

EAST AFRICAN CIVIL SOCIETY ORGANISATIONS' FORUM

Strengthening Civil Society in the Integration Process



BRIEF DISCUSSION PAPER ON THE ENVIRONMENT FOR CIVIC SPACE IN UGANDA

Is Uganda a Militarized Operating Environment for CSOs ?

Our Vision for East Africa is

“A community in which citizens are fully engaged in all affairs affecting their lives”.

1.0 Introduction

This short discussion paper analyzes the environment for civic space in Uganda. It analyzes both the legal and broader governance framework that determines and shapes this environment.

2.0 A snapshot of 2013

In the first place, at the beginning of 2013, during an interaction with the Parliamentary Rules Committee, the Minister of Defence, Dr Crispus Kiyonga, warned Parliament that if its members did not 'behave' the Uganda Peoples' Defence Forces (UPDF) would 'intervene'. Dr. Kiyonga is quoted as having said that the army was watching events in Parliament and that there was a possibility that it would 'take over' if politicians did not show 'seriousness' in resolving the problems facing the country. According to him, such an intervention would be done to 'refocus' the country's future and to reclaim it from the hands of 'wrong politicians'.¹

Shortly thereafter, on January 16th, 2013, during a retreat for NRM MPs held at Kyankwanzi, the President warned the MPs that the military would not permit what he called 'confusion' in Parliament to continue.² These threats from the country's 'civilian leaders' were echoed by the UPDF Chief of Defence Forces, General Aronda Nyakairima, who on January 23, 2013, informed reporters that the 'message' had been 'deliberately sent out', and that ... "it was well taken by those for whom it was intended' and that Ugandans should 'Stand warned'. Like Dr. Kiyonga who had spoken of 'wrong politicians', General Nyakairima warned that the military would not allow 'bad politics' to reverse the gains made by the country. The General was further quoted as saying 'Stand advised that should you not change course, other things will take place.'³

A few weeks after these strange statements, on March 4, 2013, Ugandans woke up to the strange news that a number of gunmen had launched an attack on a major military installation, the army barracks in Mbuya. This brazen attack was puzzling in terms of who was behind it, what was aimed at and what the broader goal was. The official explanation that was issued by the Army a few weeks later was that it had been planned and executed by a UPDF informant who sought to justify his claims of an imminent rebel attack.⁴ However, on May 7, 2013, it transpired that a more serious alternative theory regarding the attack had been developed by General David Sejusa Munungu (formerly known as Tinyefuza), a highly decorated Four Star UPDF General, who at the time served as Coordinator of the country's intelligence services and as a Senior Presidential Advisor. It transpired that General Sejusa, in an April 29 letter to the Director General of the Internal Security Organization (ISO) alleged that there was a plot by top officials, including the Inspector General of Police (IGP), General Kale Kayihura, to assassinate or frame a number of politicians including General.

¹<http://www.newvision.co.ug/news/638828-defence-minister-kiyonga-tells-mps-to-behave.html>

²<http://www.monitor.co.ug/News/National/Museveni-tells-MPs--Army-can-takeover/-/688334/1668782/-/15pey9/-/index.html>

³<http://www.monitor.co.ug/News/National/Aronda-saysarmy-takeover-possible/-/688334/1673856/-/eg5q6q/-/index.html>

⁴http://www.observer.ug/index.php?option=com_content&task=view&id=24478&Itemid=116

2.0 A snapshot of 2013

Sejusa himself. In the letter, General Sejusa alleged in part that the IGP had 'hatched an evil and extrajudicial plan of stage-managing the attack on Mbuya barracks' with a view to framing 'some senior members' of the government including, especially, himself, the Prime Minister Amama Mbabazi, the Chief of Defence Forces General Aronda Nyakairima as well as other persons thought to be against a perceived plan to have the President's son, Brigadier Muhoozi Kainerugaba, succeed his father as Uganda's President (the so-called 'Muhoozi Project'). In this regard, General Sejusa further asked that the Director General of ISO investigate claims that General Kayihura and company were organizing for the assassination of people opposed to the 'family project of holding onto power in perpetuity'.⁵ This letter is particularly important, coming from a General who fought with President Museveni during the bush war of 1981-1986 and can thus claim to be an 'NRM historical', and who, at the time he wrote it, was a member of the UPDF High Command, the UPDF Defence Council and was also a Member of the Parliament of Uganda, representing the UPDF. As would be expected, General Sejusa has since gone into exile in London, where he is relatively safe from some of the more dire consequences of his bold claims.

However, as has now come to be fully expected in Uganda, the full weight of the State machinery was brought to bear upon the news outlets which had published reports of the letter, with the Uganda police raiding and shutting down the offices of The Daily Monitor and The Red Pepper on May 20, 2013.



POLICE IN THE PREMISES OF THE DAILY MONITOR. (DAILY MONITOR)

⁵ <http://www.monitor.co.ug/News/National/Probe-assassination-claims--says-Tinye/-/688334/1844358/-/fjq5ayz/-/index.html>

2.0 A snapshot of 2013

The Police also shut down The Monitor's sister station KFM, as well as Dembe FM, an independent broadcaster. It would be a full eleven days before the police would finally leave the premises of the two newspapers and allow staff to resume business. Obviously, this media siege had a substantial chilling effect on the media, whose full impact will only be fully felt in the coming months. For starters, The Monitor Publications Limited, which owns The Monitor and KFM, lost over UGX 1,100,000,000 (One Billion, One Hundred Million Uganda Shillings) or approximately USD 426,000 (Four Hundred Twenty Six Thousand United States Dollars) during this eleven-day period.⁶ This is not to mention the employees whose jobs were affected during this time, as well as the entire wider network of newspaper vendors, service providers and other persons who suffered collateral damage. Although The Monitor prides itself on providing Ugandans with 'Truth Everyday' as per its slogan, it is not inconceivable that going forward, its editorial team on instruction from the Board who represent the shareholders, will be careful to 'tone down' or at worst suppress important issues of national concern for fear of running afoul of the State once more. It is no wonder that, in the wake of the lifting of the siege, Al Jazeera found it necessary to now refer to The Monitor as a 'semi-independent' newspaper.⁷

For his part, since his stern warning about the army not allowing 'bad politics' to distort the country's gains, General Aronda Nyakairima has been appointed Minister of Internal Affairs, by President Museveni, which position he assumed on July 24, 2013. The appointment sparked a spirited national debate regarding the constitutionality of a serving UPDF officer assuming a Ministerial position. In the end, however, as is now customary, the President's will triumphed in an NRM-dominated Parliamentary Appointments Committee and the appointment was eventually confirmed.⁸ True to form, in his first public pronouncement as Minister for Internal Affairs, General Nyakairima warned media groups, opposition politicians and civil society activists to toe the line or face the consequences of their actions.⁹

It would appear that the warnings that were sounded at the start of the year regarding military intervention to counteract 'bad politics' and 'wrong politicians' have started to be acted upon.

What is most unfortunate, at this critical time, is that they are being facilitated in this process a host of civilian actors who should know better. The majority of Uganda's Members of Parliament appear to be quite willing to go along with the President's will, perhaps due in no small measure to the financial pressures a number of them face. Indeed, in what appears to be a first for a national Parliament, a number of MPs had the audacity to ask the President to assist them to pay off loan obligations to banks and other financial institutions.¹⁰

Such MPs will hardly be in position to agonize over the implications of a serving UPDF officer being appointed a Minister, especially in the face of the requirement under Article 208 (2) of the Constitution for the UPDF to be 'nonpartisan' and 'subordinate to the civilian authority as established under this Constitution'. There are also increasingly troubling indications that the Judiciary as currently constituted may be more willing than before to look the other way when faced with Executive overreach and military usurpation of civilian authority.¹¹ Moreover, if current proposals to reappoint the immediate former Chief Justice Benjamin Odoki as Acting Chief Justice in spite of his having reached the mandatory retirement age (70 years) are anything to go by; there are serious efforts being made to co-opt and subsume the Judicial branch under the Executive in the context of the broader campaign to fully militarize the country's politics.

For its part, the Uganda Law Society (ULS) in a troubling Memorandum to the Parliamentary Appointments Committee, marked 'Privileged and Confidential', and which was obviously not expected to surface in the public domain, appears to take the view that, faced with the substantial question regarding the militarization of Uganda's politics, a 'literal' approach (which in their view permits a serving officer to be appointed Minister) is preferable to a 'purposive' one (which might 'have an impact on the approval by Parliament' of such an appointment).¹²

⁶ <http://news.ugo.co.ug/2013/05/monitor-loses-shs-1bn-in-media-siege/>

⁷ <http://www.aljazeera.com/news/africa/2013/05/2013530102350599419.html>

⁸ <http://www.monitor.co.ug/News/National/MPs-walk-out-as-Gen-Aronda-isconfirmed/-/688334/1919346/-/u2u6a2z/-/index.html>

⁹ <http://www.thelondoneveningpost.com/behave-or-else-army-general-warns-ugandanmedia-and-ngos/>

¹⁰ <http://www.newvision.co.ug/news/645411-broke-mps-cry-out-to-museveni-over-debts.html>

¹¹ <http://allafrica.com/stories/201307290370.html>

¹² <http://www.scribd.com/doc/155176591/Aronda-Opinion-ULS>

3.0 Current Developments :

An Analysis of the NGO Amendment Bill (2013)

There have been a variety of laws passed that impact on civic space in Uganda, such as the KCCA Act, the Public Order Management Act, the Anti-Homosexuality Act, the Anti Pornography Act to mention but a few.

This section analyzes the proposed (unofficial) amendments to the NGO Act.

3.1 Rationale of the Bill

An amendment to an existing law is usually aimed to addressing deficiencies in that law.

In this regard, the Bill expresses the major gap it addresses in these terms: 'it has...been noted that the rapid growth of non-governmental organizations has led to subversive methods of work and activities, which in turn undermine accountability and transparency in the sector.' [Memorandum to the Bill, Para 2] (Emphasis added) This language is quite telling, borrowing as it does from military terminology, used in relation to real or perceived enemies of the state.

The sections that follow analyze the text of the Bill, assess their constitutionality, and address in broad terms the implications of the Bill in terms of the broader governance and legislative context.

3.2 Text of the Bill

3.2.1 Amendments to Section 2

Under these amendments:

- (i) an organization may be refused registration where its objectives, as stated in its Constitution, 'are in contravention of the law' [new Section 2 (4)];
- (ii) additional offences are created, that is to say, contravention of any provision of the Act [Section 2 (10) (a)], operation contrary to the conditions or directions specified in its permit [Section 2 (10) (b)] and carrying out of any activity without a valid permit [Section 2 (10)(c)]
- (iii) Personal liability, for directors or officers, in respect of the offences, rather than corporate liability, with enhanced fines and imprisonment [Section 2 (11) (a) and (b)].

3.2.2 Amendments to Section 3

Under these amendments:

- (i) a temporal limitation of 5 years is stipulated for any permit issued under the Act [Section 3 (5)] ;
- (ii) each year granted to be paid for [Section 3 (5)];
- (iii) scaled fees depending on nature of organization, that is to say, 'indigenous', 'international', 'foreign', 'partnership', 'regional' [Section 3 (6)].

3.2.3 Amendment to Section 4

Under these amendments:

- (i) appointments to the NGO Board are to be made by the President rather than the Minister [Section 4 (4)];
- (ii) a citizenship requirement is required for membership to the Board [Section 4 (7)];
- (iii) board size reduced to 7 (from 12) [Section 4 (4)];
- (iv) no stipulation as to nature of board composition, other than reference to 'a person from the organization sector' [Section 4 (4)] and a requirement for one-third of members to be female [Section 4 (5)].

3.2.4 Insertion of new Section 4A

Under this new Section, Board members are to be paid rate of remuneration as determined by Minister for Internal Affairs, in consultation with the Minister of Finance.'

3.2.5 Amendment of Sections 5, 6, 7, 8 and 13; and insertions of new Sections 6A, 6B, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J and 14

The key aspects of these amendments and insertions are the following:

- (i) A more robust Secretariat, headed by an Executive Director (instead of a Secretary), with expanded duties and powers, to support the work of the NGO Board [Sections 5 and 6]
- (ii) Notably the Secretariat is now authorized to inspect premises and request information at any time, and obstruction or failure to comply is an offence with heavy penalties of both fine and imprisonment. The Secretariat is additionally clothed with the powers to prosecute offences under the Act. Additionally, members of the Secretariat and Board are shielded from liability in respect of acts undertaken under the Act in good faith. [Sections 6A and 6B]
- (iii) The duties of the board are considerably expanded, including, notably, carrying out background checks on organizations seeking registration. [Section 7]
- (iv) The mandate and reach of the Board is considerably expanded, notably by the creation of structures to scrutinize NGOs at all levels of government. This reality is envisaged in terms of Section 7 (1)(f) of the Act which requires the Board 'to guide and monitor organizations in carrying out their activities at all levels of government'. This language is a notable addition to the existing requirement. Under this elaborate structure are created Regional offices for the Board along with District Non-Governmental Organizations Monitoring Committees (DNMCs) and Sub-County Non-Governmental Organizations Monitoring Committees (SNMCs), all to be supervised by the Board. [Sections 1, 11A, 11B and 11C]
- (v) Establishment of 'special obligations' for organizations including a requirement for additional approval from the DNMC prior to conducting operations in a particular area (in addition to the general Board approval or certification), restriction of operations to particular areas where allowed to operated, a requirement of being 'non-partisan' and not engaging in 'acts prejudicial to the interests of Uganda and the dignity of the people of Uganda'. [Section 11E]

3.2.5 Amendment of Sections 5, 6, 7, 8 and 13; and insertions of new Sections 6A, 6B, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J and 14

(vi) Requirements relating to staffing of NGOs, including compliance with labour and immigration law, and curious obligations to in the first place have remuneration standards that 'are reasonably comparable' to those prevailing in Uganda or to those of foreign staff and in the second place, have a memorandum of understanding with donors and sponsors as well as local and foreign partners specifying employment terms and 'resources mobilized for the organization and any other relevant matters.' [Section 11F]

(vii) Provisions relating to the business operations of organizations, including the requirement to open and maintain a bank account, as well as, where monies are received in foreign currency, to maintain an external account with a 'reputable bank' through which such transactions are to be conducted. [Section 11G]

(viii) Requirements to submit annual returns, including estimates of expenditure and income and 'any other information that the Board may consider to be in the public interest.' [Section 11H]

(ix) Board given extensive powers relating to oversight and supervision of NGOs. The Board is empowered to summon and discipline organizations, including 'exposure of the affected organization to the public,' 'blacklisting' and 'any other disciplinary action that the Board may deem fit.' [Section 8] The Board is further empowered to dissolve an organization, including for contravening the Act and 'for any other reason the Board considers necessary in the public interest.' [Section 11]

(x) The extensive powers and functions granted to the Board are complemented by elaborate provisions relating to the funding of its operations [Sections 8A, 8B, 8C, 8D, 8E, 8F, 8G and 8H]

(xi) A transitional provision under which existing organizations enjoy a grace period of 6 months before being required to register under the Act [Section 14]



POLICE IN THE OFFICES OF THE DAILY MONITOR. (DAILY MONITOR)

[HTTPS://CPJ.ORG/2013/05/POLICE-RAID-NEWS-OUTLETS-IN-MEDIA-CRACKDOWN-IN-UGA.PHP](https://cpj.org/2013/05/police-raid-news-outlets-in-media-crackdown-in-uga.php)

4.0 Conclusions

Evidently, the implications and reach of the proposed amendments to the NGO Act are far-reaching.

Crucially they have serious implications for the ability of citizens to hold their governments accountable in terms of Article 8A (Uganda government to be guided by principles of good governance) and, especially, the freedoms of conscience, expression, movement, religion, assembly, and association (Article 29).

The restrictions imposed, placing as they do excessive discretionary power in the hands of the state and in light of the vague nature of most of the standards stipulated, would also be difficult to justify in terms of Article 43 of the Constitution, which requires **any restrictions to human rights to be acceptable and demonstrably justifiable in a free and democratic society**. [Emphasis added]

However, it is important to note that an enquiry into the legality or the constitutionality of the proposed amendments is limiting, especially in terms of the broader governance context within which the amendments have been proposed. Put simply, the situation that pertains in the country at the moment is one of Executive overreach, based on a monopoly of the coercive apparatus of the state, especially the military. In the face of this overreach by the Executive, and particularly, the Presidency, the other arms of the state have increasingly been shown to be either unable or unwilling (or both) to properly exercise the proper role and functions they would play in the protection of democratic governance. It is perhaps not coincidental that the proposed amendments have been put forward by a Minister of Internal Affairs who is a General in the Uganda Peoples' Defence Forces (UDPF) and whose own appointment is the subject of a constitutional challenge. In this light, the tenor and language of the bill is not surprising (See Section 1 above). Taken together with more recent Bills and laws, which all go towards narrowing the space for activism and citizen engagement, such as the Public Order and Management Act, and equally important although less obvious one such as the Anti-Pornography and Anti-Homosexuality legislation; it becomes clearer that the real challenge and the struggle should not be with regard to the text of the Bill or legal minutiae (which are important), but rather should be squarely addressed to dealing with the systemic challenges in terms of governance that the country faces today.

In this regard, we may end by citing the expressed opinion of Hon. Frank Tumwebaze, who this week suggested the enactment of a law to enforce patriotism in Uganda. In justifying the proposed law (coming on the heels of a private members bill proposed to postpone the 2016 elections!) the Minister is of the view that:

A quasi-military environment has to be brought in

Surely, the writing is clear on the wall.



POLICE STAND OUTSIDE
THE OFFICES OF THE DAILY
MONITOR. (DAILY MONITOR)

[HTTPS://CPJ.ORG/2013/05/POLICE
-RAID-NEWS-OUTLETS-IN-MEDIA
-CRACKDOWN-IN-UGA.PHP](https://cpj.org/2013/05/police-raid-news-outlets-in-media-crackdown-in-uga.php)