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**THE UGANDAN NON-GOVERNMENTAL  
ORGANISATIONS BILL 2015**

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**1. INTRODUCTION**

- 1.1 The Ugandan Non-Governmental Organisations Bill 2015 (the "**Bill**") was published in the Ugandan government gazette on 10 April 2015 and, if passed, will replace existing legislation. This note considers the extent to which the Bill:
- (a) could violate human rights that are recognised under 1995 Constitution of the Republic of Uganda (the "**Constitution**") and/or international law in force in Uganda; and
  - (b) could impact on the work of non-governmental organisations ("**NGOs**") that support LGBT rights.

**2. EXECUTIVE SUMMARY**

- 2.1 If passed, the Bill is likely to severely restrict the activities of NGOs, and in particular those who work in support of LGBT rights.
- 2.2 As drafted, the Bill includes provision for severe penalties, including imprisonment for up to eight years, in relation to a broad range of actions.
- 2.3 One of the most concerning and broadly drafted of the Bill's provisions is clause 40(f), which would prohibit NGOs from engaging in *"any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda."*
- 2.4 To the extent these provisions restrict the activities of organisations working in favour of sexual minorities in Uganda, it is likely that the Bill breaches certain provisions of the Constitution and fundamental principles of international law including freedom of expression and association, the right to privacy and the right to a fair trial.

**3. THE SCOPE OF THE BILL**

- 3.1 As drafted, the Bill will give wide-ranging powers to the National Board for Non-Governmental Organisations (the "**Board**"), which will also have regional offices in each region of Uganda.
- 3.2 The functions of the Board are set out in clause 6 of the Bill, and include advising the Ugandan Internal Affairs Minister (the "**Minister**"), guiding and monitoring

NGOs, and *"any other function prescribed by or under this Act or as may be directed in writing by the Minister"*.

- 3.3 One of the most important functions of the Board will be licensing and monitoring NGOs. Under the current draft of the Bill, the Board will have extensive powers in relation to both activities. Under clause 37, for example, an "officer of the Secretariat" authorised by the Board could *"at any reasonable time"* inspect the premises of NGOs and request any information necessary to give effect to the Bill's provisions.
- 3.4 The Bill confers significant discretion on the Board when carrying out its functions. For example, the Board could refuse to register an organisation where *"it is in the public interest to do so"* or *"for any other reason that the Board may deem relevant"*. Where the Board does register an organisation, it will be able to issue a permit imposing *"conditions or directions generally as it may think fit"*. In practice, however, the Minister has a significant amount of power over the Board. The Minister has the power to give the Board written instructions of a general or specific nature in relation to its functions, with which the Board is *"bound to comply"*, as well as to appoint and remove Board members.
- 3.5 The sanctions provisions of the Bill are severe. An organisation that contravenes any provision of the Bill, carries out any activity without a valid permit, or operates contrary to the conditions or directions specified in its permit, is liable to a fine. More ominously, individual directors or officers whose act or omission gave rise to the contravention are liable to a fine and/or imprisonment for up to eight years. In addition, the Board will be empowered to discipline NGOs with a warning, suspension of their permit, black listing or any other disciplinary action that it deems fit, and to make an order dissolving an NGO. This can be done for any reason that it considers *"necessary, in the public interest."*

#### 4. **PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW**

- 4.1 If passed into law, the Bill could violate a number of fundamental human rights that are widely recognised and accepted under the Constitution and/or international law.

##### **Freedom of expression**

- 4.2 The right to freedom of expression is generally recognised, including by the following provisions of the Constitution and instruments of international law to which Uganda is a party:

- (a) Article 29 of the Constitution;
- (b) Article 9 of the African Charter on Human and People's Rights (the **"Banjul Charter"**);
- (c) Article 19 of the International Covenant on Civil and Political Rights (the **"ICCPR"**); and
- (d) Article 19 of the Universal Declaration of Human Rights (the **"UDHR"**);

- 4.3 As noted above, the Bill, if passed, will enable the Board to refuse to register, or dissolve, an NGO without justification, as well as to impose conditions on an NGO and revoke its permit. There is a clear risk that these powers could be used to shut down, or impose conditions on, NGOs that actively support LGBT rights.
- 4.4 The Bill could also be interpreted as prohibiting the publication of information in support of LGBT rights on the basis that it is an *"act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda"*. If the NGO breaches its permit by, for example, publishing information critical of anti-homosexuality laws, it could face a fine and its employees could be given an eight year prison sentence.
- 4.5 Such actions would amount to a clear violation of the freedom of expression of NGOs, such as those supporting LGBT rights, as would the threat of such an action being taken. In this regard, it is worth noting that the United Nations Human Rights Committee found in the case of *Fedotova v Russian Federation*<sup>1</sup> that a law prohibiting the posting of pro-LGBT posters near a school amounted to an infringement on the right to freedom of expression.

#### **Freedom of association**

- 4.6 The right to freedom of association is generally recognised, including by the following provisions of the Constitution and instruments of international law to which Uganda is a party:
- (a) Article 29 of the Constitution;
  - (b) Article 10 of the Banjul Charter;
  - (c) Article 22 of the ICCPR; and
  - (d) Article 17 of the UDHR.
- 4.7 If passed, the Bill could prevent LGBT activists from establishing NGOs, as the Board could refuse to register them or to issue permits. It could also criminalise any group that contravened restrictions imposed on its freedom of association. The Bill could permit the Board to dissolve an NGO for any reason it considered necessary in the public interest. The Ugandan government could use the Bill to shut down groups promoting LGBT rights and convict their employees of criminal behaviour or place severe restrictions on the campaigning and advocacy they are allowed to undertake.
- 4.8 Under Article 43 of the Constitution, rights can only be limited in the public interest if the limitation is "acceptable and demonstrably justifiable in a free and democratic society, or [as] provided in [the] Constitution". Under the ICCPR, restrictions may only be placed on the exercise of freedom of association where necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Popular morality or majoritarian views on their own cannot be used to

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<sup>1</sup> Communication No. 1932/2010.

limit the fundamental rights of minority groups. For example, the High Courts in Kenya<sup>2</sup> and Botswana<sup>3</sup> have recently held that preventing the registration of LGBT groups on the basis of conceptions of morality and public health would amount to a violation of the right to freedom of association.

- 4.9 For all these reasons, it is clear that, if passed, the Bill will allow the Board to unlawfully impede the freedom of association of groups that advocate views that may be unpopular but which are protected in any free and democratic society.

### **Right to privacy**

- 4.10 The right to privacy is generally recognised, including by the following provisions of the Constitution and instruments of international law to which Uganda is a party:

- (a) Article 27 of the Constitution;
- (b) Article 17 of the ICCPR; and
- (c) Article 12 of the UDHR.

- 4.11 The Bill allows an "*officer of the Secretariat*" to inspect the premises of an NGO at "*any reasonable time*." Reasonable time is not defined and so is likely to be left up to the officer in question. There is no requirement to provide prior notice before carrying out an inspection.

- 4.12 Using this power, an officer could enter the premises of an NGO, including any NGO campaigning for LGBT rights, at any time. The officer could then interrogate staff and demand to see documents. If the officer finds material advocating LGBT rights, the organisation could be accused of engaging in acts "*prejudicial to the interests of Uganda and the dignity of the people of Uganda*" contrary to the Bill.

- 4.13 The Constitution protects the right to privacy by stating that "*no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property*." The right to privacy has generally been recognised in international human rights law to extend to the workplace. For example, in the case of *Copland v. United Kingdom*<sup>4</sup>, the European Court of Human Rights ("**ECtHR**") held that "*telephone calls from business premises are prima facie covered by notions of private life and correspondence*." It is therefore clear that the Bill, if passed in its current form, would violate the constitutional protection of the right to private life.

- 4.14 In the case of *Toonen v Australia*<sup>5</sup>, the United Nations Human Rights Committee rejected public health and public morality as permissible limitations on the right to privacy of sexual minorities under Article 17 of the ICCPR.

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<sup>2</sup> Eric Gitari v NGO Coordination Board & Attorney General [2015] Petition No 440 of 2013

<sup>3</sup> Thuto Rammoge and 19 others vs The Attorney General [2014] Case no MAHGB-000175-13

<sup>4</sup> Copland v. United Kingdom, 62617/00 [2007] ECHR 253

<sup>5</sup> Toonen v Australia (Human Rights Committee Communication No.488/1992)

### **Right to a fair trial**

- 4.15 The right to a fair trial is widely recognised including by the following provisions of the Constitution and instruments of international law to which Uganda is a party:
- (a) Article 28, 42 and 44(c) of the Constitution;
  - (b) Article 7 of the Banjul Charter;
  - (c) Article 14 of the ICCPR; and
  - (d) Article 10 of the UDHR.
- 4.16 If passed, the Bill will give the Board powers to take any disciplinary action against NGOs that it deems fit. The Board would therefore have a wide discretion to take substantial punitive against NGOs who have no adequate means of challenging this action.
- 4.17 As drafted, the Bill does not provide for judicial oversight of the Board. This contravenes Article 42 of the Constitution which states that *"any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her."*
- 4.18 The only right of appeal against a decision of the Board would be to the Minister as set out in clause 45 of the Bill. Given that the Board would take binding instructions from the Minister, this provision would be highly unlikely to protect NGOs' right to a fair trial by a competent, independent and impartial tribunal. For example, the Minister could give binding instructions to the Board to dissolve an LGBT organisation on the basis that it is in the public interest to do so. The only right of recourse for the NGO against the decision would be an appeal to the Minister who initially ordered the dissolution.
- 4.19 Furthermore, the Board could decide to take disciplinary action under clause 7 against an NGO campaigning for LGBT rights on the basis that the NGO is acting in a way *"prejudicial to the interests of Uganda and the dignity of the people of Uganda."* The Board would have powers to blacklist the NGO, suspend its permit or take any other disciplinary action it deemed fit. The NGO's only right to a defence would be to appear before the Board and *"show cause why the disciplinary action should not be taken"*.
- 4.20 For all of these reasons, it is likely that the Bill would violate the right to a fair trial.

### **Civic rights**

- 4.21 The rights of individuals to participate in organisations that seek to influence government policy and to defend human rights are generally recognised, including by the following provisions of the Constitution and international instruments:
- (a) Article 38 of the Constitution; and

(b) UN Declaration on Human Rights Defenders.

- 4.22 Article 38 of the Ugandan Constitution protects the right *"to participate in peaceful activities to influence the policies of government through civic organisations."* In breach of this right, the Bill could be used by the Board to arbitrarily restrict or shut down organisations that engage in political and legal advocacy contrary to the views of the Government.
- 4.23 The UN Declaration on Human Rights Defenders, while not itself a binding instrument, was adopted by consensus by the General Assembly. It represents a commitment to supporting human rights defenders. There are a number of ways in which the Bill could allow the Ugandan Government to act in contravention of the principles set out in the Declaration. In general, by authorising the Board and by extension the Ugandan Government to take unjust and arbitrary action against NGOs, the Bill contravenes the principle in Article 7 of the Declaration which protects the right *"to develop and discuss new human rights ideas and principles and to advocate their acceptance."*
- 4.24 The African Commission on Human and Peoples' Rights has also passed a Resolution calling on States parties to the ACHPR including Uganda *"to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities"*.<sup>6</sup>
- 4.25 If passed in its current form, therefore, the Bill could be used to unlawfully restrict the ability of NGOs to criticise and lobby government in order to promote and protect human rights, including in relation to LGBT rights.

**6 May 2015**

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<sup>6</sup> African Commission on Human and Peoples' Rights, *Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014.