

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:
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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 34/18, 32/32 and 34/5.

We would at the outset like to welcome the commitment to freedom of expression and freedom of peaceful assembly expressed by your Excellency's Government during the second cycle of the Universal Periodic Review (UPR), by ensuring that the enforcement and implementation of laws are in compliance with the Constitution and the country's obligations under international and regional law to respect freedom of expression and freedom of peaceful assembly (recommendation 115.19).

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **entry into force of legislation regulating civil society organizations' activities which may have a detrimental impact on civil society organizations in Uganda.**

The Non-Governmental Organizations Act (NGO Act) was signed into law in January 2016.

On May 5 2017, the Minister of Internal Affairs issued two Statutory Instruments under Section 55 of the NGO Act:

- Statutory Instrument 2017 No. 22, called The NGO Regulations 2017 replaces the NGO Regulations, 2007;
- Statutory Instrument, 2017 No. 21 called The NGO (Fees) Regulations, 2017.

We are seriously concerned that the 2016 NGO Act and the Regulations issued under its section 55 impose severe restrictions to civil society organizations and human rights defenders and therefore impinge on the exercise of the rights to freedom of expression and freedom of association which are guaranteed under international human rights law.

In this connection, we would like to stress some preliminary recommendations made by States during the second cycle of the UPR of Uganda, which were noted by your Excellency's Government, on the need to amend the NGO Act, 2016 or undertake legislative reforms to comply with the rights to freedom of association (and peaceful assembly).

- “Amend (...) the Non-Governmental Organizations Act, 2016, to ensure free assembly and association in line with international human rights standards” (Recommendation 117.18)
- “Amend the Non-Governmental Organizations Act, adopted in January 2016, which restricts the right to freedom of association, to bring it into conformity with the Constitution and the International Covenant on Civil and Political Rights” (Recommendation 117.50)

1. Registration

Section 30 of the Act provides very broad reasons justifying the refusal for registering an organization such as if “the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda”.

Section 31(1) of the Act requires a mandatory registration for organizations and Section 4 of the NGO Regulations, 2017, provides for burdensome requirements for an NGO seeking to register with the National Bureau of NGOs. NGOs must obtain a series of approvals from administrative entities before being able to pursue their activities: the local District NGO Monitoring Committee (DNMC), a ministry, government agency or department, the Bureau (Regulations, section 4.1.i and NGO Act, Section 29, Regulations Section 3). It must then apply for a permit from the same Bureau and then sign a memorandum of understanding with the Government (NGO Act, Section 31).

In addition, foreign organizations must seek an additional approval from the District NGO Monitoring Committee and hold a recommendation from their government (NGO Act, Section 34).

Section 32 also provides that “an organisation whose permit expires, but continues to operate without renewal of its permit will be fined”.

Organizations must additionally provide numerous documents (Section 4 of the NGO Regulations, 2017) for their registration and the renewal of their permit (Section 12 of the NGO Regulations, 2017). Among these documents is a copy of audited accounts; a copy of the annual report; minutes of an annual general assembly or the governing body; a work plan and budget or strategic plan; and evidence of payment of prescribed fees. Organizations must also submit multiple documents regarding their financial situation and to several different entities (Section 39 of the Act and Section 30 of the Regulations).

In this regard, we would like to underline the following recommendation made that were noted by Uganda:

- “Amend sections (...) 30 (1) (a) of the Non-Governmental Organizations Act to align them with the Ugandan Constitution and international human rights law” (Recommendation 117.8);

We are concerned that the Act and Regulations establish a burdensome procedure to form civil society organizations, especially for groups that are perceived as unfriendly to the authorities. The difficulty in obtaining the approval of different administrative bodies could indeed favour certain organizations and be detrimental to the independence of civil society in general. Moreover, various documents required to register or re-register could deter organizations from seeking a registration as most documents require public disclosure of personal information such as personal addresses.

As stated by the former Special Rapporteur on the rights to freedom of peaceful assembly and association, a notification procedure - that should not be burdensome - rather than a prior authorization procedure that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States (A/HRC/20/27, para 58.).

With respect to the requirement for already registered associations to re-register, we would like to underline that the right to freedom of association equally protects associations that are not registered. Individuals involved in unregistered associations should be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions. This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs (A/HRC/20/27, para 56).

2. Activities of associations

Section 44 provides a range of activities organizations shall not engage in, such as activities that are supporting or opposing a political party or that are prejudicial to the interests (f) and security (d) of Uganda as well as the dignity of its people (f).

Section 44 of the Act provides that NGOs are not allowed to carry out their activities in any part of the country unless they have approval from the DNMC and the local government and have signed a memorandum of understanding to that effect. Furthermore, they need a recommendation from the National Bureau for NGOs through the DNMC of a specific area to extend their operation to new areas. Finally, NGOs must cooperate with local councils, DNMCs and Sub-Country NGO Monitoring Committees (SNMCs). NGOs are subject to detailed requirements relating to staffing. Involuntary dissolution is by order of the High Court.

We wish to underline the recommendations, noted by Uganda, in this regard:

- “Review the Public Order Management Act and the Non-Governmental Organizations Act so that the legal framework is conducive to safe and unhindered operation of independent NGOs” (Recommendation 117.8);
- “Amend sections 44 (d), 44 (f) (...) of the Non-Governmental Organizations Act to align them with the Ugandan Constitution and international human rights law”. Both recommendations were rejected by Uganda (Recommendation 117.35);
- “Amend Section 44 of the Non-Governmental Organizations Act, 2016, to ensure its compliance with the national constitutional requirement that every criminal offence be well defined and adopt NGO Act regulations to enable and protect the rights to freedom of expression, peaceful assembly and association, both online and offline” (Recommendation 117.2).

We are concerned that these provisions are incompatible with international human rights law, in particular with articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) as they are overly restricting activities of civil society organizations. Prohibiting associations to freely carry out their activities in any geographical part of the country is a severe drain on the independence of organizations. These elements could jeopardize the role of organizations whose aim is to provide an independent assessment and expertise of the human rights situation in the country. Moreover, we would like to remind your Excellency’s Government that any restriction on the right to freedom of expression, including freedom of information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

We would also like to refer to the UN Declaration on Human Rights Defenders, and in particular its article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups.

The former Special Rapporteur on the rights to freedom of peaceful assembly and association has stressed in his first thematic report that members of associations should be free to determine their statutes, structure and activities and make decisions without State interference. Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. They should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights (A/HRC/20/27, para 64.).

3. Supervisory authority

Section 5 of the Act establishes a national Bureau that is granted broad powers to supervise non-governmental organizations. The NGO Bureau can indeed conduct inspections, request information and create monitoring committees at the local level,

extending its power locally (Section 41 of the Act). These entities are entitled “to monitor and provide information to the Bureau regarding activities and performance of organisations in the district”.

We are concerned these provisions are overly broad as there is no guidance regarding the monitoring of activities or regarding the manner committees should execute their monitoring authority. They could lead to excessive discretion and oversight power of the entitled supervisory bodies. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has previously underlined that “the right of independent bodies to examine the associations” records as a mechanism to ensure transparency and accountability, but such a procedure should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk. (A/HRC/20/27, para 65).

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 therefore be grateful for your observations on the abovementioned matters. 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 urge that all relevant authorities in Uganda to take all necessary measures to ensure the full compliance of domestic legislation with international human rights norms and standards, in particular reversing or revoking the legislative provisions and other measures that impose undue limitations to the rights to freedom of association and to freedom of expression. We would like to take this opportunity to express our interest and availability to discuss the draft legislation in more detail with your Excellency’s Government at your convenience and provide further assessment towards its revision.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the draft law. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

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

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders