



ICNL Comments on Uganda's *Non-Governmental Organisations Bill, 2015*

ICNL is pleased to offer the following comments on the draft Non-Governmental Organisations Bill, 2015 ("the Bill").¹ The Bill, which was gazetted on April 10, 2015, contains many concerning provisions. ICNL's key concerns include:

- **Mandatory Registration.** Section 31(1) of the Bill requires all non-governmental organizations, including all "private voluntary groupings of individuals" to formally register with the state. This violates the freedom of association, which protects the right of individuals to act collectively with or without a formal legal relationship with the state.
- **Operating permit.** The Bill includes an additional requirement for an operating permit which is subject to whatever conditions the NGO Board deems "fit" and is issued for an unspecified period of time for an unspecified annual fee. This opens the door to inequitable and arbitrary applications of the law.
- **"Special obligations."** The Bill includes several "special obligation" of NGOs, including the obligation to be "co-operate" with local officials. The vagueness of these special obligations violates international law's requirement for sufficient specificity within the law; and the content of these obligations violate international law's protection of the freedoms of expression and association. One example is the vague obligation to refrain from any activity that is "prejudicial to the interests of Uganda and the dignity of the people of Uganda."
- **Excessive discretion and oversight powers.** The Bill grants the NGO Board the ability to conduct nonconsensual inspections and unannounced information requests and creates monitoring committees at the local level to further extend the NGO Board's oversight capacities. The extraordinary reach of the supervisory powers granted to the NGO Board, and by extension the new monitoring committees, over the internal affairs of NGOs violates international law's requirement that restrictions on the freedom of association be clearly defined, necessary towards a legitimate government aim, and proportionate
- **Disproportionate disciplinary measures and criminal penalties.** The draft law criminalizes any violation of the Bill or the terms of an organization's operating permit, and subjects violators to fines and up to eight years in prison depending on the offence committed. The law imposes a series of disciplinary measures, such as "black listing" and "exposure of the affected organisation to the

About ICNL

The International Center for Not-for-Profit Law (ICNL) is an international not-for-profit organization that facilitates and supports the development of an enabling environment for civil society and civic participation. ICNL provides cutting-edge technical assistance, research, and education to support the development of appropriate laws and regulatory systems for civil society organizations in over 100 countries around the world, including more than 20 in Africa. For more information, please visit www.icnl.org.

¹ ICNL has provided support to local partners in Uganda since 2008. ICNL has offered comments on a number of proposed legal instruments, including the Draft National NGO Policy, the amended NGO Registration Act of 2006, the NGO Draft Regulations of 2007, the Public Order Management Act of 2013 and the Anti-Homosexuality Act of 2014.

public.” Moreover, the draft law allows the NGO Board to dissolve an organization if the Board considers dissolution “necessary in the public interest.”

The specific provisions of the Amendment Bill discussed below raise serious concerns regarding the right to freedom of association and other fundamental rights.² Please note that ICNL does not attempt to discuss every issue raised by the current draft, but instead, to highlight some of the key areas of concern. ICNL stands ready and prepared to provide additional information or technical assistance upon request.

Legal Framework

Internationally, the right to freedom of association is enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic and Cultural Rights (ICESCR), and the International Covenant for Civil and Political Rights (ICCPR), among various other treaties, conventions and declarations. Article 22 of the states that any interference with the freedom of association must be “prescribed by law,” “necessary in a democratic society,” and justified by one of four permissible “legitimate aims,” namely: (1) the interests of national security or public safety, (2) the upholding of public order, (3) the protection of public health or morals, and (4) the protection of the rights and freedoms of others.³ Uganda is a signatory to many of the international treaties protecting the freedom of association, including the ICCPR.⁴

Regionally, the freedom of association is protected by the African Charter on Human and Peoples’ Rights (ACHPR), which provides that “[e]very individual shall have the right to free association provided that he abides by the law.”⁵ This freedom is further protected by the Treaty for East African Cooperation (EAC) and the African Charter on Elections, Democracy and Governance, among others. According to Uganda’s own National NGO Policy, the EAC advocates for “the promotion of a supportive operational environment for NGOs” and “enjoins Member States to facilitate and ensure public participation and civic involvement in decision making both at [the] national and regional level.”⁶

Domestically, the freedom of association is guaranteed by Article 29 of Uganda’s Constitution, which provides that “[e]very person shall have the right to...freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.”⁷ This right is further strengthened by Article 38(2), which provides that “[e]very Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations.” Uganda’s commitment to the freedom of association is enshrined in the National NGO Policy, adopted in 2010 in recognition of the “key role” that NGOs play in many critical facets of the

² Note that the analysis below employs both of the terms ‘organization’ and ‘non-governmental organization (NGO)’ in keeping with the text of the Amendment Bill. According to Section 1, organization is defined in the bill to mean “a legally constituted non-governmental organization under the Act.”

³ ICCPR, Art. 22(2).

⁴ According to the Ministry of Internal Affairs’ National NGO Policy, adopted in October 2010, Uganda is a “signatory to the UDHR,” see p. 16 [“National NGO Policy”]. Uganda ratified the ICCPR in 1995 and the ICESCR in 1987. See <http://www.claiminghumanrights.org/uganda.html> for a full list of human rights treaties and conventions to which Uganda is a signatory.

⁵ Article 10.

⁶ National NGO Policy, Section 2.7, “Legal Framework,” at p. 16.

⁷ The Constitution of the Republic of Uganda (1995), Art. 29(1)(e). The Constitution additionally guarantees the right to engage in “peaceful activities to influence the policies of Government through civic organizations” in Article 38(2).

nation's development.⁸ The NGO National Policy aspires to create a “vibrant and accountable NGO Sector enabling citizens’ advancement and self-transformation” by increasing citizen participation, ensuring that NGOs can effectively contribute to the nation’s development, and protecting the autonomy of registered NGOs, among other such objectives.⁹

I. Mandatory Registration

Issue: Under Section 31(1) of the Bill, registration is mandatory for all non-governmental organizations (NGOs), which include all “private voluntary grouping[s] of individuals.”¹⁰ Similarly, registration is required of all Community-Based Organizations (CBOs), defined as organizations operating at the “sub county level and below whose objectives [are] to promote and advance the well-being of its members or community,”¹¹ and all Self-Regulatory Bodies (SRBs).¹² Moreover, Section 14 requires all organizations registered at the time the Amendment Bill takes effect to re-register under the new law within six months.

Discussion: The UN Human Rights Committee, which monitors implementation of the ICCPR, has repeatedly confirmed that mandatory registration of NGOs and other civil society organizations is not permitted under Article 22.¹³ Similarly, the *African Charter on Human and Peoples’ Rights* guarantees that there should “always be a general capacity for citizens to join, without State interference, in associations.”¹⁴ Further, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, has confirmed that “the right to freedom of association applies equally to associations that are not registered” and has called a voluntary registration regime that permits unregistered associations to operate as the “best practice.”¹⁵

This is not to say that registered and unregistered organizations must be treated identically under the law. Registered organizations with legal personality are typically entitled to certain privileges and benefits from the state, such as the right to enter into enforceable contracts, open bank accounts, or receive tax exemptions, while unregistered organizations often do not receive such benefits. This analysis applies equally to CBOs and SRBs, both of which should similarly have the choice whether or not to register and obtain legal entity status.

Requiring currently registered NGOs to re-register within six months from when the new law takes effect, as required by Section 51 of the Bill, imposes an impractical, unnecessary and unjustifiable burden on the NGO sector, not to mention the NGO Board itself. There are easier and less intrusive ways

⁸ National NGO Policy: Strengthening Partnership for Development, Ministry of Internal Affairs, October 2010 (see the Foreword, pp. 1-3).

⁹ A 9 Point Guide to Understanding the National NGO Policy and Supporting its Implementation, A Summary of the National NGO Policy, July 2012, see p. 4, available at http://www.actionaidusa.org/sites/files/actionaid/summary_of_ngo_policy.pdf.

¹⁰ See “Interpretations” in Part 1.

¹¹ Ibid.

¹² Section 34.

¹³ E.g., United Nations General Assembly, “Lebanon,” Report of the Human Rights Committee: Volume 1 (A/52/40) (1997), paragraphs 357 – 358; United Nations General Assembly, “Lithuania,” Report of the Human Rights Committee: Volume 1 (A/53/40) (1998), paragraph 177. United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, A/HRC/26/29, April 2014 [“UNSR Report”], para.55.

¹⁴ African Commission on Human and Peoples’ Rights, Communication No. 101/93 (1995), paragraph 15.

¹⁵ UNSR Report, at para. 55.

of ensuring that NGOs remain in compliance with the new law, such as reviewing NGOs' annual reports. Indeed, reporting requirements, which typically include submission of financial statements and descriptions of an organization's activities, are used in many regions throughout the world to facilitate compliance with NGO laws.

Recommendation: Revise Sections 31 and 34 to reflect registration as voluntary rather than mandatory. Delete Section 51 requirement for re-registration of existing NGOs.

II. Operating Permits

Issue: Section 31(5) requires that, in addition to obtaining registration status, an organization also apply for and obtain an operating permit, which is "subject to such conditions and directions" as the NGO Board "generally...may think fit to insert," particularly those relating to the organization's operations, staffing decisions, and the location of its activities. Under Section 32(5) permits are issued for some unspecified period of time "not exceeding five years," and for an unspecified "prescribed fee" paid annually.

Discussion: As with mandatory registration, requiring an organization to obtain a permit prior to operating violates core principles of international law, which forbid the freedom of association from being contingent on registration or legal entity status, as previously discussed.¹⁶ The same analysis applies here. Requiring organizations to obtain a permit from the government forces them to form a legal relationship with the state before operating. Moreover, requiring an operating permit in addition to formal registration adds a superfluous and unnecessary bureaucratic layer to the registration process.

The NGO Board is authorized to attach whichever conditions it "generally...may think fit" to receipt of a permit, but no specific grounds are delineated as to when the government is authorized to exercise this apparently unlimited influence. Indeed, Section 31(5) allows the Board to specify in an organization's operating permit "where the organisation may carry out its activities." This is not consistent with the "minimalist approach" to NGO regulation, which holds that the freedom of association

"necessarily entails some limits on the degree of regulation [...] The very essence of the freedom of association is the ability of those belonging to a body to decide how it should be run, [requiring] both a minimalist approach to regulation and very close scrutiny of attempts to interfere with the choices that associations and their members make about the organization of their affairs."¹⁷

According to the Special Rapporteur on the rights to freedom of peaceful assembly and association, "associations are entitled to operational autonomy, which includes the freedom to choose which activities they engage in to achieve organizational goals."¹⁸

¹⁶ Among others, the UN Human Rights Committee, responsible for overseeing compliance with the ICCPR, has repeatedly criticized laws requiring that associations of individuals form a legal relationship with the state before associating. See, for example, United Nations General Assembly, "Lebanon," Report of the Human Rights Committee: Volume 1 (A/52/40) (1997), paragraphs 357 – 358; United Nations General Assembly, "Lithuania," Report of the Human Rights Committee: Volume 1 (A/53/40) (1998), paragraph 177. United Nations General Assembly, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, A/HRC/26/29, April 2014 ["UNSR Report"], para.55.

¹⁷ Public Interest Law Initiative, *Enabling Civil Society: Practical Aspects of Freedom of Association*, (Budapest, 2003), p.42.

¹⁸ UNSR Report, at para. 58.

Also concerning are the requirements, reflected in Section 32(5), that a permit be issued for a period of “less than five years” and that a “prescribed fee” be paid “for each year for which the permit is granted.” This kind of imprecise language opens the door to discretionary and arbitrary decision-making by the NGO Board, which could impose shorter or longer timelines, or arbitrary fees, on an organization depending on its own personal or political preferences.

Recommendation: Delete Sections 31 (5) and all references to an operating permit requirement.

III. “Special Obligations”

Issue: Section 40 imposes a list of “special obligations” on all registered organizations, which include obligations to “co-operate with the local councils in the area” as well as the relevant monitoring committees; to “not engage in any act which is prejudicial to the security and laws of Uganda” or that is “prejudicial to the interests of Uganda and the dignity of the people of Uganda”; and to “be non-partisan ...,” among others.

Discussion: The vague standards contained in Section 40 violate the “prescribed by law standard” contained in Article 22 of the ICCPR. This strict standard requires the law to contain “sufficient precision to enable the persons concerned to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.” . The rationale behind this well-established legal doctrine is that ambiguous provisions fail to provide sufficient notice of how one might remain in compliance with the law and grant too much discretion to government officials.

Certain “special obligations” leave many questions unanswered. Is questioning one of the local council’s decisions considered uncooperative, in violation of Section 40(c)? Is organizing a public gathering to peacefully challenge one of the state’s military policies “prejudicial to” Uganda’s security, in violation of Section 40(d)? Does a secular organization espousing what could be perceived as anti-religious messages offend the “dignity of the people of Uganda,” in violation of Section 11E(f)? As written, Section 40 does not provide the necessary level of precision to enable organizations to reasonably foresee the consequences of their actions; nor does it provide the Board with sufficient guidance in interpreting and enforcing the law. The “special obligations” imposed on organizations are particularly concerning given that they are enforced by harsh criminal penalties (see below).

Without further specification, Section 40(g) also violates international best practice and international law by requiring an organization to be “non-partisan.” Many organizations engaged in socially valuable work could be characterized as ‘partisan’ if their work overlaps with a policy proposal endorsed by, or associated with, a political party. It may be appropriate to differentiate rules that apply to political parties, that is, organizations primarily aimed at obtaining public office, from those that apply to other kinds of organizations. Still, this differentiation should protect NGOs’ freedom to engage in public policy advocacy and participate in decision-making.

Recommendation: Section 40 should be deleted. At the very least, Section 40 should be redrafted with greater specificity, including what is meant by “co-operate” and what actions are considered “prejudicial to the interests of Uganda...”

IV. The NGO Board’s Discretion & Supervisory Authority

Issue: Section 6(c) authorizes the NGO Board to “guide and monitor organizations in carrying out their activities at all levels of government.” In carrying out these supervisory roles, the Board is given authority by Section 37 to conduct involuntary inspections and request “any information” that appears “necessary for purposes of giving effect to this Act.” Sections 20 and 21 create two additional layers of governmental oversight at the sub-national level: District Non-Governmental Organisations Monitoring

Committees (DNMCs), and Subcounty Non-Governmental Organisations Monitoring Committees (SNMCs). Among other functions, both are authorized to “monitor and provide information to the Board regarding the activities and performance of organizations.”¹⁹

Discussion: Section 6(c) permits the NGO Board to “guide and monitor organizations in carrying out their activities at all levels of government.” Such a wide and theoretically unlimited scope of authority, which lacks clear and objective criteria detailing under what conditions such monitoring is appropriate and what specifically such guidance should entail, unjustifiably implicates the NGO Board in the internal affairs of all organizations. Without specific checks on abuses of this authority, such an open-ended grant of power violates international law’s requirement for specificity within the law, as previously discussed.²⁰ As written, Section 6(c) does not contain the sufficient level of precision necessary to provide individuals working within an organization with the ability to foresee, to a reasonable degree, the consequences which a given action may entail.²¹

Under Section 37, an officer of the Secretariat authorized by the Board may “at any reasonable time inspect the premises of an organisation and may request any information that appears to him or her necessary for the purposes of giving effect to this Act.” In other words, at the sole discretion of the Board and apparently without cause, government officials may initiate inquiries, demand documents, and enter onto the property of any NGO. There are no procedural protections such requiring a warrant, prior notice, an opportunity to object, the right to counsel, or the right to a hearing to contest the grounds for the inspection/information request.

DNMCs and the SNMCs are established to “monitor and provide information to the Board regarding the activities and performances of organizations” in their respective jurisdictions.²² What precisely is meant by, and what specific tools or scope of authorities attach to, the act of monitoring or providing information is left entirely undefined. It is unclear whether the authority to ‘monitor’ involves merely accessing publicly available information, or whether it allows the gathering of traditionally private information using typically unlawful methods (phone-tapping, involuntary inspections, compulsory information demands, etc.). There is no guidance contained within the law as to how the monitoring committees should execute their monitoring authority; nor are specific safeguards to protect against abuses of this authority. This unconstrained and undefined ability to ‘monitor’ organizations threaten the autonomy of all registered NGOs, and thus their internationally guaranteed right to freedom of association as enshrined in the ICCPR.²³

¹⁹ Section 20(4)(f) & 21(d).

²⁰ This is inherent in the “prescribed by law” requirement contained in Article 22 of the ICCPR. See, for example, *N.F. v. Italy*, (Application No. 37119/97), ECHR, 8 February 2001, paragraphs 26-29 (stating that the ‘prescribed by law’ standard requires that a law be written with “sufficient precision to enable the individual...to regulate his conduct”); and *Gorzelik and others v. Poland [GC]*, (Application no. 44158/98), ECHR, 17 February 2004, paragraphs 64-65 (stating that the “prescribed by law” standard requires that laws be “formulated with sufficient precision to enable them...to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct.”).

²¹ *Id.*

²² Section 20 (the DNMCs focus on ‘the district’); Section 21 (the SNMCs focus on the ‘subcounty’).

²³ Article 17 of the ICCPR provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” This principle has been extended to organisations; see *Niemetz v. Germany*, Judgment of 16 December 1992, Series A, No. 251-B, 16 EHRR (1993), para. 31.

There are less intrusive means to supervise organizations that will meet the government's goals of ensuring compliance with the law and development of an effective and well-governed civil society. Most countries supervise organizations by, in the first instance, requiring reporting by organizations that is appropriate to their size and type of activity. Government concerns about illegality within the NGO sector can be addressed through the criminal code and judicial process. There is no compelling justification for subjecting NGOs to special scrutiny or procedures.

Recommendation: Revise Sections 6(c) to more specifically delimit the NGO Board's scope of authorities, and include specific safeguards for NGOs, such as the ability to contest an action by the Board to a neutral arbiter. Revise Section 37 to eliminate inspections except in certain narrow situations. State clearly within the law the circumstances in which information requests can be made; and provide organizations with appropriate legal safeguards, such as prior notification and the right to contest a scheduled gathering of information. All references to the District and Subcounty NGO Monitoring Committees should be deleted from the Amendment Bill.

V. Criminal Penalties, Personal Liability & Disciplinary Measures

Issue: The Bill imposes criminal and disciplinary sanctions on organizations and responsible individuals for offences under the law. Section 31(9) makes it a prosecutable offence subject to a fine if an organization "(a) contravenes any provision of [the Amendment Bill]; (b) carries out any activity without a valid permit; [or] (c) operates contrary to the conditions or directions specified in its permit." Under Section 31(11), "any director or officer of the organization whose act or omission gave rise to" any of the above offences are subject to fines or up to eight years in prison depending on the offence committed. Section 7(b) authorizes the Board to "discipline" organizations using a variety of techniques, including "black listing," "exposure of the affected organization to the public," and "any other disciplinary action that the Board may deem fit." Finally, under Section 44, the Board is authorized to involuntarily dissolve an organisation in five different situations, including "for any other reason the Board considers it necessary in the public interest."

Discussion: Criminal Penalties. The draft law imposes criminal penalties for violations that are either not deserving of such penalties, or are better left to the criminal code. Because criminal penalties attach to violations of "any provision" of the law or any "conditions or directions" contained within an organization's operating permit, even minor deviations from basic, administrative provisions contained within the law or an organization's operating permit can lead to lengthy prison sentences or hefty fines.²⁴

Also of concern, the Bill lacks substantive and procedural safeguards guaranteed to criminal suspects under international law.²⁵ The NGO Amendment Bill does not mention a right to appeal, nor does it include any specific rights or protections granted to organizations or individuals accused of criminal wrongdoing. The absence of a cross-reference or even a mention of such safeguards present in Uganda's criminal code is concerning and will likely have a deterrent effect on associational activity. Without such protections, the Amendment Bill violates Article 14 of the ICCPR, which requires all criminal cases to be decided by a "competent, independent and impartial tribunal established by law," appealable to a "higher tribunal," and accompanied by a variety of substantive and procedural rights.

²⁴ Sections 31(10) & 31(11).

²⁵ ICCPR, Art. 14 (see below); Universal Declaration of Human Rights, Art. 10 (stating that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."), Art. 10 ("Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.").

Personal Liability. The attachment of personal liability, particularly for minor or insignificant administrative violations as allowed under Section 31(11), is inconsistent with mainstream international practices and potentially in violation of international law. One of the primary purposes of formally registering an organization with the state, whether non-governmental, not-for-profit or otherwise, is to shift the risk of financial and contractual liability from the individuals comprising an association to the association itself. The idea behind this common legal principle, as reflected in Uganda's 2012 Companies Act, is to incentivize associational activity, which is essential to any nation's development and growth. In most instances, individuals cannot be held liable for the financial and contractual obligations incurred by the organizations they are associated with; the organization itself is alone liable for such obligations. On the other hand, individuals can be held liable for criminal wrongdoing committed on behalf of an organization. In such cases, the responsible individuals are not protected by the general rule that individuals are legally immune from the liabilities of their organizations. The law should make this important distinction clear, highlighting the standard required for personal criminal liability to attach, which typically includes intentional wrongdoing.²⁶ According to the Uganda National NGO Forum (UNNGOF), the current draft law, by making individuals associated with organizations personally liable for breaches of any provision of the law or their organization's operating permit, goes "over and above what is acceptable in international law and even standard company law in Uganda."²⁷

Disciplinary Measures. The disciplinary measures enumerated in Section 7(b) include "exposure of the affected organisation to the public," "black listing," and "involuntary dissolution." "Exposure" and "black listing" seem aimed at public shaming, though the draft law is silent as to what these disciplinary measures entail. These provisions violate Article 22 of the ICCPR for, among other reasons, not being sufficiently precise, and therefore not giving organizations the proper notice or understanding as to what conditions could trigger disciplinary action.

Involuntary dissolution should be a measure of last resort for only the most egregious violations of the law.²⁸ According to the UN Special Rapporteur, involuntary dissolution "should be strictly proportional to the legitimate aim and used only when softer measures would be insufficient."²⁹ Under the draft law, however, an organization can be involuntarily dissolved in five situations, including where an organization "violated the terms and conditions attached to its permit," operated "in contravention of the provisions of the Act," or "for any other reason the Board considers it necessary in the public interest."³⁰ According to these provisions, minor, administrative or technical violations, such as missing a filing deadline or not holding an annual meeting on the date specified in the operating permit, could lead to an organization's dissolution. 'Softer' and less intrusive measures certainly exist to deter violations of an organization's operating permit or the terms of the NGO Registration Bill, particularly minor violations. Issuing a warning and providing an opportunity to rectify the violation within a specified period of time, are two such examples.

²⁶ Uganda's 2012 Companies Act could be helpful here in determining which standards should apply to organizations covered under this law.

²⁷ Uganda National NGO Forum, go to: <http://socs.civicus.org/?p=3560>.

²⁸ According to the UN Special Rapporteur, "The suspension and the involuntarily dissolution of an association ... should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, Twentieth session (May 21, 2012), ¶75.

²⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, Twentieth session (May 21, 2012), ¶75.

³⁰ Section 44(d).

Although it is commendable that organizations are afforded an opportunity to show cause why they should not be disciplined, no other procedural or judicial safeguards are specified within the draft law, including the right to appeal or contest a particular disciplinary action to a neutral arbiter.

Recommendation: Amend Section 31 to require civil (not criminal) sanctions, such as small fines proportional to the underlying offense, and an opportunity to rectify the violation prior to issuing a civil citation. Add more specific language detailing what precisely constitutes a violation. Delete all references to criminal offenses and penalties. Specify a procedure allowing organizations to appeal any judgment against them before an independent tribunal. Revise Section 31(11) to reflect the important distinction between legal immunity for individuals from organizational debts, contracts and other obligations and criminal liability for acts of criminal wrongdoing performed on behalf of the organization.³¹ Delete Section 7(b)(v). Delete Sections 44(d) allowing unlimited discretion to impose involuntary dissolution.

Other Concerns

- *Benefits Attaching to Legal Status.* Section 2(6) discusses the benefits that flow to an organization once officially registered, which include: “perpetual succession, power to sue and be sued in its corporate name and shall be issued a certificate of incorporation by the Board [sic].” It is unclear whether this is an exhaustive list and includes all benefits attaching to legal entity status. Typical benefits, in addition to those listed under Section 2(6), include: preferential tax treatment, the ability to open a bank account in the organization’s name; personal immunity from liability for the organization’s founders, officers and directors; and the ability to contract in the organization’s name. Section 2(6) should be rewritten to include all of the benefits attaching to legal entity status, and this list should reflect a more robust array of privileges and rights.
- *Marginalized Groups.* Section 31 states that an “organisation shall not be registered under this Act, where the objectives of the organisation as specified in its constitution are in contravention of the law.” Section 31 would allow the government to deny registration to groups advocating for changes in the law. Similar language has been used to deny registration to groups advocating for LGBT rights because homosexuality is considered illegal in Uganda. However, recent court rulings in Botswana and Kenya have reaffirmed that the freedom of association includes the rights of LGBT people to form organizations.³²
- *Foreign Staffing.* Section 41 imposes a series of unjustifiably burdensome requirements on the hiring of non-citizens that are better left to existing immigration and labor laws, such as the requirement to ensure that all foreign employees present their “certificates, credentials and recommendations of his or her academic and professional qualifications and proven work experience” to the Ugandan diplomatic mission in his or her country of origin prior to entering Uganda. This violates Article 22’s requirement that the right to freedom of association be applied to “everyone” without distinction of any kind, including national origin.

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³¹ Likely such cases are already covered by the criminal code; cross-reference to the criminal code if necessary.

³² See *Rammoge et Orgs v. Attorney General of Botswana* (14 November 2014): http://www.humandignitytrust.org/uploaded/Library/Case_Law/Rammoge_and_ors_v_AG_Botswana_Judgment_2014-11-14.pdf and *Gitari v. NGO Co-ordination Board and Attorney General of Kenya* (30 April 2015): <http://kenyalaw.org/caselaw/cases/view/108412/>.