



DEFENDERS PROTECTION INITIATIVE

**THE LEGISLATIVE CLIMATE FOR
HUMAN RIGHTS DEFENDERS IN UGANDA**

“A Glance at the Legal Excesses”

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LIST OF ACRONYMS

AMLA	Anti-Money Laundering Act
AU	African Union
CSO	Civil Society Organization
HRD	Human Rights Defender
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic Social and Cultural Rights
NGO	Non-Governmental Organization
NODPSP	National Objectives and Directive Principles of State Policy
POMA	Public Order and Management Act
UDHR	Universal Declaration of Human Rights
UNSR	UN Special Rapporteur on the situation of Human Rights Defenders

INTRODUCTION

1.0 INTRODUCTION

1.1 Background and Objectives of the Study

This study was informed by growing national and international concerns on the space available in Uganda for the operation of Human Rights Defenders (HRDs). A Human Rights Defender (HRD) may be described as any person who individually or in collaboration with others, works to promote or protect human rights. Although the term is usually applied with reference to non-state actors such as NGOs, journalists, lawyers and others, the term includes state agencies which are mandated, directly or indirectly to promote and protect human rights, such as the police, national human rights commissions and so on.

As an entity that works closely with HRDs on a daily basis, Defenders Protection Initiative (DPI) observed the need to develop a critical analysis of the legal environment within which HRDs operate as a basis for a more in-depth and holistic understanding of the opportunities and threats to HRDs' in Uganda today.

This study is therefore aimed at generating a critical analysis of Uganda's legal framework for HRDs operations, measured as against applicable international, regional and domestic human rights standards, as a basis for crafting suitable responses to the contemporary challenges to civic space in Uganda.

1.2 Methodology

This report is based on a qualitative study of relevant primary and secondary legal materials based not only on the Ugandan case, but drawing from international and regional legal instruments and cases.

This methodology was adopted because of the nature of the instruments under review which called for a primarily textual analysis as opposed to more quantitative research methods.

1.3 Structure of the Report

The report is presented in 5 (five) sections. Section one (1) presents the objectives of the study as well as the methodology that was adopted therein.

Sections 2 (two) and 3 (three) set out the international and regional legal standards respectively that are applicable to HRDs. In both instances, both normative and institutional frameworks for the protection of HRDs are examined.

Section 4 (four) interrogates the legislative climate for HRDs in Uganda. Relevant statutes are surfaced and examined from the perspective of civic space and their implications for the activities of HRDs. Institutional structures established domestically with implications for HRDs are also analyzed.

Finally, Section 5 contains the conclusions of the study, as well as a stipulation of critical recommendations to civil society and state actors for the amelioration of the current legal regime.

INTERNATIONAL LEGAL STANDARDS RELATING TO HUMAN RIGHTS DEFENDERS

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2.0 INTERNATIONAL LEGAL STANDARDS RELATING TO HUMAN RIGHTS DEFENDERS

2.1 Normative Framework

The rights of HRDs are based primarily on the corpus of rights applicable to all human beings under international law.

In this regard, note may be taken of the **Universal Declaration of Human Rights (UDHR) of 1948**, which definitively enunciated a range of rights which States are obligated to respect, promote and protect ' as a common standard of achievement for all peoples and all nations'.

SUMMARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)	
Article 1: Right to Equality	Article 16: Right to Marriage and Family
Article 2: Freedom from Discrimination	Article 17: Right to Own Property
Article 3: Right to Life, Liberty, Personal Security	Article 18: Freedom of Belief and Religion
Article 4: Freedom from Slavery	Article 19: Freedom of Opinion and Information
Article 5: Freedom from Torture and Degrading Treatment	Article 20: Right of Peaceful Assembly and Association
Article 6: Right to Recognition as a Person before the Law	Article 21: Right to Participate in Government and in Free Elections
Article 7: Right to Equality before the Law	Article 22: Right to Social Security
Article 8: Right to Remedy by Competent Tribunal	Article 23: Right to Desirable Work and to Join Trade Unions
Article 9: Freedom from Arbitrary Arrest and Exile	Article 24: Right to Rest and Leisure
Article 10: Right to Fair Public Hearing	Article 25: Right to Adequate Living Standard
Article 11: Right to be Considered Innocent until Proven Guilty	Article 26: Right to Education
Article 12: Freedom from Interference with Privacy, Family, Home and Correspondence	Article 27: Right to Participate in the Cultural Life of Community
Article 13: Right to Free Movement in and out of the Country	Article 28: Right to a Social Order that Articulates this Document
Article 14: Right to Asylum in other Countries from Persecution	Article 29: Community Duties Essential to Free and Full Development
	Article 30: Freedom from State or Personal Interference in the above Rights

These rights are also replicated in the two major covenants adopted in 1966, that is to say the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**.

SUMMARY OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	
Article 1: All peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.	Article 14: Right to Asylum in other Countries from Persecution
Article 2: The right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity.	Article 16: The right to be recognized as a person before the law.
Article 3: The right to equality between men and women in the enjoyment of their civil and political rights	Article 17: The right to privacy and its protection by the law.
Article 6: The right to life and survival.	Article 19: The freedom of opinion and expression.
Article 7: The freedom from inhuman or degrading treatment or punishment	Article 21: The right to peaceful assembly.
Article 8: The freedom from slavery and servitude.	Article 22: The right to freedom of association.
Article 9: The right to liberty and security of the person and freedom from arbitrary arrest or detention.	Article 25: The right to participate in the conduct of public affairs, to vote and to be elected and access to public service.
Article 12: The right to liberty and freedom of movement	Article 26: The right to equality before the law and equal protection
Article 14: The right to equality before the law; the right to be presumed innocent until proven guilty and to have a fair and public hearing by an impartial tribunal.	Article 27: The right, for members of religious, ethnic or linguistic minorities, to enjoy their culture, practice their religion and use their language.
Article 10: Right to Fair Public Hearing	Article 24: Right to Rest and Leisure
Article 11: Right to be Considered Innocent until Proven Guilty	Article 25: Right to Adequate Living Standard
Article 12: Freedom from Interference with Privacy, Family, Home and Correspondence	Article 26: Right to Education.
Article 13: Right to Free Movement in and out of the Country	Article 27: Right to Participate in the Cultural Life of Community.
	Article 28: Right to a Social Order that Articulates this Document.

SUMMARY OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Article 1: All peoples have the right of self determination, including the right to determine their political status and freely pursue their economic, social and cultural development.	Article 6: Everyone has the right to work; including the right to gain one’s living at work that is freely chosen and accepted.
Article 2: Each State Party undertakes to take steps to the maximum of its available resources to achieve progressively the full realization of the rights in this treaty. Everyone is entitled to the same rights without discrimination of any kind.	Article 7: Everyone has the right to just conditions of work; fair wages ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure.
Article 3: The States undertake to ensure the equal right of men and women to the enjoyment of all rights in this treaty.	Article 8: Everyone has the right to form and join trade unions, the right to strike.
Article 4: Limitations may be placed on these rights only if compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.	Article 9: Everyone has the right to social security, including social insurance.
Article 5: No person, group or government has the right to destroy any of these rights	Article 12: Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.
	Article 15: Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress.

More particularly, however, the rights of HRDs have been given the special attention they require in terms of the **United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the UN Declaration on HRDs of 1998)**. – Under the Declaration, States recognize the right of all persons to, individually and in association with others, promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

States acknowledge that they have the primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required

to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

To this end, they affirm their recognition of the rights of HRDs to: peaceful assembly and association; information and expression; advocacy around new human rights ideas and principles; participation in government and public affairs; effective remedies; as well as to work and occupation.

In addition to these restatements of traditional rights enshrined in general human rights law, the Declaration guarantees a number of rights that are specifically tailored to the situation of HRDs. In this regard, it is provided that everyone has the right, individually and in association with others, to: participate in peaceful activities against violations of human rights and fundamental freedoms; and to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.

In the same vein, under Article 10 of the Declaration, no one may participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Under Article 14, the State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights. The State is also mandated to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

The Declaration also recognizes the role of non-state actors in promoting and protecting the rights of HRDs. To this end, Article 16 provides that individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in

mind the various backgrounds of the societies and communities in which they carry out their activities.

It is important to note that the Declaration is not an exhaustive enumeration of the rights and freedoms of HRDs, which as noted above, must be founded upon the entire framework of international human rights law.

2.2 Institutional Framework

The normative framework described in the preceding section is monitored and implemented by a variety of international institutions and processes.

One of the most important of these is the office of the United Nations ***UN Special Rapporteur on the situation of Human Rights Defenders***.

The Special Rapporteur on HRDs was created in 2000 to take constant stock of the threats faced by HRDs around the world and to constantly devise strategies for their effective protection. This function is executed through regular country visits, analysis of particular country situations and themes relevant to HRDs as well as formal correspondence with States and interactions and engagement with State officials at various fora.

Other important mechanisms include the ***United Nations Human Rights Committee***, which is a body of independent experts that monitors the implementation and application of the ICCPR; as well as ***Universal Periodic Review (UPR)***, a process under the auspices of the United Nations in which States periodically report on the progress they have made with regard to the promotion and protection of human rights and receive constructive feedback from other States and non-state actors regarding their record including what steps they might take to improve the situation in their jurisdictions.

REGIONAL LEGAL STANDARDS RELATING TO HUMAN RIGHTS DEFENDERS

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3.0 REGIONAL LEGAL STANDARDS RELATING TO HUMAN RIGHTS DEFENDERS

3.1 Normative Framework

The African system also contains a number of instruments that are of direct relevance to the promotion and protection of the rights of HRDs.

In the first place, the *African Charter on Human and Peoples' Rights (ACHPR) of 1986* contains a range of guarantees that apply to HRDs as they do to all human beings. Among other things, the ACHPR guarantees the rights of all persons to:

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (ACHPR) OF 1986 SUMMARY	
Article 1: Non-discrimination	Article 14: Property.
Article 2: Equality before, and equal protection of, the law	Article 15: Work.
Article 3: The right to equality between men and women in the enjoyment of their civil and political rights	Article 16: The best attainable state of physical and mental health.
Article 4: Life and integrity of the person.	Article 17: Education.
Article 5: Freedom from slavery, torture or other cruel, inhuman or degrading punishment and treatment.	Article 18: Protection of the family.
Article 6: Liberty and security of the person.	Article 20: Existence.
Article 7: The right to a fair hearing.	Article 21: Self-determination.
Article 8: Freedom of conscience and religion.	Article 22: Economic, social and cultural development.
Article 9: Freedom of expression, including the right to receive information.	Article 23: National and international peace and security.
Article 10: Freedom of association.	Article 24: A healthy environment.
Article 11: Freedom of assembly.	Article 13: Participation in government and access to public service, property and services

In addition to the above general framework, the African Union and its predecessor the Organization of African Union has supported the protection of the rights of HRDs and made commitments most notably through the Grand Bay (Mauritius) Declaration and Plan of Action of 1999. In that Declaration and Plan of Action, the OAU affirmed its commitment to the promotion and protection of rights of HRDs and urged member States to implement the UN Declaration on Human Rights Defenders.

*The African Commission on Human and Peoples' Rights*¹, has also issued a number of resolutions that are relevant in this regard. For instance, in 2003, the African Commission on Human and Peoples' Rights at its 33rd Ordinary Session determined

1 The African Charter established the African Commission on Human and Peoples' Rights which was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia. The Secretariat is located in Banjul, The Gambia and is tasked with three major functions; the protection of human and peoples' rights ; the promotion of human and peoples' rights ; the interpretation of the African Charter on Human and Peoples' Rights

that any inappropriate intrusion into or restriction upon the work of HRDs would constitute a violation of the ACHPR. In addition, the Commission has issued Resolution ACHPR/69(XXXV) 04 of 4 June 2004 on the protection of human rights defenders in Africa; Resolution 83(XXXVIII) 05 of 5 December 2005 on the appointment of a Special Rapporteur on Human Rights Defenders in Africa; Resolutions ACHPR/Res.119 (XXXXII) 07 and ACHPR/Res.196 (L) 11 on the Situation of Human Rights Defenders in Africa; and Resolution ACHPR/Res.125 (XXXXII) 07 relative to the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa.² Through these instruments, the African Commission has helped to apply the African Charter to the situation of HRDs on the continent and has thereby created a favorable normative climate for the promotion and protection of their rights.

3.2 Institutional Framework

The normative architecture for the protection of HRDs is mainly implemented by the African Commission on Human and Peoples' Rights. The Commission is mandated to consider complaints regarding violations of the African Charter and making conclusive findings of fact and law addressed to the State in question, aimed at redressing the violation and ensuring future compliance with the Charter.

The African institutional mechanism has been recently modified to include an **African Court on Human Rights**³. However, the utility of this Court is limited by the fact that its contentious jurisdiction can only be directly accessed by individuals where the State against whom the violation is alleged had made a declaration accepting the Court's competence to receive such petitions. ***Uganda is among many other African countries which are yet to issue declarations allowing the Court to consider petitions by individuals in respect of human rights violations in their jurisdictions.***

Like the international system and as noted in the preceding section, the African regional system has also created an ***African Special Rapporteur on Human Rights Defenders***.⁴ The Special Rapporteur is charged with examining violations of the rights of HRDs across the continent and making targeted interventions regarding the same, mainly by way of recommendations to the African Commission on Human and Peoples' Rights.

2 Adopted at its 42nd Ordinary Session held in Brazzaville, Republic of Congo from 13 to 28 November 2007.

3 The **African Court of Human and Peoples' Rights (AfCHPR)** entered into force in 2004 as a regional court created to make judgments on African Union states' compliance with the ACHPR. The AU discourages prosecution of human rights abuses in the International Criminal Court, hoping that they would be tried by the AfCHPR instead; but the AfCHPR has achieved very little

4 See, generally, <http://www.humanrights-defenders.org/achpr-mandate>

RELEVANT SUB-REGIONAL STANDARDS

4.0 RELEVANT SUB-REGIONAL STANDARDS

4.1 Normative Framework

The major instrument at the sub-regional level is the *Treaty for the Establishment of the East African Community ('the EAC Treaty')*. In the first place according to Article 6 (d) of the EAC Treaty, one of the fundamental principles of the Community is the promotion of good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. Under Article 7 (2) of the Treaty, the Member States of the EAC commit themselves to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights. In addition, under Article 123 (3) (c), Member States commit to pursuing a common foreign and security policy aimed at developing and consolidating democracy and the rule of law and respect for human rights and fundamental freedoms.

Since the re-establishment of the East African Community an important normative development in the EAC was the adoption by the East African Legislative Assembly of an East African Human Rights Bill 2012. The Bill mirrors the articulation of rights contained in the international and regional bills of rights and as highlighted in Sections 2 and 3 of this report. However, to become binding, the Bill requires the approval of the Heads of State of the Community, upon which it will become an Act of the EAC. This has not materialized.

4.2 Institutional Framework

A major avenue for the protection of HRDs at the EAC level is the *East African Court of Justice* which is established as one of the organs of the Community under Article 9 (1) (e) of the EAC Treaty. The Court is created as a judicial body charged with ensuring the adherence to law in the interpretation and application of and compliance with the Treaty.⁵ Although the Court does not specifically have an express human rights mandate, it has in the past broadly interpreted the Treaty to address human rights violations in terms of the violations of human rights under the broad rubric of the rule of law principle enshrined in Article 6 (d) of the EAC Treaty.⁶

Another important development would be the creation of a Human Rights Commission for the East African Community as envisaged under the East African Human Rights Bill. If it receives the assent of the Heads of State of the EAC and becomes an Act of the Community. This Commission would be a crucial mechanism for supranational action to promote and protect the rights of HRDs in Uganda.

5 Article 23 (1) EAC Treaty.

6 See, for instance, *James Katabazi v. Secretary General of the EAC* 20 November 2007, EACJ First Instance Division, Ref. No. 1 of 2007.

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5.0 LEGISLATIVE CLIMATE FOR HUMAN RIGHTS DEFENDERS IN UGANDA

5.1 Normative framework

Uganda has a fairly progressive Constitution. *The 1995 Constitution* guarantees a range of rights that are relevant for the protection of HRDs. In the first place it recognizes that human rights are inherent and not granted by the State which is only mandated to guarantee them (Article 20 (1)).

The Constitution then proceeds to establish a robust framework of protection, which includes the rights to: non-discrimination (Article 21); life (Article 22); liberty (Article 23); freedom from torture or other cruel, inhuman and degrading treatment or punishment (Article 24); freedom from slavery or servitude (Article 25); property (Article 26); privacy (Article 27); fair trial (Article 28); freedom of speech, expression, association and assembly (Article 29) and education (Article 30).

In addition, civic space is specifically protected under Article 38 of the Constitution, which is to the effect that:

- (1) Every Ugandan citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.
- (2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organizations.

As a whole, therefore the 1995 Constitution should have inspired the enactment of laws in its spirit meant to promote and protect HRDs and their work. Regard may also be had in this respect to Article 79 of the Constitution, under which Parliament is empowered to 'make laws on any matter for the peace, order, development and good governance of Uganda'⁷ and wherein it is required to protect the Constitution and promote the democratic governance of Uganda.⁸

However, a number of laws enacted, especially recently create an increasingly restrictive legislative climate that threatens the existence and work of HRDs.

We examine each of these below:

7 Article 79 (1).

8 Article 79 (3).

5.1.1 The NGO Registration Amendment Act (2006)⁹

Rationale of the Act: “To amend the NGO registration Act Cap 113 and to provide for the registration of non-governmental organisations; to provide for the monitoring of non-government organisations, and to establish a Board for these purposes and for other connected matters”.

NGOs are governed by the NGO Registration Act of 1989, as amended by the NGO Registration Amendment Act 2006. Under the Act (as amended) an NGO must be certified by the NGO Board before it can operate in Uganda. The challenge is that NGOs are now required under the law to apply for registration annually, with no guarantee of the application being granted from year to year. This is an indirect check on the activities of organizations which are aware that their activities in the current year will determine whether they are allowed to exist in the following year. This is complicated by the lack of transparency in the certification process which lends it to the potential of abuse of discretion.

The restrictive landscape under the prevailing law looks set to be made even more oppressive if the proposed Non-Governmental Organizations Bill of 2015 is passed through Parliament. This Bill seeks to repeal and replace the Non-Governmental Organizations Act Cap 113. The Memorandum to the Bill betrays the attitude that appears to have informed both this proposed law and related legislation that is the subject of this report. The Memorandum makes reference to the need to deal with the ‘subversive methods of work and activities’ of certain NGOs. To this end, a rigorous framework for NGO certification and regulation is imposed, which would virtually freeze the activities of any NGOs whose activities would in any way challenge the established State authority.

The Bill would establish a more robust NGO Board, supported by an elaborate framework of regional branches; District NGO Monitoring Committees (DNMCs) and Sub-County NGO Monitoring Committees (SNMCs). In effect, the Bill would require NGOs in addition to certification from the Board, to obtain permission from each DNMC in whose area they intend to operate. Given the multitude of current districts in Uganda an NGO wishing to carry out activities throughout the country would have to obtain in excess of 100 permits.

The Bill would also notably introduce personal liability for directors and officers of NGOs whose actions or omissions cause an NGO to violate the provisions of the Bill. Taken as a whole, the Bill establishes a regime that appears to be aimed at stifling and controlling rather than enabling the activities of NGOs as HRDs.

9 See, generally, B Kabumba ‘An analysis of the Legal Environment for Civic Organization in Uganda’, paper presented at a Civil Society Action Planning Meeting on Governance of Natural Resources, 10th April 2014.

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Section 2	Registration: No Organisation is authorised to operate unless it is registered by the NGO registration Board and has been granted a valid permit.	This provision subjects the operation of NGOs to the discretion of the NGO Board. It gives the NGO board the power to determine which organisations operate in Uganda. Furthermore, the board may arbitrarily refuse to grant or delay the renewal of an organisations permit or may issue tough conditions for the operation of an NGO.
Section 2 (4)	An organisation shall not be registered if its objectives are inconsistent with the law.	Organisations that promote the rights of marginalised groups eg Sex workers or LGBTI and groups that advocate for contentious issues such as safe abortion could be denied registration or their permits may not be renewed by the NGO Board.
Section 2 (5)	Consequences of contravening the Act. It is an offence to contravene any of the provisions of the Act. On conviction the party is liable to a fine not exceeding UGX 500,000/= . Personal liability of Directors of NGOs that contravene the provisions of the NGO Act are also liable to a fine not exceeding UGX 1,000,000/= or 6 month imprisonment or both.	The threat of criminal sanctions may be used to harass NGOs and could scare HRDs into adopting a self censorship approach that steers clear of politically sensitive matters.

5.1.1.1 NGO Bill (2015)

Rationale of the Bill: To repeal and replace the NGO Act Cap 113 as amended, to provide for legal and procedural guidelines to facilitate transparency in NGO operations to promote and develop a charity culture that is non-partisan and relevant to needs and aspirations of the people.

The NGO BILL seeks to heighten government control and restrictions on the operations of NGOs. It grants broad and far reaching powers to the NGO Board, to supervise, approve, inspect, and dissolve all nongovernmental organizations and community based organizations and impose severe criminal sanctions on organizations that don't comply with the Bill.

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Clause 6	<p>Functions of the NGO Board :</p> <ul style="list-style-type: none"> » Issue guidelines for organizations » Monitor activities of organizations » To register organizations, review permits, revoke permits and renew permits. » Issue certificates of incorporation 	<p>HRDs will be subjected to broad and extensive restrictions by the NGO Board. The Board will directly interfere with the operations of NGOs, it could issue tough and unreasonable conditions that severely curtail the freedom of association.</p>
Clause 7	<p>Powers of the NGO Board:</p> <ul style="list-style-type: none"> » Summon and discipline organizations » Disciplinary action may include: warnings, suspension of permits, Exposure of the organization to the public, black listing, or other disciplinary action that the Board may deem fit. 	<p>The threat of sanctions could lead HRDs to practice self-censorship. They may choose to avoid matters that are considered politically sensitive in order to avoid arbitrary penalties from the NGO Board.</p>
Clause 9(2)	<p>Membership of the board of directors</p> <p>The board of Directors shall be appointed by the minister with approval of the cabinet.</p>	<p>Members of the board are likely to pay allegiance to the minister who may serve the selfish interests of the ruling government.</p>
Clause 31(1)	<p>No organization shall operate in Uganda without being registered by the NGO the Board.</p>	<p>The mandatory registration requirement gives the NGO Board sweeping powers to determine which organizations' operate in Uganda.</p>
Clause 31 (4)	<p>The NGO Board may refuse to register an organization:</p> <ul style="list-style-type: none"> » Where objectives of organization are contrary to the law. » Where application for registration doesn't comply with the law. » Where applicant provides false and misleading information » Where it is in the public interest to refuse to register an organization » Any other reason the board deems fit 	<p>The Board may arbitrarily decline to register organizations that intend to implement activities it deems illegal or contrary to the "public interest".</p> <p>The Bill doesn't define "Public interest" giving the board the arbitrary powers to determine what is or isn't in the public interest. This vague provision could be abused.</p>

<p>Clause 31 (5)</p>	<p>Issuance of a permit: Upon registration an organization shall be granted a permit that stipulates:</p> <ul style="list-style-type: none"> » The operation of the organization; » The areas where the organization may carry out its activities; » Staffing of the organization; » The geographical area of coverage of the organization; » The location of the organization headquarters; » Expiry of the permit and » The type of organization registered 	<p>An organization that operates without a valid permit is liable to pay a fine of UGX 4,000,000/= (Clause 35(10). The Director of the organization will also be personally liable to a fine of UGX 4,000,000/=</p> <p>An organization that fails to renew its permit or operates, contrary to the directions of the permit, is liable to pay a fine of 2,000,000/= The Director will also be personally liable to a fine of UGX 2,000,000.</p> <p>The threat of criminal sanctions severely hinders the enjoyment of freedom of association</p> <p>It hinders Human Rights Defenders to respond to the dynamic needs of society due to geographical restrictions.</p> <p>The board may compromise the recruitment and job security of staff in Human Rights organizations.</p>
<p>Clause 31(11)</p>	<p>Acts or omissions by staff or directors of the organization that contravene are punishable by a fine of UGX 2,000,000 or imprisonment not exceeding four (4) years or both</p>	<p>Imposes dual liability on both the organization and its directors / staff i.e. the person of the director / staff and the person of the organization are both liable to a fine of UGX 2,000,000 each or imprisonment not exceeding four (4) years or both for the same acts or omission</p>
<p>Clause 33</p>	<p>Grounds for revocation of permit: The Board may revoke the permit of an organization on the following grounds:</p> <ul style="list-style-type: none"> » The Organization contravenes the conditions and directions specified in the permit; » The organization does not operate in accordance with its constitution; » The Organization contravenes the provisions of the Act; » It is in the public interest to revoke the permit. 	<p>The threat of having a permit revoked by the NGO Board could lead to self-censorship thus affect joint advocacy or coalitions and networks of HRDs working together on a particular social or political issue.</p> <p>»</p> <p>The broad and vaguely worded grounds for revocation of a permit, could be used arbitrarily by the NGO Board to unduly restrict freedom of assembly and association.</p>

<p>Clause 37 (a)</p>	<p>Inspection by an official of the NGO Board: The Bill permits an officer of the NGO Board to inspect the premises of an organization and request for information that is necessary to give effect to the Act.</p>	<p>A person who obstructs an officer who inspects an organization or provides false information commits an offence and is liable on conviction to a fine of UGX 960,000/=</p> <p>This provision grants the board extensive powers to interfere with the operations of NGOs and could potentially lead to the infringement of codes of professional secrecy and confidentiality between the NGO and the beneficiaries of its services. The principles that govern a free and democratic society require the board to notify the organization days in advance of its intention to inspect the organization's premises. The notice should specify the purpose of inspection and the relevant information that should be availed. Where the said information is privileged or subject to strict standards of confidentiality, the board should obtain a court order.</p>
<p>Clause 40</p>	<p>Special obligations of organizations: The Bill imposes a number of special obligations on Organizations:</p> <ul style="list-style-type: none"> » Not to carry out its activities in any part of the country unless it has approval from the Local government or District NGO monitoring committees » Not to extend its operations to areas not described in the permit, unless it has approval from the Board » Not to engage in acts that are prejudicial to the security of the country » Not to engage in activities prejudicial to the interests and dignity of the people of Uganda. » Be nonpartisan 	<p>The ill-defined "special obligations" could be interpreted broadly and arbitrarily by the Board to limit the operations of NGOs. For example, 'interests and dignity of Ugandan people' or 'security' could be used to restrict or limit the operations of NGOs engaged in advocacy.</p> <p>HRDs involved in political advocacy may be misconstrued to be partisan in their actions.</p>

5.1.2 The Regulation of Interception of Communications Act (2010)¹⁰

Rationale of the Act: To provide for the lawful interception and monitoring of communication in the course of transmission through postal or other related forms of communication. The law limits the right to privacy guaranteed under the Constitution of Uganda by enabling government to intercept private communication under circumstances specified in the law.

This Act allows for interception by the State of a wide range of communications whether by post, telephone, email or others under the broad justification of national security with the sanction of a High Court Judge.

The law constitutes a significant tool that can be used to monitor and curtail the activities of HRDs, a danger which is not altogether obviated by the judicial role envisaged, since the judicial oversight is only at the point of interception of the communication and would not conceivably extend to the use made of the information obtained.

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Section 5	<p>A designated Judge of the High Court shall issue a warrant to the authorized persons if there are reasonable grounds to believe that:</p> <ul style="list-style-type: none"> » An offence which may result in the loss of life has been or is about to be committed; » That the gathering of information concerning an actual or potential threat to national security or national economic interest is necessary; » An offence of human or drug trafficking has been, is being or is about to be committed » There is a threat to the national interest involving the State's international relations or obligations. <p>In cases of urgency or existence of exceptional circumstances, a designated judge may permit an oral application.</p> <p>The designated Judge has the power to revoke or amend the warrant.</p>	<p>This provision subjects the process to judicial oversight which is necessary to guard against the abuse of process.</p> <p>However, there is no safeguard in place to ensure that the information collected is not misused in a manner that infringes individuals' right to privacy.</p>
Section 8	<p>Assistance by service providers: Service providers are required to ensure that their postal or telecommunication systems are capable of supporting lawful interceptions at all times. A service provider who fails to cooperate commits an offence and upon conviction, is liable to a fine of UGX 2,400,000 or imprisonment not exceeding 5 years. The minister of information and UCC mat also cancel the license.</p>	<p>This provision imposes a burden on service providers to acquire equipment that will facilitate the interception of communication. The cost of acquiring this equipment is expected to be passed on to the HRDs who use such services.</p>

10 Act No. 18 of 2010.

Section 10	<p>Notice of disclosure of protected information: An authorized person under the Act, may by notice impose a disclosure requirement on a person believed to be in possession of information that is necessary in the interests of in the interest of national security; or for the purpose of preventing or detecting an offence that may result to loss of life or threat to life; or for the purpose of preventing or detecting an offence of drug trafficking or human trafficking; or in the interest of Uganda’s economic well being</p> <p>A Person who fails to comply with a notice for disclosure, commits an offence and is liable upon conviction to a fine of 2,400,000/= or imprisonment not exceeding 5 years</p>	<p>This provision is problematic because it is not subjected to judicial oversight. Courts alone should have the power to order the disclosure of information, in order to guard against the infringement of an individual’s right to privacy.</p> <p>The threat of criminal sanctions may compel service providers to provide information to the State authorities which could be used to curtail the activities of HRDs who are critical of government policies</p>
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5.1.3 The Uganda Communications Act. (2012)

Rationale of the Act: To among others, “consolidate and harmonize the Uganda Communications Act and the Electronic Media Act”.

Under this law, the Uganda Communications Authority is empowered to establish a committee to examine complaints related to national security concerns with respect to content providers.

As noted above, the broad catch-all justification of national security provided under this law is a natural foundation for wide ranging censorship of HRDs, such as those which might seek to mobilize citizens with respect to oil revenues or other related questions of public expenditure accountability.

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Section 28 (1)	<p>Rights of broadcasters: Broadcasters are required to comply with laws which prohibit the broadcasting of pornographic material and obscene publications; or any broadcasting which infringes upon the privacy of any individual</p>	<p>This section could be used to censor programs that address the plight of sexual minorities or create awareness about safe sex practices and sexual and reproductive health</p>
Section 29	<p>Duties of a licensee or producer of a broadcasting station. A producer shall not broadcast material which is contrary to “public morality” and retain all material that is broadcast for 6 months</p>	<p>“Public morality” could be misinterpreted to limit freedom of the press. It could also give rise to self-censorship by broadcasters out of the fear of being penalized by the UCC.</p>

Section 31	<p>Minimum broadcasting standards: The Act, in its second schedule imposes a duty on producers shall ensure that any programme which is broadcast—</p> <ul style="list-style-type: none"> » is not contrary to public morality; » Does not promote the culture of violence or ethnical prejudice among the public, » In the case of a news broadcast, is free from distortion of facts; » is not likely to create public insecurity or violence; » is in compliance with the existing law; 	<p>This broad provision grants the UCC broad discretionary powers to restrict the content of broadcasting, especially where it is deemed to be contrary to public morality. For example programs that address the situation or rights of sexual minorities or other contentious issues ,such as safe abortion, could be banned by the UCC on the premise that the subject matter is illegal or against public morality</p> <p>In addition HRDS who are critical of government policies, question the use of public resources or seek to expose cases of graft, could from having their views broadcast on the premise that they constitute a “distortion of facts.”</p> <p>This provision, curtails freedom of the expression and freedom of the press.</p>
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5.1.4 The Public Order Management Act, 2013

Rationale of the Act: To provide for public management and to regulate the exercise of freedom of assembly in accordance with Article 29 and 43 of the Constitution of Uganda. ,

The Public Order and Management Act (POMA) of 2013 is another significant clog on the activities of HRDs, especially those dealing with civil and political rights.¹¹

In reality, the POMA reintroduces the previously nullified Section 32 (2) of the Police Act which was declared unconstitutional by the Constitutional Court in *Muwanga Kivumbi v Attorney General* (2005).¹²

This is done through replacing the phrase ‘reasonable grounds’ under the former subsection (2) of the Police Act, with a number of stipulated grounds upon which public gatherings may be prevented.¹³

The effect of the Act is to prioritize the vague notion of ‘order’ over the fundamental right of peaceful assembly and civic participation guaranteed under Articles 29 and 38 of the Constitution. As Professor Oloka-Onyango has correctly observed:

Despite its professed noble intensions with regard to the maintenance of law and order, the [POMA] is fatally flawed for several reasons. In the first instance, the Act reverses the basic premise on which the right to freedom of peaceful assembly is based. In other words, the [POMA] forces those who oppose the government of the day and want to translate such opposition into

11 Available at <http://ulug.org/files/downloads/Public%20Order%20Management%20Act%202013.pdf>

12 See, generally, B Kabumba ‘The unconstitutionality of the Public Order Management Act’, Monograph, 20th October 2013.

13 As above.

protest to justify why they should not be stopped from protesting. The Act should instead be compelling the Police to give sound reasons for refusing a protest to take place. Secondly, the [POMA] places an inordinate degree of discretionary power in the Police, and specifically in the Inspector General of Police. This is obviously problematic because it makes the IGP prosecutor and judge in his own cause, violating basic principles of natural justice. Thirdly, the law gives lower-ranking Police officers the perfect excuse for not taking action which supports human rights rather than curtails them. The first words out of the mouths of officers ... are: 'I'm (simply) acting on orders from above.'¹⁴

The POMA has already been used in practice to prevent a number of activities by HRDs, including the activities of the Black Monday Movement (against the theft of public resources) and seems to be poised to continue to operate as one of the most potent tools for the further restriction of civic space in Uganda.

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Section 3	Power of the Inspector General of Police (IGP) : The IGP or authorized officer is vested with the power to regulate the conduct of public meetings	The Act subjects public meetings of HRDs to the wide discretionary powers of the IGP
Section 4	Meaning of a public meeting: A public meeting is “a gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest”. It doesn't <i>inter alia</i> include: A meeting of members of any registered organization, whether corporate or not, convened in accordance with the constitution of the organization and held exclusively for a lawful purpose of that organization; A meeting for a social, religious, cultural, charitable, educational, commercial or industrial purpose;	From the plain reading of the Act, ordinary meetings of HRDs and their members, including, workshops, trainings and dialogues, which are organized in accordance with the organization's founding instrument (constitution or charter) are not subject to the Act. However, the police could use its broad discretionary powers under the Act, to restrict these meetings. The IGP may use the broad discretionary powers to prevent public meetings or peaceful processions organized by political activists , to oppose flawed government policies or demand accountability

14 See Prof. J Oloka-Onyango 'Of mice and farmers' wives: unveiling the broader picture behind recent legislation in Uganda', paper presented at HURIPED Public Dialogue held on March 25, 2014, available at <http://law.mak.ac.ug/article/mice-and-farmers-wives>

Section 5	<p>Notice of Public meeting: An organizer of a public meeting is required to notify the IGP or authorized officer of: Address of the organizer, Consent from the owner of the venue where the public meeting will take place, time of the public meeting, (should be between 7:00 am -7:00 pm) purpose of the meeting and the number of persons that will participate.</p> <p>A person who , without reasonable cause, organizes a public meeting in contravention of the provisions of the Act commits an offence and is liable, on conviction to imprisonment not exceeding 2 years, as per s. 116 of the Penal code Act</p>	<p>This provision unduly restricts the enjoyment of freedom of association; The IGP is likely to use his broad powers to prevent public meetings of persons or groups that demand for just and accountable government policies</p>
Section 6	<p>Notification by authorized official: Upon receipt of a notice of public meeting and where it is not possible to hold the public meeting, the authorized officer is required, within 48 hours, to write back to the organizers informing them of reasons why it is not possible to hold the public meeting. The reasons include: the venue is considered unsuitable for purposes of crowd and traffic control or will interfere with other lawful business,</p> <p>The authorized officer is also required to invite the organizers to identify an alternative and acceptable venue or to reschedule the public meeting</p>	<p>The police could use its broad, and arbitrary powers under this provision to prevent HRDs from organizing public meetings. This also gives the police an opportunity to dillydally giving a response and using flimsy excuses on why the chosen venue can't be availed to a particular group of HRDs</p>
Section 8	<p>Powers of authorized officer: Subject to the directions of the Inspector General of Police, an authorized officer or any other police officer of or above the rank of Inspector may stop or prevent the holding of a public meeting where the public meeting is held contrary to this Act.</p> <p>A person who neglects or refuses to obey an order issued by an authorized officer commits an offence and is liable on conviction, to imprisonment for two years as per s. 117 of the Penal Code Act.</p>	<p>This provision grants wide and discretionary powers to the police which could be exercised in contravention of the principles of natural justice; and could be used to severely curtail the enjoyment of freedom of association.</p> <p>The POMA has already been used in practice to prevent a number of activities organized by HRDs, including the activities of the Black Monday Movement and public meetings convened to call for electoral reforms</p>

Section 10	<p>Responsibilities of organizers:</p> <ul style="list-style-type: none"> » Adhere to required criteria for the meeting » Inform participants of the traffic guidelines and assembly plan » Coordinate and cooperate with the police to ensure participants are unarmed and peaceful. » Ensure statements made to the public and media do not conflict with any law » Ensure that the meeting is concluded by 7:00pm 	<p>Imposes an undue burden on organizers of public meetings more like deter them not to hold public meetings. The time restriction hinders the enjoyment of freedom of association.</p>
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5.1.5 The Anti-Money Laundering Act (2014)

Rationale of the Act : To provide for the prohibition and prevention of money laundering; to impose certain duties on institutions and other persons, businesses and professions who might be used for money laundering purposes;

The Anti-Money Laundering Act (AMLA), like a number of other laws, does not immediately appear to be relevant to the work of HRDs.

However, like a number of the laws examined above, the AMLA contains broad and overarching provisions under which the assets and business transactions of persons and organizations of interest may be closely monitored and curtailed under the guise of public interest.¹⁵

Indeed, the dangers posed by this seemingly innocuous language are best appreciated from a *reading of the AMLA together with the proposed powers of the NGO Board under the NGO Bill of 2015, which permits enhanced scrutiny of NGOs and empowers the Board to de-register entities that violate ‘any law’.*

15 See R Kirunda ‘Rhetoric or Reality? An Analysis of the Role of the Anti – Money Laundering Act, 2013 in the Fight Against Corruption in Uganda’, Second Paper: Legal Analysis of Recent Bills Series, Parliament Watch Uganda (2014).

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Section 1	<p>Definitions</p> <p>Money laundering: “money laundering” is the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under the Money Laundering Act</p> <p>Accountable persons “accountable persons” include advocates, financial institutions, real estate agents, investment dealers, brokers, and advisers licensed under the Capital Markets Authority Act (Cap 84), insurance companies, all licensing authorities, churches, Non-Governmental Organizations (NGOs) and other charitable organizations who, by the nature of their business or profession are deemed to be at risk of being involved in the different stages of money laundering or terrorist financing.</p>	<p>This provision imposes duties and obligations on NGOs to take measures that prevent and detect transactions that could be used by criminals in money laundering. This could mean HRDs inquiring of donors of their sources of funding. This also allows for bank account surveillance even by people who will feign to be looking out for money laundering.</p>
Section 6 (2)	<p>An accountable person shall not initiate a business relationship or carry out an occasional transaction, including the opening of a new account or perform a cash transaction, over 20,000,000/= (one thousand currency points), or conducting a wire transfer, without undertaking customer due diligence measures, including obtaining, recording and verifying by reliable means— The identity of the person, the purpose of the transaction or business relationship</p>	<p>The Act imposes a series of due diligence obligations on ‘accountable persons’</p> <p>For example, Financial institutions are required to monitor the transactions of their clients. They are supposed to keep detailed records of the transactions</p>
Section 8	<p>Recording and reporting cash and monetary transactions: An accountable person is required to keep detailed and accurate records of their cash and monetary transactions exceeding 20,000,000 (1,000 currency units)</p> <p>This information is to be provided to the Minister within a specified period</p>	<p>This provision enables government to heavily monitor and scrutinize money transfers and other transactions of HRDs, if those transactions exceed 20,000,000/=.</p> <p>Government could use the information obtained to seize or freeze the assets of HRDs or activists with divergent political views, under the guise of ‘public interest’, thus curtailing their access to resources.</p>

Section 14	<p>Obligations of professional secrecy or confidentiality, between banks and their clients shall not affect the disclosure of information under the Act.</p> <p>Communication between Advocates and their clients are excluded from this provision.</p>	<p>This blanket exclusion of confidentiality could result in the misuse of information by government institutions.</p>
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5.1.6 The Anti-Homosexuality Act (2014)

The Anti-Homosexuality Act was passed by Parliament in 2014 and annulled by the Constitutional Court in the same year on a narrow technical ground of quorum.¹⁶

This notwithstanding, a draft version of a new Bill, along similar lines has been prepared under the title, the *'Prohibition of the Promotion of Unnatural Sexual Acts Bill'*. Like its predecessor, the Bill focuses on 'promotion' of same sex practices and is directly targeted towards HRDs who work or are perceived to work in the area of sexual and gender minority rights.

Moreover, through association the Bill may be used to repress the activities of partner organizations and grant-making agencies which are broadly deemed to be engaged in the promotion of homosexuality.

5.1.7 The Anti-Pornography Act (2014)

Rationale of the Act: To create and define and create the offence of pornography.

This Act ostensibly seeks to prohibit publication and trafficking in pornography. Although this appears to be in the public interest on the face of it, a wide discretion is granted to the Pornography Committee established under the Act in terms of the 'detection and prohibition' of pornography, as well as in ensuring the apprehension of perpetrators. The Minister charged with the implementation of the Act is the Minister for Ethics, whose actions in the past have particularly targeted the activities of HRDs working in the areas of the rights of sexual minorities and those of sex workers. Given that the Minister is also empowered to appoint the Pornography Committee, it is not inconceivable that the implementation of the Act will disproportionately and inordinately target the activities of HRDs whose activities are frowned upon by the Minister for Ethics and the Pornography Committee, even where such activities are legitimate exercises of the freedoms guaranteed under the Constitution.

16 See *Oloka Onyango & 9 Others v Attorney General* Constitutional Petition No. 8 of 2014, available at <http://www.ulii.org/ug/judgment/constitutional-court/2014/14>

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Section 1	The Act defines Pornography as “ Any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or stimulated explicit sexual activities or any representation of sexual parts of a person primarily for sexual excitement’	The definition of Pornography is broad, imprecise and vague. It could be interpreted to cover a range of activities and practices, which are subjectively deemed as pornographic. These include educational materials on sexual and reproductive health, HIV/ Aids or other related information. The broad definition of pornography could be used to infringe women’s right to autonomy, dignity and equality. For example a number of women have been stripped and violated by hooligans, in the name of enforcing the Act.
Section 11	Powers of the Pornography control Committee: The Committee is vested with powers to order the production, inspect, and examine documents in relation to the enforcement of the Act. The Committee is also empowered to seize material, equipment or documents that it deems pornographic or have been used to transmit pornography. It also has the authority to order the closure of an internet service provider or cause the arrest of persons who are believed to have committed an offence under the Act	This provision is problematic because it grants the Committee sweeping powers to search and seize property it deems pornographic, without first obtaining a warrant from court. This power is likely to be abused, and could result in the infringement of the right to privacy, the right to liberty and freedom of expression.
Section 13	Prohibition of pornography: Persons are prohibited from trafficking, publishing broadcasting procuring, importing, exporting selling or abet any form of pornography. 2 A person who produces or participates in the production or traffics in publishes procures imports exports or in any way abets pornography commits an offence, and is liable on conviction to a fine not exceeding 500 currency points (10,000,000) or 10 years imprisonment	Given the broad and vague definition of pornography, the prohibition could be arbitrarily applied to restrict public debate, dissemination of educational materials, and activities that promote sexual and reproductive health the rights of sexual minorities. The penalties under the Act are severe and disproportionate to the crime.

5.1.8 The Anti-Terrorism Act (2002)

Rationale of the Act: To among others, “suppress acts of terrorism, to provide for the punishment of persons who plan, instigate, support, finance or execute acts of terrorism;”

This Act was enacted in 2002, in the wake of the September 11th terrorist attacks in the United States. The law therefore directly tapped into an existing climate of fear, allowing for a quick passage through Parliament with relatively limited public debate.

Although the Act addresses a legitimate concern, that is to say the prevention and punishment of terrorism, like a number of the laws highlighted above, the Act contains a number of broad provisions that leave it open to abuse. These include such broad offences as the ‘promotion of terrorism’ which may catch within its ambit a wide range of legitimate activities especially in the areas of human rights advocacy. This was powerfully demonstrated in September 2010 when Mr. Al-Amin Kimathi, a Kenyan human rights activist and Mr. Mbugua Mureithi, a Kenyan lawyer, were arrested and charged under the Anti-Terrorism Act, after they had travelled from Kenya to Uganda to observe the trial of six Kenyans arrested in connection with the bomb attacks at Kyadondo in July of that same year.

PROVISION	PARTICULARS	IMPLICATIONS FOR HRDS
Section 7	<p>Creates the offence of terrorism and lists a broad range of activities that constitute terrorism.</p> <p>A person convicted of terrorism is liable to suffer death.</p>	<p>The Definition of terrorism under the Act is broad and vague. It could be subjectively interpreted undermine fundamental rights guaranteed under the Constitution, including freedom of expression, Freedom of assembly and association. For instance some of the demonstrators during the September 2009 protests, following the refusal by the Government to allow the Kabaka to visit Kayunga were charged with terrorism related offences.</p>
Section 8	<p>Aiding and abetting terrorism: Any person who aids or abets or finances or harbors, or renders support to any person, knowing or having reason to believe that the support will be applied or used to commit acts of Terrorism commits an offence and shall, on conviction, be liable to suffer death.</p>	<p>This provision is broad and could be subjectively interpreted to restrict fundamental rights guaranteed under the constitution.</p>
Section 19	<p>Interception of communication and surveillance: An authorized officer under the Act, has the right to intercept the Communications of a person and conduct surveillance of a person suspected of committing any offence under the Act.</p>	<p>The absence of judicial oversight creates an opportunity for the broad interpretation and misuse the powers under this provision, resulting in the violation of the right to privacy, guaranteed under the constitution.</p>

5.1.9 The Penal Code Act Cap 120

In addition to the above more specific and relatively more recent laws, a notable trend relates to the use of certain provisions of the long-standing Penal Code Act to particularly target the activities of HRDs.

The provisions which have been most notoriously employed in this regard include, but are not limited to: publication of information prejudicial to security (Section 37); promoting sectarianism (Section 41); incitement to violence (Section 51); unlawful society (Section 56); living on the earnings of prostitution (Section 136); unnatural offences (Section 145); being idle and disorderly (Section 167); libel (Section 179) and related offences.

The effect is that, about more than half a century after independence, laws enacted in the colonial period, primarily to stifle alternative expressions of identity and dissent, are still being used today for exactly the same purpose.

5.2 Institutional framework

The same challenges apparent in the above normative framework are evident in the institutional mechanisms for the protection of HRDs in Uganda.

One avenue for the protection of HRDs are the **Courts of law, as stipulated under Articles 50 and 137 of the Constitution**. Under Article 50 of the Constitution, may approach a competent court for redress in respect of a violation of the rights of that person or another person. Under Article 137 of the Constitution, the any person may petition the Constitutional Court of Uganda for a declaration that any law is inconsistent with the Constitution. The above provisions notwithstanding, the judicial system has itself come under scrutiny in terms of chronic case backlog and, more problematically, rampant corruption at all levels of the courts. Moreover, there a clear trend towards disrespect of court orders by the executive, which further calls into question the utility of domestic courts in the protection of HRDs.

Regard may also be had to the **Uganda Human Rights Commission (UHRC), which is established under Articles 51-58 of the Constitution**. The UHRC has been instrumental in the protection of HRDs, particularly through conducting investigations and publishing annual reports on the human rights situation in Uganda, as well as by handling complaints submitted to it in respect of human rights violation. These contributions notwithstanding, like the Courts, the Commission is plagued by under-funding and consistent disrespect of its orders and awards, which has diminished its capacity to fully realize its constitutional mandate.

Similarly, **the Equal Opportunities Commission (EOC), a constitutional body envisaged under Article 32 of the 1995 Constitution** has only recently been established by Parliament.¹⁷ Under Article 32 of the Constitution, the Commission is charged with eliminating discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, color, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability; and taking affirmative action in favor of groups marginalized on the basis of gender, age,

17 Equal Opportunities Commission Act (2007).

disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them, and to provide for other related matters.¹⁸ It is thus potentially a powerful ally, especially for HRDs dealing with the rights of minorities, including sexual and gender minorities. Nevertheless, the EOC has already started to experience the challenges of its sister organization, the UHRC, in terms of inadequate funding for its full and optimal operationalization. Moreover, its utility is further diminished by the provisions of S.15 (6) (d) of the EOC Act, which prohibits the Commission from considering any petitions concerning behavior which is regarded as ‘immoral and socially harmful’ or ‘unacceptable’ by the majority of the cultural groupings and social communities in Uganda.¹⁹

The Uganda Police Force (UPF) is also a potential partner in the protection of HRDs, in terms of Articles 211-214 of the 1995 Constitution. However, the police has increasingly lost its traditional character, with strong indications towards the militarization of the force.²⁰ Indeed, the police is one of the institutions which are most frequently cited in the harassment and intimidation of HRDs. Although certain progressive developments in the structure of the UPF are evident, notably the institution of the Police Standards Unit to handle complaints against individual police officers, the broader framework and character of the current Force does not bode well for these nascent and limited reforms.

Mention should also be made of **the Parliamentary Standing Committee on Human Rights which was set up in May 2012** and which is mandated to monitor and report on the human rights situation in the country and report its findings to the plenary for appropriate action. Already, some positive developments appear to have emerged following the creation of this Committee, the most notable of which is the Human Rights Compliance Checklist, launched in September 2013, aimed at enabling the Committee to audit all bills coming before the House, for compliance with international, regional and domestic human rights standards. The major drawback of this committee is that it cannot, on its own, take enforcement action to protect human rights, and must ultimately rely on the executive branch of government to effect its recommendations.

18 Article 32 of the 1995 Constitution.

19 S.15 (6)(d) has been challenged in the Constitutional Court in the case of Adrian Jjuuko v Attorney General Constitutional Petition No. 1 of 2009, and a decision in respect of the same is expected on notice.

20 It is noteworthy, for instance, that the current and immediate past Inspectors General of the Police have been serving generals in the Uganda Peoples’ Defence Forces, rather than career police officers.

CONCLUSIONS AND RECOMMENDATIONS

6.0 CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

This study has analyzed the prevailing and anticipated legal climate relevant to the work of HRDs in Uganda.

It finds that this environment is increasingly restrictive, with the passage of a number of laws which, taken together, present very significant challenges for existence and thriving of HRDs in the country. As Professor Oloka Onyango has observed:

“We live in a time of legal gymnastics, a time when the law is being openly used as a mechanism to consolidate and perpetuate dictatorship and autocracy and where there is a need for lawyers, activists and intellectuals of all shades of political opinion to come together and speak out against this legal autocracy. We are witnessing the legalization of mob injustice; the granting of a license to do anything to people who have done nothing but express their dissenting opinions and their different sexuality. The [laws] represent the very essence of the problem we are confronted with in Uganda today, namely growing impunity, autocracy and neglect of the Rule of Law accompanied by increasing nonchalance on the part of the Public.”²¹

The Judiciary has started to take note of this problematic trend, with one Judge, Justice Lydia Mugambe, in particular making pointed observations regarding the implications of this legislative pattern for the freedoms and liberties of Ugandans. In the matter of *Elias Lukwago v The Attorney General & 3 Others*²² the Judge observed as follows:

“With all the due respect, this big elephant in the room in the name of rule by law, in the circumstances before me, appears to have blinded all the respondents in the application before me. Resultantly, they disregarded respect for the rule of law through their utter disregard of the Court Order and ruling of 25th and 28th November 2013 while acknowledging that they received or otherwise know it exists. That, with reckless abandon and effrontery, they/or their agents continue to do the same in whatever manner they clothe it, in my view, is blasphemous and deplorable given they are all in one way or another agents or servants of government – which is mandated to ensure such respect for the rule of law.

Justice Mugambe’s dictum points to the fact that, in addition to the problematic legislation cited in this study, even seemingly benign laws have been applied selectively and problematically by the police and other security agencies, so as to unreasonably restrict the legitimate work and operations of HRDs in Uganda.

This situation calls for new ways of conceptualizing, and responding to, this restrictive framework. To this end, a number of recommendations are suggested, as below.

21 Prof. J Oloka-Onyango ‘Of mice and farmers’ wives: unveiling the broader picture behind recent legislation in Uganda’, paper presented at HURIPPEC Public Dialogue held on March 25, 2014, available at <http://law.mak.ac.ug/article/mice-and-farmers-wives>

22 Misc. Application. No 94 of 2014.

6.2 Recommendations

1. In the first place, there is an urgent need to amend or repeal, as the case may be, the problematic laws or provisions in laws, highlighted in this study as being inconsistent with the freedom and safety of HRDs in Uganda.
2. In addition, it is important for HRDs to advocate for the passage of a specific law that recognizes, and protects, their work. In this regard, Uganda would be following in the footsteps of Ivory Coast, whose Parliament on 11th June 2014 adopted the 'Law on the Promotion and Protection of Human Rights Defenders'. This would be an important mechanism for protecting the work of HRDs in Uganda and holding violators of their rights accountable before domestic tribunals.
3. As an interim measure, human rights defenders should be trained and empowered to enable them to thoroughly understand the current regulatory framework under which their operations are scrutinized, and to this end, to equip them with the requisite means of understanding how to make the best use of the exceptions and defenses within the law to continue doing the important work of human rights protection that they are engaged in.
4. In addition, and perhaps more importantly, HRDs should address the reality of the governance structures from which the restrictive legislative framework has emerged in the past and will continue to emerge in the future, in even more repressive forms. In the absence of this, the responses to these laws will remain *ad hoc* and reactive, rather than preemptive and decisive. Put differently, the current climate requires that all HRDs, including those that have in the past focused primarily on socio-economic rights, leave the relatively comfortable zone provided by 'safe' human rights discourses, and engage with the important questions of the day regarding the reality of the country's governance, as well as how a peaceful transition may be obtained so as to secure the rights and liberties of HRDs and the general population.
5. To counter the restrictive legal environment, HRDs should make use of new media and communication channels such as social media platforms to resist human rights violations, and to organize and resist the restriction of civic space.
6. HRDs should make use of the sub- regional, regional and international human rights mechanisms such as the East African Court of Justice, the African Commission of Human and Peoples rights and the UN reporting and complaints mechanism, to draw attention to the constriction of civic space and to seek remedies for the infringement of fundamental human rights guaranteed in a number of regional and international human rights instruments
7. HRDs should consult with DPI for technical support in implementing the security triangle approach (Acceptance, Protection and Deterrence security strategies). This constitutes a range of mitigating Security management options and actions for organizations transiting from a 'tolerant' to 'hostile' environment.

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