

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: OL
UGA 1/2015:

27 April 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the publication in the official Gazette of the "Non-Governmental Organisations Bill, 2015" (thereafter NGO Bill), which certain provisions may seriously curtail the right to freedom of association.**

According to information received:

The Government ordered the publication of the NGO Bill in the Bill Supplement no. 5 to the Uganda Gazette no. 18 volume CVIII dated 10 April 2015.

The NGO Bill seeks to repeal and replace the "Non-Governmental Organisation Act Cap. 113" regulating the activities of Non-Governmental organizations in Uganda.

Amongst the provisions in the Bill which do not appear in compliance with international human rights law and standards are the following:

National Board for NGOs (the Board)

The Board is responsible, among others, for the registry and the issuance, renewal and revocation of permits of associations (part 2, section 6). The Board can impose “any disciplinary action that [it] deem fit” and charge fees for its services (part 2, section 7). Moreover the Board decides on how associations may access public funding (part 7, section 27).

The Board of Directors

The Board of Directors is the governing body of the Board. The members of the Board of Directors are appointed by the Minister for Internal Affairs with the approval of the Cabinet and can be removed from their positions by the said-Minister (part 3, section 9). The Board of Directors is responsible for overseeing the implementation of the Board’s policies, among others; it also considers applications for registration and renewal of associations (part 3, section 11).

The Minister for Internal Affairs determines the salaries of the Board of Directors’ members (part 3, section 13). The Executive Director of the Board is the chief executive officer of the Board and an ex-officio member of the Board of Directors; he is appointed/removed by the Minister for Internal Affairs (part 5, section 16).

The NGO Bill also establishes regional and sub- county offices of the Board, whose role includes maintaining a register of associations in the different regions and counties and guiding the work of the District and Sub-Counties NGOs Monitoring Committees. These NGOs Monitoring Committees, composed mainly of local authorities, consider among others applications for registration and monitor the work of associations (part 6, sections 19, 20 and 21).

Registration and issuance of a permit to operate

Registration is mandatory for all associations. The Board may reject registering an association for any reason that it deems relevant. The registration is subject to a fee as well as the permit to operate, which cannot exceed five years at a time and must be paid annually. Different fees may apply to local, regional and international organizations (part 8, section 32). The Board is the body mandated to issue permits and to determine their expiry dates, which condition the activities, thematic and geographic areas of operations, staffing, locations of the offices and types of associations registered. Associations are summoned to incremental fines if failing to comply with the provisions of the NGO Bill; their directors can be subject to fines up to 4 million shillings (about 1.330 USD) and imprisonment up

to eight years (part 8, section 31). The Minister for Internal Affairs prescribes regulations for applying for registration (part 10, section 47 elaborates on these regulations).

Revocation of a permit

The Board has the authority to revoke the permit of an association if 1) it operates contrary to the Constitution, 2) it contravenes “conditions or directions specified in the permit”, 3) it contravenes the provision of the NGO Bill and if 4) “in the opinion of the Board, it is in the public interest to do so”. The Board shall inform in writing the holder of a permit of its decision (part 8, section 33).

Reporting obligations

The associations are requested to submit to the Board annual returns and to submit to the Board and the local Government of the area of operations their budget, work plan, information on funds received and sources of funds, inform the district technical planning committees and the District NGOs Monitoring Committees of estimates of income and expenditures in each area in which they operate, and submit any other information required by the Board “in the public interest” (part 9, section 36).

Inspections

The Board may authorize an officer to inspect premises of an association and request any information he/she deems necessary at any “reasonable time” (part 10, section 37).

Operations

Associations cannot operate if not registered and without a permit. Moreover, they are required to sign a memorandum of understanding with the local Government where they wish to carry out their activities. The NGO Bill also requires associations to cooperate with local councils in the areas where they operate, to be non-partisan and to not support or oppose political parties or candidates (part 10, section 40). The latter also applies to affiliated associations, which are defined in the Bill as organizations affiliated to other organizations that are registered (part 10, section 43).

Dissolution

The Board can dissolve an association for any reasons that it considers necessary in the public interest. The Board shall inform in writing the association of its decision; the association will have thirty days to appeal such decision before the

Board (part 10, section 44). If it fails to satisfy the Board, the association will have three months to appeal to the Minister for Internal Affairs (part 10, section 45).

We are greatly concerned by the above mentioned provisions of the NGO Bill that would severely restrict the right to freedom of association as enshrined in international human rights law and standards. In particular, we believe that the vague formulation of such provisions and wide discretion given to the Minister for Internal Affairs and the National Board for NGOs at the National, District and Sub-County levels are problematic and could have the effect of discouraging the formation and work of associations. For example, the power given to the National Board for NGOs and the NGO Monitoring Committees in the establishment and dissolution of associations and the requirements for associations to cooperate with local authorities and to be non-partisan may create space for arbitrary interferences in the functioning of associations. We are also concerned that this Bill, if adopted, may be seen as part of a general trend to restrict the activities of associations in Uganda.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned case.
2. Please explain how the provisions of the NGO Bill are in accordance with Uganda's obligations under international human rights law and standards, particularly with regard to the right to freedom of association.
3. Please indicate any consultation undertaken, including with civil society, in drafting this Bill.
4. Please indicate what measures your Government intends to take so that the final Bill is compliant with relevant international human rights standards.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we call on your Excellency's Government to take all necessary measures to ensure the full compliance of Uganda's legislation, including the Non-Governmental Organisations Bill, 2015, with international human rights law and standards, particularly in relation to the right to freedom of association.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with the above concerns, the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR), acceded by Uganda on 21 June 1995, include articles 19 and 22 which guarantee the right of people to freedom of expression and freedom of association, respectively.

Furthermore, we would like to refer your Excellency's Government to Human Rights Council resolution 24/5 in which the Council, inter alia, highlights the States' obligation to respect and protect the right of all individuals to associate freely as well as Council's resolution 22/6 which indicates that domestic law and administrative provisions, and their application, should facilitate the work of human rights defenders, including by avoiding their criminalization or stigmatization, or by any impediments, obstructions or restrictions of their work (A/HRC/RES/22/6, PPs 10-13).

We would also like to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2, which state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Furthermore, we would like to bring to the attention of your Excellency's Government article 5 point b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups.

Moreover, we would like to draw your attention to the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), which stated that:

- "A regime of notification to establish an association should be in force. Associations should be established after a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge. Registration bodies should provide a detailed and timely written explanation when denying the registration of an association. Associations should be able to challenge any rejection before an impartial and independent court" (paragraph 95);

- “[a]ny associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment” (paragraph 96)

- “[a]ssociations should be free to determine their statutes, structure and activities and to make decisions without State interference” (paragraph 97).

- “[T]he right to freedom of association equally protects associations that are not registered” (paragraph 56); and

- “Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities (paragraph 62).