence of formal non-governmental organisations.

1.2 **Legal analysis of interpretations under the law**

The interpretation section of the law is provided under section 3 of the law. The definitions of an "organisation" and a "community based organisation" are of particular interest to this analysis.

Under the law, an organisation is defined 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."*

The definition appears to include all non-profit organisations. As a result, the National Bureau for NGOs (NGO Bureau) interprets the overbroad and vague definition of the word "organisation" to mean that all companies limited by guarantee or trusts that are incorporated under the Companies Act, 2012 and the Trustees Incorporation Act are required to register with the National Bureau for NGOs and seek a valid NGO permit before operating in Uganda in accordance with Section 31 (1) and (2) of the Act. The NGO Bureau is actively enforcing this definition and arising obligations. Most recently, on August 20, 2021, the NGO Bureau issued a press statement[31] halting the operations of 16 companies limited by guarantee for failure to register with the NGO Bureau.

Under international and regional human rights standards, and indeed the 1995 Constitution, the registration of associations is required to be governed by a simple and non-burdensome procedure of notification rather than an authorization.[32] Therefore, the interpretation of the word "organisation" which seeks to require already incorporated and registered associations to again seek authorization from the NGO Bureau to obtain a permit to operate is in contravention with the recognised human rights standards and guarantees of the 1995 Constitution. The legal framework should allow individuals and associations that are engaged in non-profit services to determine their legal status – whether to operate as companies limited buy guarantee or trusts or as non-governmental organisations.

Section 3 of the Act further defines a "community based organisation" as:

> *"an organisation operating at a subcounty level and below whose objectives is to promote and advance the wellbeing of the members of the community."*

The above definition restricts the geographical coverage of community based organisations (CBOs) to the subcounty level without justifiable basis. Before the enactment of the Act, CBOs were registered to operate at the district level – and many Chief Administrative Officers continue to issue permits for CBOs to operate at the district level. Under human rights law and constitutional dispensation that recognise

informal associations, individuals who choose to register a CBO at the local government level should be granted permits to operate at the district level.

1.3 **Analysis of legal framework for registration of NGOs and CBOs**

> *"It is not an easy process. It prevents some intended NGOs from registering and operating. For instance, a requirement and recommendation by the District NGO Monitoring Committee is biased where some officers want to be seen as working and they deny some activists from forming NGOs. That's why most activists are not working with formal NGOs," Michael Businge, an environmental HRD.*[33]

The NGO Act, 2016 and the Regulations provide for a legal framework for the registration of organisations as Non-Governmental Organisations (NGOs) and as CBOs.

Section 29 (1) of the Act and section 3 of the NGO Regulations, 2017 provides that any person or group of persons incorporated as a company limited by guarantee or registered under the Trustees Incorporation Act, and all other entities that carry out non-profit services, shall register with the NGO Bureau before carrying out any operations.

These provisions are problematic on two fronts – firstly, 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. Secondly, 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 attempts to render such formal entities namely companies limited by guarantee and trusts invalid and illegal yet they are fully established under the laws of Uganda.

The section further creates dual and burdensome layers of registration requirements that raise the cost of NGO registration and seeks to extinguish the fundamental right of individuals and associations to operate using their certificate of incorporation and registration under the law that regulates trusts.

International, regional and national law standards require that registration of associations shall be governed by simple notification regimes.[34] Under section 29 (2) of the Act and section 4 of the NGO Regulations, 2017, the law lists a number of requirements which have to be attached to an application for NGO registration, including the following:

a) *a recommendation from the District Non-Governmental Organisations Monitoring Committee where the headquarters are located*
b) *a letter from the responsible/line ministry or ministries or a government department or agency;*

The long list of requirements makes the registration process significantly burdensome. For instance, individuals who wish to register an NGO must first incorporate a company limited by guarantee at the URSB under the Companies Act, 2012. This is the case because a certificate of incorporation is one of

the requirements for NGO registration. In addition to this, the individual must also secure a letter of recommendation from the Chief Administrative Officer or Town Clerk where the headquarters of the organisation will be situated. They also need to secure a letter of recommendation from a ministry or government department or agency where most of the activities of the organisation fall. These three requirements are burdensome and unnecessary. The law "has led to difficulties in registering some new upcoming NGOs,"[35] Michael Busingye noted.

In the event that the law authorises the authorities to reject applications for NGO registration, it must do so on the basis of a limited number of clear legal grounds that in consistent with regional and international human rights law. Under section 30 of the NGO Act, 2016 and section 6 of the NGO Regulations, 2017, the NGO Bureau may refuse to register an organisation provided it gives its reasons for the refusal within thirty days from the date of refusal. The three reasons include where the objectives of the organisation are in contravention of the laws of Uganda, where the application for registration does not comply with the requirements of the NGO Act, 2016 and where the applicant has given false or misleading information in any material particular.

The law is however silent on what happens if an organisation satisfies the reason cited by the NGO Bureau for refusal to register it. Legislation that is established in favour of association and with an aim of facilitating and encouraging the establishment of associations should provide for request for clarification or further information where there is an inconsistency instead of providing for the three circumstances to be a ground for refusal to register, without any communication.

The other gap in the law is in failure to provide clear time limits within which an application for registration must be responded to. The thirty days applies to the period within which the NGO Bureau should notify the organisation after taking such decision.

The provision on mandatory registration has further been used by the NGO Bureau to disband and declare "loose coalitions" formed by duly registered organisations criminal outfits. On October 29, 2021, as Uganda prepared for the General Elections, the NGO Bureau disbanded[36] 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". The Centre for Constitutional Governance (CCG) filed a case in court challenging the impugned actions of the NGO Bureau. On July 30, 2021, Justice Ssekaana dismissed the application and held that the NGO Bureau was "right-legally to halt the operations of National Election Watch-Uganda (NEW-U) in the circumstances of this case".[37] In this case, the court missed an opportunity to clarify on the right to freedom of association as guaranteed under Article 29 of the Constitution.

The Non-Governmental Organisations (Fees) Regulations, 2017[38] were made on March 24, 2017 by the Minister of Internal Affairs to provide for fees payable during the government in registration fees. Under human rights law, whereas a fee may be imposed to cover administration fees, such fees must be modest and not have an effect of deterring associations from registering in practice.[39] Under the Second Schedule to the regulations, indigenous organisations are required to pay Ugx. 100,000 (USD. 29) in application

fees for registration, foreign organisations are required to pay Ugx. 520,000 (USD. 146), while continental organisations are required to pay Ugx. 260,000 (USD. 73). Under the repealed law, there was no fee for registration. Organisations were required to only pay for the NGO permits at a fee of Ugx. 20,000 (USD. 6) per year.

Considering that NGOs are voluntary associations which are often started by individuals without any grant, the said amounts are an impediment to association freedoms. The amounts are capable to denying individuals or a group of individuals from registering an NGO.

1.4 **Analysis of legal framework for issuance and renewal of NGO permits**

All NGOs and CBOs registered in Uganda are further required to apply for a permit to operate. Unlike the application for registration, the organisations are required to renew their permits periodically once they expire. An organisation may apply for a minimum of 1 year permit and a maximum of 5 years.

Under section 31 (1), the NGO Act, 2016 and section 7 (1) of the NGO Regulations, 2017 provide that an organisation shall not operate in Uganda without a valid permit issued by the NGO Bureau. Section 31 (2) provides that the requirement not to operate without an NGO permit applies to all companies limited by guarantee and trusts that are engaged in non-profit activities, as defined in section 3 of the Act. Section 7 of the Regulations further provides that the application for a permit shall specify the following:

a) *filled Form D.*
b) *the objectives of the organisation.*
c) *staffing of the organisation;*
d) *geographical area of coverage of the organisation;*
e) *location of the organisation's headquarters;*
f) *evidence of payment of the prescribed fees; and*
g) *intended period of operation not exceeding five years.*

Whereas the above requirements are generally fair, the requirement for geographical area of coverage of the organisation is not justifiable under the current legal framework and only seeks to create further rules to expose NGOs to legal sanction. For instance, an organisation in Uganda cannot be an NGO without first being incorporated as a company. Under the law, a company has the legal status to operate in any part of the country. It is therefore inconsistent that the NGO Act, 2016 seeks to unlawfully trim the powers of such a legal entity with corporate personality to a small geographic location, in many cases a district level.

On the fees, the Non-Governmental Organisations (Fees) Regulations, 2017 provides for a fee of Ugx. 60,000 per year (USD. 17) for indigenous organisations and Ugx. 400,000 (USD. 113) for continental, foreign and international organisations. This cost is in addition to the initial incorporation costs and the NGO registration fees stated above. Under the repealed law, the cost for a permit was Ugx. 20,000 (USD. 6). Considering that most organisations are voluntary initiatives, this cost is prohibitive and is capable of

impeding the exercise of freedom of association.

Section 32 of the Act and section 12 of the regulations provide for renewal of the permit. The requirements are generally fair apart from two provisions.

First, the demand that all NGOs seeking to renew their permits should provide signed Memorandum of Understanding with their local governments where they operate is restrictive. This requirement impedes the ability of organisations to apply for renewal of their permits if the local authorities decide not to sign the MOU with the organisation. This provision is inconsistent with the 1995 Constitution's[40] National Objectives and Directive Principles of State Policy II (vi) on democratic principles and the guarantee that "civic organisations shall retain their autonomy in pursuit of their declared objectives."

Secondly, section 32 (6) requires an organisation whose permit expires, but continues to operate without renewal of its permit to be fined Ugx. 200,000 (USD 57) in case of a CBO and Ugx. 2,000,000 (USD 561) for NGOs, for every month of operation in default of renewal of the permit. This penalty is exorbitant, extremely prohibitive, inconsistent with the Constitution and therefore cannot be justified. It outlaws informal associations and is extremely punitive. "It is not fair to be given a penalty. The Bureau must first understand why the NGO hasn't renewed its permit. It may be because of limited funding, or any other issue," Michael Busingye.

1.5 **Review of NGO Bureau powers and processes on sanctioning NGOs**

The NGO Bureau has specific powers under the law. Notably, section 7 (1)(b) of the NGO Act, 2016 provides that:

> *"(b) summon and discipline organisations by either –*
>
> *i. warning the organisation;*
> *ii. suspending the permit of the organisation;*
> *iii. exposing the affected organisation to the public;*
> *iv. blacklisting the organisation; or*
> *v. revocation of an organisation's permit."*

Section 7 (2) of the Act provides that the NGO Bureau "shall before taking any action against an organisation under subsection (1), give the organisation the opportunity to be heard."

Most recently, the NGO Bureau exercised this power when it halted the operations of 54 NGOs (and companies limited by guarantee) for alleged non-compliance with the NGO Act, 2016. In a press statement issued on August 20, 2021, the NGO Bureau halted operations of 23 NGOs (and companies limited by guarantee) for operating with expired NGO permits, indefinitely suspended 15 NGOs for failing to file annual returns and audited books of accounts, and halted activities of 16 organisations for operating without registering with the NGO Bureau.[41]

On revocation of an organisation's permit, section 33 of the act provides that the NGO Bureau may revoke

the permit if:

> *"(a) the organisation does not operate in accordance with its constitution;*
>
> *(b) the organisation contravenes any of the conditions or directions specified in the permit."*

Subsection (2) requires that before the NGO Bureau revokes a permit of an organisation, "it shall within thirty days from the date of notice in writing request the holder of the permit to show cause why the permit should not be revoked." Section 13 (2) of the NGO Regulations, 2017 provides further that the NGO Bureau notice shall state the ground for the intended revocation, the brief facts of the case leading to revocation of the permit, and any relevant evidence relating to the grounds.

The above provisions do not meet the standards provided in international and regional human rights law. Any sanctions to be applied to associations should be applied narrowly and should be strictly proportionate to the gravity of the misconduct in question. For example, suspension or revocation of a permit of an organisation should only occur where there has been a serious violation of national law, in compliance with regional and international human rights law. The sanction should only be taken following a court order and any appeal process should suspend the sanction pending determination of the appeal.

Where an organisation fails to comply with a particular State requirement / obligation, the remedy should be compliance with that requirement. There is no justification for a warning, suspension, blacklisting and other high handed irrational sanctions.

The opportunity to be heard as provided under the law should also be adhered to. The organisation should be formally notified of the concerns and invited for a hearing with sufficient notice. The administrative process should also be impartial and independent. The sanctions placed should also be proportionate to the gravity of the misconduct, reasonable in the circumstances, and not be ultravires.

Section 33 (4) which provides for the right of an organisation where the NGO permit has been revoked to re-apply for a permit should further be enforced impartially, fairly and independently.

1.6 **Analysis of administrative and reporting obligations**

The NGO Act, 2016 requires NGOs and CBOs to furnish several categories of information, including annual returns.

Section 39 of the Act requires all organisations to file annual returns within eight months after an end of its financial year. The returns by NGOs are required to be submitted to the NGO Bureau, the District Technical Planning Committee (DTPC), the District NGO Monitoring Committee (DNMC), and the Sub-County NGO Monitoring Committee (SNMC) of the area in which it operates. CBOs on the other hand

are required to submit their returns to the SNMC. The annual returns should include the audited books of accounts by a certified auditor and the budget and workplan for the next year. Sections 30, 31 and 32 of the NGO Regulations, 2017 provide for further directives on filing returns and furnishing of information.

The above reporting obligation is burdensome and creates unnecessary and unjustified multiple reporting layers for organisations. Annual returns should be submitted to one authority – the NGO Bureau and if any other authority is interested in a report of an organisation, they can make a formal request to the NGO Bureau like it is the case with company search procedures at the URSB.

Further to the above, the law fails to provide for procedure of filing returns for organisations that are not able to engage certified auditors to audit the books of accounts of the organisation. The assumption that all NGOs and CBOs have the financial resources to contract an auditor is flawed and creates yet another layer of administrative obligation which exposes organisations to sanctions for non-compliance. There should be an alternative for organisations that are unable to carry out audits.

For instance, such organisations would be required to extract statements of all the bank accounts of the organisation and submit to the regulator as a statement of the account, especially where there has been no much business / transactions on the bank account during that year.

Further to this, CBOs should file their returns to the DNMC, the authority that issued the permit and in line with the recommendation that CBOs should operate at district level.

1.7 **Criminal offences and penalties under the law**

Section 40 of the NGO Act provides that any person who does the following commits an offence and is liable on conviction to a fine not exceeding Ugx. 1,440,000 (USD. 405) or to imprisonment for a term not exceeding three (3) years or both, and in case of a continuing offence, to a further fine not exceeding Ugx. 300,000 (USD. 85) for each day during which the offence continues after conviction:

> *"(a) on being required to do so, fails or refuses to produce to the Bureau a certificate, permit, constitution, charter or other relevant document or information relevant for the purposes of this Act;*
>
> *(b) knowingly gives false or incomplete information for the purpose of obtaining a permit or other requirement.*
>
> *(c) operates contrary to the conditions or directions specified in its permit; or*
>
> *(d) engages in any activity that is prohibited by this Act."*

The above provision on criminal sanctions is not only inconsistent with international, regional and national human rights law, it is also not necessary and justifiable. The law regulating non-profit association cannot and should not have criminal sanctions. Failure to meet administrative obligations, failure to operate within the provided geographic area etc cannot be sanctioned through criminal law. All criminal acts that may be done by officers of the organisations are specified within the Penal Code Act.

1.8 **Analysis of the legal framework on inspections by NGO Bureau**

Subject to the provisions of section 41 of the Act, section 33 of the NGO Regulations, 2017 provides for the powers of the NGO Bureau to designate from among its officers such number of inspectors to investigate any matter for the purpose of ensuring compliance with the NGO Act, 2016 and the Regulations. A person designated as an inspector shall be Gazetted in the National Gazette.

A notice for inspection is required to be issued and served on the office of the organisation intended to be inspected. Prior notice of at least three (3) days is required before any inspection.

Under section 34 of the Regulations, the inspectors have powers to access the premises of the organisation, confiscate any incriminating document or material, interview and record statements from any person, and recommend to the Bureau for an interim closure of the offices of the organisation.

Upon consideration of the inspector's report, if it appears to the NGO Bureau that provisions of the NGO Act, 2016 have not been complied with, the Bureau may warn the organisation, suspend the permit, expose the affected organisation to the public, backlist the organisation, or revoke the permit. Where the report reveals possibility of criminal offence for which any person is criminally liable, the NGO Bureau will forward a copy of the report to the Director of Public Prosecutions for further action.

Whereas the above provisions appear to be well intentioned, they present significant concerns on freedom of association of NGOs and CBOs. The law places unbridled power for the NGO Bureau inspectors to pick on any organisation for purposes of inspection. They do not have to establish reasonable cause for need of the inspection.

Under regional and international human rights law, inspections of NGOs, CBOs and other associations by oversight and regulatory bodies is not permitted without a judicial order in which clear legal and factual grounds justifying the need for the inspection is presented. This requirement exists even in criminal cases, in the form of search warrants issued by court. Therefore, it is crucial that inspections only take place when there is a court order.

During the legal process to secure the order from a magistrate's court, the existence of well-founded evidence-based allegation of a serious legal violation will be examined. Inspections should further not be carried out with an aim of verifying the compliance of organisations with their own internal procedures

– that is a preserve of the members of the associations. In the absence of these safeguards, arbitrary and unjustified inspections will be conducted to harass and intimidate associations, and in extreme cases, the process will be manipulated to justify severe actions such as suspension or revocation of permits.

1.9 **Analysis of the "special obligations" for NGOs**

Under section 44 of the NGO Act, 2016, the law establishes "special obligations" for NGOs. This section analyses a few of the concerning obligations.

The first obligation under section sub-section (a) is a requirement not to carry out activities in any part of the country unless the organisation has received the "approval" of the DNMC and local government of the area of operation and has signed a Memorandum of Understanding (MOU) with the local authorities to that effect. Section 41 (2) of the NGO Regulations, 2017 requires that the approval must be in writing and sub-section (4) recognises that the DNMC and local government can refuse to grant the approval for whatever reason, provided such decision is given in writing. Sub-section (3) requires that the MOU shall be executed at least within 14 days from the date of approval of the organisation to carry out its activities in a district.

The above provisions mean that after securing a certificate of incorporation from the URSB and a certificate of registration and NGO permit from the NGO Bureau, an organisation still needs to secure a written approval from the DNMC and the local government in the area of operation. The organisation is further required to execute an MOU with the DNMC within 14 days after receiving the approval letter. These burdensome multiple layers of registration and authorization form a legal framework that significantly narrows the space for NGOs to establish and operate in Uganda and further exposes the organisations to legal compliance concerns. During the validation exercise for this report, many staff of NGOs that are working on human rights, governance and accountability reported having challenges in signing the MOUs with the local authorities.

Relatedly, staff working with NGOs that operate in the refugee settlements in Uganda further expressed challenges in signing MOUs with the Office of the Prime Minister, which is a strict requirement for any organisation to carry out an activity in the said refugee settlements. These strict requirements impede the work of civil society to improve the stands of living of the project beneficiaries without justifiable cause. Organisations that work in the settlements can be invited to register and declare their work plans under a simple notification regime.

The strict requirement for all NGOs to obtain "approval" and execute "memorandum of understanding" with DNMCs and local governments before operations is inconsistent with the 1995 Constitution's National Objectives and Directive Principles of State Policy II (vi) on democratic principles and the guarantee that "civic organisations shall retain their autonomy in pursuit of their declared objectives."

Section 44 (b) and (e) of the Act further provide an obligation for organisations not extend their operations

beyond the area provided in the permit unless it has received a recommendation from the NGO Bureau through the DNMC of the area. Cognizant of the fact that all NGOs are companies with the legal right to operate anywhere in Uganda, this attempt by the NGO Act, 2016 and the NGO Bureau to restrict NGOs to small geographical locations is unnecessary, unjustified and inconsistent with the Companies Act, 2012 and human rights law on freedom of association. Instead of limiting NGOs to geographic zones, the law should require NGO Bureau to register the places where an organisation has an office.

Section 44 (f) of the Act further requires all organisations not to engage in any act which is "prejudicial to the interests of Uganda" and the "dignity of the people of Uganda." These vague and overbroad provisions can be abused to curtail associations that are deemed critical of the government or that belong to the LGBTI community.

1.10 **Recommendations**

e) The Parliament of Uganda should 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.

f) The Parliament of Uganda should amend the definition of the word "community based organisation" to provide for geographical coverage of a district instead of sub-county as it is now.

g) The Parliament of Uganda should 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 responsible ministry or ministries or a government department or agency.

h) The Parliament of Uganda should repeal section 29 (1) to stop compelling companies limited by guarantee from mandatory registration with the National Bureau for NGOs. The Bureau should register NGOs and respect other forms of association as provided by other laws.

i) The Parliament of Uganda should amend section 7 (1) (b) to provide for clarity on what disciplinary issues can lead to sanctions listed thereunder to avoid imposition of excessive sanctions.

j) The Parliament of Uganda should amend section 7 (2) to provide for clear fair hearing procedure to avoid any ambiguities.

k) The Parliament of Uganda should repeal the multiple reporting obligations and provide for only annual reports to be filed only with the National Bureau for NGOs. Other government agencies and departments that need information about a specific organisation can apply for a search at the Bureau for necessary information.

l) The Parliament of Uganda should amend section 32 (6) to remove the prohibitive monthly penalties for organisations that operate without a valid permit. NGOs should pay monthly penalty of five currency points (Ugx. 100,000) for operating without the permit while CBOs should not be subjected to any fines.

m) The Minister of Internal Affairs should immediately suspend the enforcement of section 32 (6) on monthly penalties of Ugx. 2,000,000 for NGOs that operate without a valid permit to allow time for the prohibitive provision and fee to be reviewed.

n) The Parliament of Uganda should repeal all criminal offences and penalties under the NGO Act, 2016.

o) The Parliament of Uganda should repeal section 44 on "special obligations" for organisations.

p) The Parliament of Uganda should amend the NGO Act, 2016 to provide for formal recognition of loose coalitions formed by registered organisations for specific purposes in compliance with the Constitution of Uganda and international and regional human rights law standards.

CHAPTER FOUR: THE COMPANIES ACT, 2012

4.1. Introduction

The Companies Act, 2012[42] was enacted to amend, replace and reform the law relating to the incorporation, regulation and administration of companies and to make provision for related matters. The law, inter alia, establishes the office of the Registrar General at the Uganda Registration Services Bureau (URSB) and provides for the incorporation and other matters related to companies in Uganda. The law is generally progressive and it has also been enforced generally fairly by the Registrar General. However, there are the two issues arising from enforcement that are subject to analysis under this law.

4.2. Enforcement of provisions with respect to names of companies

Under the law, it is a requirement for any association intending to be incorporated into a company to first reserve a name under section 36 (1) of the Act, pending registration of a company. Sub-section (2) provides that no name shall be reserved and no company shall be registered by a name, which in the "opinion of the registrar" is "undesirable."

Whereas a limit on names of associations where they are misleading, resemble other already registered names of other associations or where they violate the prohibition of hate speech as defined by human

rights law, the overbroad power vested in the registrar has been invoked to obstruct human rights defenders from exercising the freedom of registering a company as a form of association.

In *Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Warry v Uganda Registration Services Bureau*,[43] the Applicants filed an application in the High Court to challenge the decision of Uganda Registration Services Bureau (URSB) to reject to reserve the name *"Sexual Minorities Uganda"* on February 16, 2015 on grounds that the name was undesirable and un-registrable because the proposed company was to be formed to advocate for the rights and well-being of lesbians and gay persons, among others (LGBTIs), who are engaged in activities labelled criminal acts under Section 145[44] of the Penal Code Act. The proposed Memorandum of Association of the organisation included the following activities:

a) *Research and documentation of violations of fundamental human rights of LGBTI people in Uganda.*
b) *Promote protection, wellbeing and dignity of LGBTI persons and combat discrimination in policy, law and practice.*
c) *Providing security response and safe space to the members in case of a crisis.*
d) *Providing health care services for the LGBTI people in Uganda.*

The applicants contended that the rejection of the proposed company name was a violation by URSB of Articles 21 (1) & (2), 29 (1)(a), (b), (d), (e), 32 (1), 36 and 38 (2) of the Constitution of Uganda. The Articles provide for the right to equality and non-discrimination, inter alia. The respondent argued that Article 44 of the Constitution permits limitations of human rights in public interest and that the freedom of association does not fall under the category of non-derogable rights under Article 44. Counsel for the respondent further submitted that the promotion of morals is widely recognised as a legitimate aspect of "public interest" which can justify restrictions of such an "undesirable name" which would give a green light to the proposed company to engage in practices prohibited by section 145 and 21 of the Penal Code Act. In rejoinder, the applicant's counsel referred to the case of *Kasha Jacqueline & 2 Others vs Rolling Stone Newspaper & Anor*[45] where it was held that section 145 of the Penal Code Act does not criminalise "gayism" *per se* but just sexual acts. The applicants further noted that the interpretation of section 145 of the Penal Code Act by URSB is absurd as it implies that anything done for the benefit of LGBTI persons would amount to incitement, promotion and conspiracy.

Hon. Lady Justice P. Basaza – Wasswa held that the URSB was justified in rejecting the name "Sexual Minorities Uganda" in public interest.[46] In disagreeing with the decision in *Kasha Jacqueline & Others vs Rollingstone Newspaper & Anor case (supra)*, the judge relied on the decision of Musota, J in the *Jacqueline Kasha Nabagesera & 3 Ors vs Attorney General & Rev. Fr. Simon Lokodo*[47] where he held that;

> *"[I]n addition to the substantive offence under sec. 145 of the PCA, it is also prohibited to directly or indirectly encourage or assist the commission of an offence or to conspire, to do so with others to commit it regardless of whether the offence is actually committed or not. To*

wit, to incite, and to promote an illegality is prohibited... by the closure of a workshop on the ground that the organizers were using the workshop to promote and encourage homosexual practices, the Minister acted lawfully"

The actions of the Registrar General at URSB and the decision of the court in *Jacqueline Kasha Nabagesera & 3 Ors vs Attorney General & Rev. Fr. Simon Lokodo case (supra)* illustrate the challenges that LGBTI individuals face in their quest to exercise freedom of association on an equal basis with others.

4.3 Investigations by the URSB

The Companies Act, 2012 provides for the powers of the registrar to conduct an investigation into the affairs of a company on application of the members under section 173 and in other cases, under section 174. Section 173 (2) requires that applications by members shall be supported by such evidence as the registrar may require for the purpose of showing that the applicants have good reason for requiring the investigation.

Whereas such inspection powers can be used for legitimate purposes, the URSB has in the past, acting on orders of a minister, invoked its mandate to investigate a company under baseless circumstances.

On July 3, 2015, the Minister of Internal Affairs demanded URSB conducts urgent investigations leading up to possible de-registration of the Great Lakes Institute for Strategic Studies (GLISS), a political think-tank[48] on the grounds that the organisation was "de-campaigning government programs". In response, the Registrar General of URSB appointed inspectors under Sections 173 and 174 of the Act and an endless frivolous investigation ensued.[49]

"They told me that they are investigating whether the company is compliant with the Companies Act. But I am aware this probe is because of the political and civic work that I have been doing. This has no relation whatsoever to my personal work," said Godber Tumushabe, Associate Director, GLISS.[50]

The incident at GLISS illustrates how the law can be enforced to harass, interrupt and impede the work of human rights defenders and civil society organisations.

4.4 Recommendations

a) The Parliament of Uganda should amend section 36 (2) to provide for clear circumstances under with a registrar may decline to register a name of an intended company. The law should clarify that LGBTI individuals shall not be discriminated against in the exercise of freedom of association on the basis of their gender identity or sexual orientation.

b) In the interim, the Uganda Registration Services Bureau (URSB) should ensure that the powers provided under section 36 (2) are exercised judiciously and are not used to promote discrimination.

c) The URSB exercise the powers under sections 173 and 174 of the Companies Act, 2012 judiciously, fairly and independently without influence from other individuals and government departments or agencies.

CHAPTER FIVE: THE ANTI-MONEY LAUNDERING ACT, 2013

5.1 Introduction

The Anti-Money Laundering Act, 2013[51] was enacted, inter alia, to provide for the prohibition and prevention of money laundering, the establishment of the Financial Intelligence authority (FIA) in order to combat money laundering activities, and to impose certain duties on institutions and other persons who might be used for money laundering purposes. In exercise of the powers conferred upon the Minister of Finance, Planning and Economic Development by section 141 of the Act and on the advice of the FIA, the Anti-Money Laundering Regulations, 2015[52] were gazetted on December 24, 2015 to provide for the enforcement of the Act. The law was later amended with the enactment of the Anti-Money Laundering (Amendment) Act, 2017[53] to harmonise the definitions used in the 2013 Act and other obligations of accountable persons.

Under section 4 of the Anti-Money Laundering Regulations, 2015, every "accountable person" that was registered then was required to register with the FIA by December 24, 2016, and those that registered after that period are required to register after attaining the status of being an accountable person. Section 1 of the Anti-Money Laundering Act, 2013 defines an "accountable person" as any person (includes registered entities) listed in the Second Schedule to the Act. The schedule, among others, lists Non-Governmental Organisations (NGOs), churches and other charitable organisations – collectively referred to as the Non-Profit Organisations (NPOs).

In the 2016 Mutual Evaluation Report, Uganda was rated technically non-compliant with Financial Action Task Force (FATF) Recommendation 8[54] in regards to protecting NPOs from abuse for terrorist financing. Uganda's Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT) system was also rated ineffective in the corresponding Immediate Outcomes 9 and 10 in relation to confiscation, investigation and prosecution of terrorist financing. However, the August 2021 findings of the overall terrorist financing risk assessment of FATF NPOs in Uganda is rated as low for NGOs, CBOs, trusts, and Faith-Based Organisations (FBOs). However, FBOs that operate madrassas and NPOs that are involved in the governance sector were rated as posing a "higher terrorist financing risk".[55]

The law has been misapplied in Uganda to target organisations and individual human rights defenders. For example, on December 22, 2020, prominent human rights defender Nicholas Opiyo, Executive Director of Chapter Four Uganda – a civil rights watchdog – was arbitrarily arrested and later charged in court with the offence of money laundering for receiving, in the name of Chapter Four, USD 340,000 in undefined "proceeds of crime." The FATF has spoken out on the misapplication of anti-money laundering laws in oversight of NPOs.

> *"Any misapplication of the FATF Standards in a way that suppresses the legitimate activities of non-profit organisations or curtails the human rights of individuals is clearly a matter of grave concern and cannot be condoned in any way as part of the fight against money laundering and terrorist financing," FATF said.*[56]

5.2 Obligations for non-profits under the law

The first obligation for NPOs under the law is to appoint or designate a money laundering control officer in accordance with section 6 of the Regulations. The role of the officer is to act as the liaison person between the accountable person and the FIA in matters relating to coordination and compliance to anti-money laundering and combating terrorism financing, to develop and implements systems, and notify the FIA of any suspicious money laundering or financing of terrorism activity on behalf of the organisation.

The NPOs are further required to take several money laundering prevention measures. These include conducting regular anti-money laundering and terrorism financing risk assessments in line with FATF Recommendation 8 to enable the NPOs to identify, assess, monitor, manage and mitigate risks associated with money laundering and terrorism financing. The organisation is required, within forty-eight hours after conducting the assessment, to give a copy of the risk assessment results to the FIA. Whereas this obligation is progressive, many NPOs so not have the capacity to adequately comply. It has to be a gradual process to raise awareness in the sector and build compliance capacity.

NPOs are further required under section 9 of the Regulations to take reasonable measures to prevent the use of new technologies for money laundering and terrorism financing.

Section 11 of the Regulations requires NPOs to develop, adopt and implement internal control measures,

policies and procedures for the prevention of money laundering and financing of terrorism.

On management of accounts, organisations are required not to open or maintain anonymous or fictitious accounts or knowingly establish and maintain a business relationship with any person under a false name.

NPOs, as accountable persons, are further required to carry out due diligence on customers or any other person they are engaged in a business transaction with as detailed under Part V of the law. Further to this, NPOs have an obligation to keep financial records for at least 10 years, monitor and report suspicious transactions, among other obligations. At the end of each calendar year, NPOs are required to file a compliance report to the FIA by January 31 of the new year reporting on status of compliance on all obligations under the law.

Overall, whereas there is evident need to protect the abuse of NPOs for money laundering and terrorist financing, the myriad of obligations under the law will require time and effort for the larger part of the NPO sector to be in full compliance. The concern with this situation is that the legal provisions expose NPOs to accusations and possible sanctions for non-compliance where they may fall short of meeting the legal standards due to capacity and knowledge gaps.

5.3 Analysis of legal framework for freezing of bank accounts of NPOs

The legal framework for freezing of bank accounts in Uganda is provided for under the Anti-Terrorism (Amendment) Act and the Financial Institutions Act, 2004.

The FIA derives its powers to freeze accounts from section 17A of the Anti-Terrorism (Amendment) Act, 2015, which provides that;

> *"(1) The Financial Intelligence Authority may, cause the freezing or seizing of funds or property where it is satisfied that the funds are or the property is intended for terrorism activities.*
>
> *(2) Where the Financial Intelligence Authority causes the freezing or seizing of funds or property under subsection (1), the Financial Intelligence Authority shall, immediately inform the Director of Public Prosecutions in any case not later than forty eight hours after the time of freezing or seizing.*
>
> *(3) After receipt of the information under subsection (2), the Director of Public Prosecutions shall apply to court for an order freezing or seizing such funds or property and the court shall make a determination expeditiously."*

The above provision confers discretionary power upon the FIA on whether or not to freeze a bank account, and other related powers. In *Sundus Exchange & Money Transfer & 5 Ors v Financial Intelligence*

Authority,[57] Justice Ssekaana noted, "discretion must be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, that there must not be any malversation of any kind or that the decision must not be arbitrary or capricious." Justice Ssekaana further referred to the case of *R v Commission for Racial Equality ex p Hillingdon*[58] where Griffiths LJ said;

> *"Now it goes without saying that Parliament can never be taken to have intended to give any statutory body a power to act in bad faith or a power to abuse its powers. When the court says it will intervene if the particular body acted in bad faith it is but another way of saying that the power was not being exercised within the scope of the statutory authority given by Parliament. Of course it is often a difficult matter to determine the precise extent of the power given by the statute particularly where it is a discretionary power and it is with this consideration that the courts have been much occupied in the many decisions that have developed our administrative law since the last war."*

The FIA has used the power to cause the freezing of bank accounts of a number of NPOs since the enactment of the law. In December 2020, the FIA froze the bank accounts of Uganda Women's Network (UWONET) and the Uganda National NGO Forum over allegations of "terrorism financing activities" only to revoke[59] its directives on February 19, 2021. In a statement, before the revocation of the freeze order, Xavier Ejoyi, the Executive Director of ActionAid Uganda said;

> *"We are deeply troubled as the civil society sector about the growing smear campaign engineered to undermine our credibility and deep commitment to improving the welfare of all Ugandans. We strongly believe that nation building is a collective effort with each sector bringing their expertise and experience to the service of the nation."*[60]

In response to the concerns by NPOs, Sydney Asubo, the Executive Director of the FIA argues that the institution exercises a lot of restrain in the exercise of the power to freeze bank accounts:

> *"[T]here is a misconception that FIA is applying a lot of powers to freeze accounts but it's not true. There are situations that would call for a freeze and FIA has not frozen... FIA has used it (power to freeze) sparingly because it has been applied only 5 times in the 6 years of FIA existence."*[61]

The law does not provide a timeline within which the freeze should be lifted if no case is filed in court by the DPP. While commenting on this issue of the time it takes to resolve situations when a bank account is frozen, Sydney Asubo noted that the *"the time frame on how long the accounts should be frozen is not controlled by the regulator. For example, if the DPP delays to proceed with the case to court, it's not on FIA."*[62]

The Financial Institutions Act, 2004[63] further provides for powers for the Central Bank to order for the freezing of bank accounts. It is important to reflect on this provision because it has been used in recent past to freeze accounts of NPOs. Section 118 (1)[64] provides that;

(1) The Central Bank shall, if it has reason to believe that any account held in any financial institution has funds on the account which are the proceeds of crime, direct in writing the financial institution at which the account is maintained to freeze the account in accordance with the direction."

On September 20, 2017, the police raided the offices of ActionAid Uganda and on October 3, 2017, the organisation's bank accounts in Standard Chartered Bank were frozen on orders of the Bank of Uganda under section 118 of the Financial Institutions Act, 2004. After nearly three months later, the Bank of Uganda wrote back to the bank to revoke the freezing directive.[65]

5.5 Recommendations

a) The Parliament of Uganda should amend the Second Schedule to the Anti-Money Laundering Act to remove NGOs and charities as accountable persons. Where necessary, the organisations should be provided with a different legal framework for NPOs that do not include the complex set of obligations that are also reserved for financial institutions, forex bureau and other related entities.

b) The FIA should exercise its powers under section 17A of the Anti-Terrorism (Amendment) Act, 2015 judiciously, fairly and lawfully.

c) The Parliament of Uganda should amend section 17A (3) of the Anti-Terrorism (Amendment) Act, 2015 to provide for a strict requirement for the Director of Public prosecutions to apply to court for an order on freezing or seizing of funds within 72 hours from the time the FIA takes action to freeze the bank account.

d) The Central Bank / Bank of Uganda should exercise its powers under section 118 (1) of the Financial Institutions Act, 2004 and the Micro Finance Deposit-Taking Institutions Act, 2003 judiciously, fairly and lawfully.

e) The FATF should urgently investigate the application of Uganda's anti-money laundering and terrorism financing laws and take appropriate action to send a strong message that misapplication of the laws to target NPOs will not be tolerated.

CHAPTER SIX: THE PUBLIC ORDER MANAGEMENT ACT, 2013

6.1 Introduction

The Public Order Management Act, 2013[66] was enacted in 2013 to provide for the regulation of public meetings / peaceful assemblies, to provide for the duties and responsibilities of the police, organisers and participants in relation to public meetings, to prescribe for safeguarding public order and for related matters.

Since its enactment, the law has been under the spotlight for granting the police powers to stop or prevent the holding of a public meeting. As a typical claw back law, the it establishes a notification regime, provides for spontaneous peaceful assemblies, and provides for a legal process to challenge any unfair decision by the police to block assemblies – while in fact – it provides for a "permission" regime. Therefore, while on the face of it, the law appears well intentioned, an analysis reveals the insidious re-introduction of unconstitutional police powers of the Police Act.[67]

6.2 Analysis of the notification regime under the law

Under section 5 of the Act, an organiser of a public meeting is required to give a notice in writing to the authorised officer of the intention to hold a public meeting, at least three days but not more than fifteen days before the proposed date of the public meeting.

The notice is required to include the full name and physical and postal address of the organiser of the proposed public meeting, his or her immediate contact, where applicable the consent of the owner of the venue where the proposed public meeting is intended to take place, proposed date and time of the public meeting, and the estimated number of persons expected to attend.

Upon receipt of the notice, section 6 of the Act provides that where it not possible to hold the proposed public meeting for reasons that notice of another public meeting on the date, time and at the venue proposed or that the venue is considered unsuitable for purposes of crowd and traffic control or will interfere with other lawful business, the police officer shall, in writing, within 48 hours after receipt of the notice, notify the organiser or his/her agent that it is not possible to hold the proposed public meeting.

The organiser or his / her agent will be invited to identify an alternative and acceptable venue or reschedule the public meeting to another date or venue. Ultimately, the police retain the final decision on whether to agree or not on whether the public meeting can take place.

If the organiser of any other person is aggrieved by the decision of the police officer, they have a right to appeal within 14 days to a magistrate's court after receipt of the notice.

Analysis of this notification regime reveals that it falls short of the notification regime required under regional, international and national law standards. Whereas the notification is simple, the law reserves the final decision on whether a public meeting can go ahead or no to the authorised police officer as can be observed under section 6 (3). In *Human Rights Network Uganda & 4 Ors v Attorney General,*[68] Justice Cheborion Barishaki, JA/JCC noted,

> *"Limitations on enjoyment of constitutionally guaranteed rights must be demonstrably justifiable in a free and democratic society. Prohibition of public meetings, protests or processions on grounds that the police has declined to provide permission or not received notification of the same is not a lawful limitation on the constitutional freedoms of assembly and right to demonstrate peacefully and unarmed."*

Section 5 (1)(b) of the Act further contains provisions that establish excessive restrictions on the freedom of peaceful assembly. For instance, rejecting a request for an assembly simply because it will disrupt "traffic control or will interfere with other lawful business" is not a justifiable limitation. In the *Human Rights Network Uganda & 4 Ors v Attorney General case (supra),* Justice Cheborion Barishaki, JA/JCC further noted;

> *"[p]ublic meetings/processions or gatherings, even those of a political nature, must be equally seen in the same prism as other tolerable social or religious gatherings that may provide some measure of inconvenience to the public... I also take judicial notice of the fact that certain social gatherings, such as sports competitions between rival teams, music shows inter alia also occasionally cause a breach of the peace but the law enforcers do not react by prohibiting such competitions or games from taking place in the future. Besides, to do would be unconstitutional."*

6.3 Analysis of police powers and obligations under the law

Section 8 of the Act provides for police powers to stop or prevent the holding of a public meeting, including powers to order for dispersal of a peaceful assembly, "as are reasonable in the circumstances".

In *Human Rights Network Uganda & 4 Ors v Attorney General case (supra),* section 8 was put to a test, yet again, and in a resounding 4 – 1 decision, the Constitutional Court found it unconstitutional. Justice Barishaki, JA/JCC held;

> *"The police have absolutely no authority to stop the holding of public gatherings on grounds of alleged possible breach of peace if such gatherings are allowed to proceed. The police's duty is to regulate the holding of public gatherings and to ensure there is no breach of peace... the attention of the police must be directed at the individuals causing the breach of peace."*

The court further emphasised that whereas the right to freedom of peaceful assembly is not absolute, granting police the powers to stop or prevent peaceful assemblies is not a justifiable limitation to the freedom. Justice Barishaki, JA/JCC noted,

> *"[p]olice permission is not required before the public can assemble or hold a demonstration... The legality of police powers to suppress protests and public gatherings is a question that has been determined in various jurisdictions and one with very wide treatment in English Law."*

The courts have in the past declared the said police powers unconstitutional but the authorities continue to ignore to implement the decision of the courts. In *Human Rights Network Uganda & 4 Ors v Attorney General case (supra),* Justice Barishaki, JA/JCC expressed concern with the actions of the Executive and the Legislative arms of the government in this regard;

> *"It is a pity that their [Constitutional Court in Muwanga Kivumbi v AG[69]] explanations in nullifying section 32 (2) of the Police Act were contemptuously ignored by Parliament and the Executive... It, therefore, defies logic as to why Parliament would rush to pass an Act of Parliament containing provisions that are pari materia with those that were declared unconstitutional."*

Despite this latest court decision on the unconstitutionality of police powers in blocking peaceful assemblies, the Executive has filed an appeal in the Supreme Court.

6.4 Recommendations

f) The President of Uganda should instruct the Attorney General and other government agencies to implement the decision of the constitutional court in the *Human Rights Network Uganda & 4 Ors v Attorney General* case in compliance with the Constitution of Uganda.

g) The Parliament of Uganda should repeal section 8 of the POMA and enact provisions that are in compliance with the constitutional court decision in the cases of *Muwanga Kivumbi v Attorney General* and *Human Rights Network Uganda & 4 Ors v Attorney General.*

CHAPTER 7: THE UGANDA COMMUNICATIONS ACT, 2012

7.1 Introduction

The Uganda Communications Act, 2013[70] was enacted to consolidate and harmonise the Uganda Communications Act and the Electronic Media Act, to dissolve the Uganda Communications Commission and the Broadcasting Council and reconstitute them as one body known as the Uganda Communications Commission (UCC), and to provide for other related matters. Several Regulations have been made under the law, with concerning implications on freedom of expression in Uganda.

7.2 Analysis of the minimum broadcasting standards

Under section 31 of the Act, a person shall not broadcast any programme unless the broadcast or programme complies with Schedule 4 of the Act. Schedule 4 provides that a broadcaster or video operator shall ensure that –

(a) *Any programme which is broadcast –*
- (i) *is not contrary to public morality;*
- (ii) *does not promote the culture of violence or ethnical prejudice among the public, especially the children and the youth;*
- (iii) *in the case of a news broadcast, is free from distortion of facts;*
- (iv) *is not likely to create public insecurity or violence;*

(v) *is in compliance with the existing law;*

The UCC regularly enforces these standards, often in a manner that leaves many human rights defenders concerned. Notably, in May 2019, UCC ordered for the immediate suspension of 39 producers, heads of programming and heads of news and ordered investigations into the coverage of six TV stations (NBS TV, BBS TV, NTV Uganda, Bukedde TV, Kingdom TV and Salt TV) and seven radio stations (Akaboozi, Beat FM, Capital FM, Pearl FM, Sapienta FM, and Radio Simba). The impugned UCC directives arise from the April 29, 2019 broadcast of a procession of Hon. Robert Kyagulanyi, commonly known as Bobi Wine and his subsequent arrest by the police. UCC raised concern and noted that it observed misrepresentation of information, views, facts and events in a manner likely to mislead or cause alarm to the public during the live broadcasts and main news bulletins. UCC further accused the media houses of airing programs that have "extremist or anarchic messages, including incitement of violence."[71]

The UCC conducted an investigation and in the October 2019 investigation report,[72] it was found that the 13 media houses were in breach of the minimum broadcasting standards. For example, NTV Uganda was found to have given

> *"[U]ndue coverage and prominence to particular individuals and activities, sensationalised news stories concerning the confrontation between police and the rowdy crowds, glorified the confrontation between the police and the rowdy crowds, with the risk that continued broadcasting of such stories was likely to embolden other mobs to attack the police and cause violence.*

On reporting by NBS TV, the report notes;

> *"NBS TV sensationalised the events of 29th April 2019. NBS dedicated an inordinate amount of the prime news time to broadcasting rowdy crowds engaged in running battles with the police, which had the potential to embolden the public to engage in similar unlawful activities and thereby compromise public security; NBS TV gave unwarranted and biased extensive coverage and prominence to individuals and events; showed violent scenes involving police and the rowdy crowds that are engaged in burning tyres and fighting the police; repeatedly aired images of beatings, teargassing, burning of tyres, erecting of barricades in roads and gruesome pictures of victims of violence, without a viewer's advisory notice."*

Whereas press freedom is not absolute, the minimum broadcasting standards provide for overbroad and vague provisions which cannot be justified in a free and democratic society. For instance, the requirement that a broadcaster or video operator shall ensure that broadcasts are not contrary to "public morality", does not promote the "culture of violence", is not "likely to create public insecurity or violence", and news broadcasts must be free from "distortion of facts". These standards contain vague statements that have been enforced subjectively, selectively and in an overbroad manner as has been demonstrated above.

The said standards provide for undue interference in editorial standards beyond what is demonstrably justifiable in a free and democratic society in breach of fundamental guarantees of the independence and

editorial freedom of the press.

7.3 Recommendations

b) The Parliament of Uganda should review and amend Schedule 4 of the Uganda Communications Act, 2013 to provide for minimum broadcasting standards that are consistent with the Constitution of Uganda and obligations under international and regional human rights standards.

c) The UCC should exercise restraint in enforcement of the minimum broadcasting standards to avoid watering down the independence and editorial freedom of the press, beyond what is demonstrably justifiable in a free and democratic society.

Endnotes

1 Misc. Cause No. 96 of 2016. A copy of the judgment can be accessed via this link: https://www.hrapf.org/index.php/resources/court-judgements/90-judgement-in-the-smug-case/file

2 Chapter Four Uganda, Ugandan CSO under investigations on minister's orders, https://chapterfouruganda.org/articles/2015/08/03/ugandan-cso-under-investigations-minister's-orders

3 Section 32 (2) of the Police Act was annulled in *Muwanga Kivumbi v Attorney General* (Constitutional petition 9 of 2005) for giving police powers to stop and disperse peaceful assemblies. The judgment can be accessed here: https://ulii.org/ug/judgment/constitutional-court-uganda/2008/34

4 Constitutional Petition No. 56 of 2013, https://ulii.org/ug/judgment/constitutional-court-uganda/2008/34

5 Freedom House, *Freedom of the World Report, 2019*, https://freedomhouse.org/report/methodology-freedom-world-2019

6 CIVICUS, *"People Power Under Attack: A global analysis of threats to fundamental freedoms,"* November 2018, https://www.civicus.org/documents/PeoplePowerUnderAttack.Report.27November.pdf

7 The Independent, *Sweden: Continued closure of DGF hurting Ugandans,* https://www.independent.co.ug/sweden-continued-closure-of-dgf-hurting-ugandans/

8 UN Human Rights Office, *what is civic space?,* https://www.ohchr.org/EN/Issues/CivicSpace/Pages/ProtectingCivicSpace.aspx

9 Civic Space Watch, About civic space, https://civicspacewatch.eu/what-is-civic-space/

10 CIVICUS, Civic space, https://monitor.civicus.org/whatiscivicspace/

11 Constitutional Appeal 2 of 2002 [2004] UGSC 81, Supreme Court of Uganda, https://ulii.org/ug/judgment/supreme-court-uganda/2004/81

12 Article 3, https://www.ohchr.org/documents/professionalinterest/cedaw.pdf

13 Article IX, https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf

14 General Comment No. 34: Article 19: Freedoms of opinion and expression, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

15 See article, https://www.apc.org/en/news/un-recognises-freedom-expression-internet-human-right

16 See, https://www.hrw.org/legacy/backgrounder/africa/uganda/UgandaNGOfinal-01.htm

17 World Health Organisation, *WHO Director General's opening remarks at the media*

briefing on Covid-19, https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020

18 The Order can be accessed here: https://ulii.org/ug/legislation/statutory-instrument/2020/45

19 The Rules can be accessed here: https://ulii.org/ug/legislation/statutory-instrument/2020/52

20 Chapter Four Uganda, *Petition for the classification of legal services as essential services amidst the ongoing lockdown*, https://chapterfouruganda.org/sites/default/files/downloads/COVID-19-%3A-Petition-for-classification-of-legal-services-as-essential-services-amidst-the-ongoing-lockdown.pdf

21 The Daily Monitor, *Uganda: No stickers for lawyers in lockdown,* https://allafrica.com/stories/202106240590.html

22 Miscellaneous Cause No. 77 of 2020, High Court of Uganda at Kampala, https://covidlawlab.org/wp-content/uploads/2020/06/Court-Order-lawyers-as-essential-workers.pdf

23 Reporters Without Borders, *Wave of police attacks on reporters during Uganda's night-time Covid curfew,* https://rsf.org/en/news/wave-police-attacks-reporters-during-ugandas-night-time-covid-curfew

24 West Nile Web, *Journalists suspend covering Arua COVID-19 task force activities,* https://www.westnileweb.com/news-a-analysis/arua/journalists-suspend-covering-arua-covid-19-task-force-activities

25 NTV Uganda, *Trade union leaders come to aid of Busia nurse,* https://www.youtube.com/watch?v=BWfG23y89yU

26 The Observer, *Nurse summoned for wheeling patient to hospital,* https://observer.ug/news/headlines/64254-nurse-summoned-for-wheeling-patient-to-hospital

27 Human Rights Watch, *Uganda LGBT shelter residents arrested on Covid-19 pretext,* https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext

28 United Nations Human Rights, Office of the High Commissioner, *UN rights experts fear Uganda is using Covid-19 emergency powers to target LGBT people,* https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25832&LangID=E

29 Quote from an interview with William Amanzuru.

30 The Non-Governmental Organisations Act, 2016 [Laws of Uganda], https://www.mia.go.ug/sites/default/files/download/The-Non-Governmental-Organisations-Act-2016%20comp.pdf

31 Ministry of Internal Affairs, National Bureau for NGOs, *Press Release: Statement on halting of operations of fifty four (54) NGOs due to non-compliance with the NGO Act, 2016,*

https://www.ngobureau.go.ug/sites/default/files/news-notices/2021/08/STATEMENT%20ON%20HALTING%20OF%20OPERATIONS%20DUE%20TO%20NON-COMPLIANCE.pdf

32 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

33 Supra

34 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

35 Quote from an interview with Michael Busingye, an environmental human rights defender working in Hoima district.

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

37 *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

38 Statutory Instrument 2017 No. 21, The Non-Governmental Organisations Act, 2016, https://chapterfouruganda.org/sites/default/files/downloads/The-NGO-%28Fees%29-Regulations-2017.pdf

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

40 Constitution of the Republic of Uganda, 1995, https://statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf

41 Ministry of Internal Affairs, National Bureau for NGOs, *Press Release: Statement on halting of operations of fifty four (54) NGOs due to non-compliance with the NGO Act, 2016,* https://www.ngobureau.go.ug/sites/default/files/news-notices/2021/08/STATEMENT%20ON%20HALTING%20OF%20OPERATIONS%20DUE%20TO%20NON-COMPLIANCE.pdf

42 The Companies Act, 2012 [Laws of Uganda], https://ulii.org/akn/ug/act/2012/1/eng%402015-07-01#sec_173

43 Misc. Cause No. 96 of 2016. A copy of the judgment can be accessed via this link: https://www.hrapf.org/index.php/resources/court-judgements/90-judgement-in-the-smug-case/file

44 The section provides for the offence of unnatural offences.

45 Miscellaneous Cause No. 163 of 2010, Ruling of the court: https://www.chr.up.ac.za/images/database/sexual_minority_database/cases/SOGIESC-Jacqueline-Kasha--Others-v.-

Rolling-Stone-Ltd-2010.PDF / Summary of the case by the International Commission of Jurists (ICJ): https://www.icj.org/sogicasebook/kasha-jacqueline-david-kato-kisule-and-onziema-patience-v-rolling-stone-ltd-and-giles-muhame-high-court-of-uganda-at-kampala-30-december-2010/

46 Judgment delivered on June 27, 2018

47 Misc. Cause No. 033 of 2012, High Court of Uganda at Kampala. Judgment can be accessed here: https://ulii.org/ug/judgment/hc-civil-division-uganda/2014/85

48 Website for the organisation: http://gliss.org/

49 Chapter Four Uganda, Ugandan CSO under investigations on minister's orders, https://chapterfouruganda.org/articles/2015/08/03/ugandan-cso-under-investigations-minister's-orders

50 The Observer, Great Lakes Institute under investigation over 'unlawful activities', https://observer.ug/news-headline/39743-great-lakes-institute-under-investigation-over-unlawful-activities

51 The Anti-Money Laundering Act, 2013 [Laws of Uganda], https://bou.or.ug/bou/bouwebsite/bouwebsitecontent/acts/supervision_acts_regulations/FI_Act/The-Anti-money-Laundering-Act-2013.pdf

52 The Anti-Money Laundering Regulations, 2015, https://chapterfouruganda.org/sites/default/files/downloads/The-Anti-Money-Laundering-Regulations-2015.pdf

53 The Anti-Money Laundering (Amendment) Act, 2017 [Laws of Uganda], https://chapterfouruganda.org/sites/default/files/downloads/The-Anti-Money-Laundering-%28Amendment%29-Act-2017.pdf

54 See link for details: https://www.fatf-gafi.org/documents/documents/bpp-combating-abuse-npo.html

55 AML/CFT/CPF Taskforce, *Terrorism financing risk assessment for non-profit organisations sector in Uganda* (August 2021)

56 Reuters, *Special Report: How a little-known G7 task force unwittingly helps governments target critics,* https://www.reuters.com/business/finance/how-little-known-g7-task-force-unwittingly-helps-governments-target-critics-2021-08-05/

57 High Court of Uganda at Kampala, Miscellaneous Cause no. 154 of 2018, https://media.ulii.org/files/judgments/ughccd/2018/100/2018-ughccd-100.pdf

58 LBC [1982] QB 276

59 Nile Post, *Govt unfreezes accounts of NGOs accused of terrorism funding,* (February 27, 2021) http://nilepost.co.ug/2021/02/27/govt-unfreezes-accounts-of-ngos-accused-of-terrorism-funding/

60 The New Vision, *CSOs plead with Government not to freeze their accounts,* https://www.newvision.co.ug/news/1535110/csos-plead-government-freeze-accounts

61 Defenders Protection Initiative, *Ensuring the implementation of AML/CFT measures while safeguarding civic space* (February 11, 2021), https://defendersprotection.org/home/wp-content/uploads/2021/03/Report-Ensuring-the-implementation-of-AMLCFT-while-safeguarding-civic-space.pdf

62 Ibid

63 The Financial Institutions Act, 2004 [Laws of Uganda], https://bou.or.ug/bou/bouwebsite/bouwebsitecontent/acts/supervision_acts_regulations/FI_Act/FIAct2004.pdf

64 Similar provisions, verbatim, are reproduced under the *Micro Finance Deposit-Taking Institutions Act, 2003* [Laws of Uganda], https://bou.or.ug/bou/bouwebsite/bouwebsitecontent/acts/supervision_acts_regulations/MDI_Acts/MDIAct2003.pdf

65 The Observer, *Bank of Uganda unfreezes ActionAid accounts,* December 26, 2017, https://observer.ug/news/headlines/56469-bank-of-uganda-unfreeze-actionaid-accounts

66 The Public Order Management Act, 2013 [Laws of Uganda], https://www.refworld.org/pdfid/5200a77c4.pdf

67 Section 32 (2) of the Police Act was annulled in *Muwanga Kivumbi v Attorney General* (Constitutional petition 9 of 2005) for giving police powers to stop and disperse peaceful assemblies. The judgment can be accessed here: https://ulii.org/ug/judgment/constitutional-court-uganda/2008/34

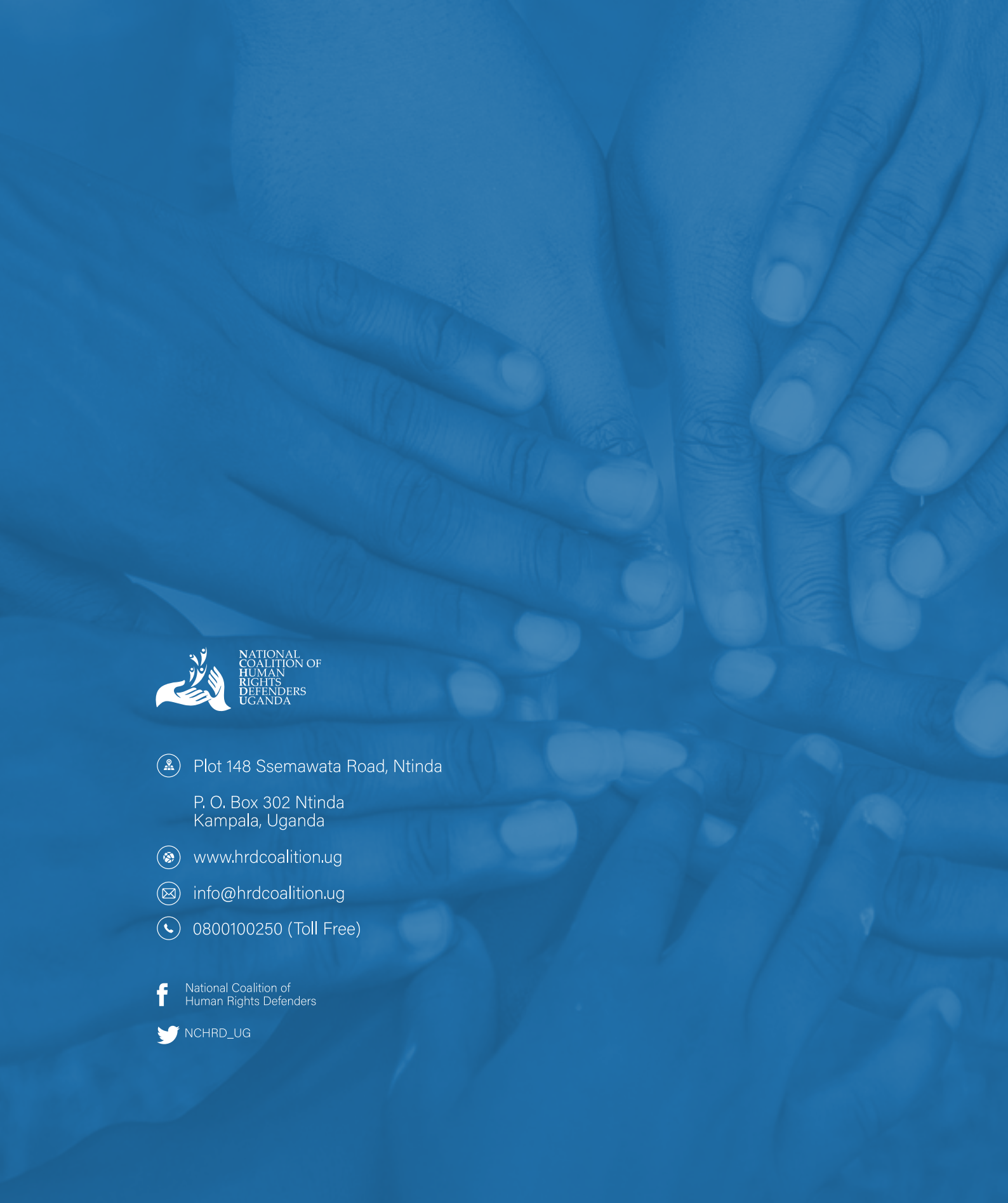
68 Constitutional Petition No. 56 of 2013, https://ulii.org/ug/judgment/constitutional-court-uganda/2008/34

69 Constitutional Petition No. 9 of 2005, https://ulii.org/ug/judgment/constitutional-court-uganda/2008/34

70 The Uganda Communications Act, 2013 [Laws of Uganda], https://chapterfouruganda.org/sites/default/files/downloads/Uganda-Communications-Act-2013.pdf

71 The Observer, *Bobi Wine: UCC orders suspension of 39 journalists at 13 media houses,* https://observer.ug/news/headlines/60575-ucc-orders-suspension-of-39-journalists-at-13-media-houses

72 Uganda Communications Commission, *Breach of the Minimum Broadcasting Standards: Investigation report,* https://www.ucc.co.ug/wp-content/uploads/2019/10/ucc_Broadcasting_Investigation_Report.pdf



NATIONAL COALITION OF HUMAN RIGHTS DEFENDERS UGANDA

Plot 148 Ssemawata Road, Ntinda

P. O. Box 302 Ntinda
Kampala, Uganda

www.hrdcoalition.ug

info@hrdcoalition.ug

0800100250 (Toll Free)

National Coalition of
Human Rights Defenders

NCHRD_UG