



Policy Brief on the Non-Governmental Organisations (NGO) Act, 2016 (as amended)

1.0 Executive Summary

This assessment was commissioned by the Centre for Constitutional Governance (CCG) with support from the GIZ Civil Society in Uganda Support Programme (CUSP) co-financed by the European Union and the German Federal Ministry for Economic Cooperation and Development (BMZ) and implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) to assess the impact of the NGO Policy, the NGO Act (as Amendment). Center for Constitutional Governance is a regional organization based in Uganda and reaches out to the Eastern Countries of Kenya, Tanzania, Rwanda, Burundi and South Sudan with a cardinal goal of strengthening constitutional governance by bridging the gaps in governance and challenges in policy and regulatory framework. The study sought to provide a deeper understanding of the existing trends in the sector and provide insight into potential reforms. Specifically, the objectives of the study were;

1. Assess the NGO Policy and the NGO Act, highlighting key legal and constitutional issues as well as issues of concern.
2. Seek stakeholder understanding of the key issues in the NGO Policy and NGO Act for meaningful engagement in the processes of reform.
3. Make recommendations for potential legal reform for the NGO Policy and the NGO Act.
4. Participate in the mobilization of NGOs to meaningfully participate in the NGO legal reform processes.

The study used two main approaches: desk review, where literature, laws, policies, and related publications were reviewed. It also used Focus Group Discussions (FGDs). Four online FGDs involving NGO leaders were held for the Central, Northern, Eastern, and Western regions of Uganda. A validation meeting comprised of members of the NGO sector selected from across the country was also held. Some of the key findings of the report include;

1. Categorization of NGOs into indigenous, foreign, regional, and international is potentially discriminatory and may be against the Constitution
2. The definition of Community Based Organisations (CBOs) limits them to

the Sub-County level and below, and this has tended to limit the work of CBOs, especially those that operate beyond Sub-counties

3. The lack of legal personality for CBOs makes it difficult for CBOs to operate, own property, employ staff, and work effectively
4. The Act creates too many reporting levels, which are burdensome and repetitive, this affects the effectiveness of NGOs
5. The lack of guidelines for the conduct of District Non-Governmental Organisations Monitoring Committees (DNMCs) and Sub County Non-Governmental Organisations Monitoring Committees (SNMCs) has affected their effectiveness
6. The lack of proper financing of DNMCs and SNMCs has resulted in them being ineffective and in some Districts not active at all
7. The lack of guidance on how NGOs should choose their representatives on the DNMCs and SNMCs makes it difficult for the participation of NGOs.
8. Whereas the Act provides for self-regulation, it has not been effective because the provisions in the Act provide in detail internal regulation of NGOs. These are not in line with the standards set by Finance Action Task Force (FATF).

The report makes several recommendations to different actors, including;

1. Remove the categorization of NGOs based on members of the organization, since this has not added any value to the sector regulation
2. Extend the definition of CBOs to operate beyond a Sub-County
3. Consider giving CBOs legal personality to enable them to own property, be able to sue, and be sued.
4. Centralize the system of filing returns to limit unnecessary paperwork, which is expensive and time-wasting
5. Reduce the composition of DNMC and SNMC to enable these entities to be effective
6. Provide guidelines on meetings and other issues governing the management of DNMCs and SNMCs
7. Provide for a term of office for members of the DNMCs and SNMCs, especially those representing NGOs.
8. Provide for mechanisms through which NGOs can choose their representatives at the NGO Bureau, DNMCs, and SNMCs
9. Review self-regulation requirements to meet the standards set by the FATF and other international standards.
10. Provide funding for SNMCs and DNMCs to enable the different entities to carry out their work.

2.0 Problem Statement:

Uganda has one of the most regulated NGO sectors in the world. NGOs have to meet obligations under more than 15 laws. The NGO Act which is the main law that governs NGOs has numerous obligations and requirements that could potentially affect the efficiency of the regulators and the performance of the NGOs. The law creates several entities from sub county to national level, some of the entities have not been operational, and the government has not financed them.

This review therefore focuses on issues in the Act that may need to be adjusted or amended to ensure a smooth and vibrant NGO sector in Uganda.

3.0 Key Issues in the NGO Act, 2016

3.1 Categorization of NGOs

The NGO Act categorizes NGOs into Indigenous NGOs, Regional NGOs (RENGO), Continental NGOs, Foreign NGOs, and International NGOs under Section 3. The categorization tends to bring about different treatment for NGOs doing the same work. This could potentially be considered discriminatory and against Uganda's constitution. There is a need to abandon the categorization and NGOs get treated the same way and as equal.

3.2 Limitations on work of CBOs

The Act under Section 3 defines a CBO as an organization operating at a subcounty level and below, whose objectives are to promote and advance the well-being of the members of the community. The definition limits CBOs to sub-counties and below, and yet some community issues may cut across more than one sub-county. The definition also tends to limit CBOs to be run only by citizens and yet there are a number of noncitizens that may need to provide for the community well-being and need to work with communities.

3.3 Lack of legal personality for CBOs

The Act does not give CBOs legal personality, nor does it give them any form of protection in terms of brand, name, etc. As a result, CBOs cannot contract or own property; most of this ends up being owned by the entity donating or by the individuals forming the CBOs. On name and brands, CBOs have tended to lose their brand and name the moment someone other than the CBO registers the names. There has also been confusion where a CBO can get the same name as an NGO. This results from the fact that name registration is not centralized. The Law needs to centralize the name registration process.

3.4 Too many reporting entities

The Act provides for the NGO Bureau as a body charged with the management of NGOs and the general implementation of the Act. Below the Bureau is the DNMC and the SNMC. An NGO has to report to the NGO Bureau and to every DNMC and SNMC where it operates. This makes enormous work and control for a number of entities that an NGO operates. For example, an NGO operating in 10 districts and 10 sub-districts in each district has to report to more than 100 levels! This needs to be streamlined to reduce the reporting levels.

3.5 Excessive composition of DNMCs and SNMCs

At each district and sub county is an 8 member DNMC and 5 member SNMC, these are comprised of the Chief Administrative Officer (CAO), who is the chairperson of the committee; the District Community Development Officer (DCDO), who is the secretary to the committee, the District Health Officer, the District Internal Security Officer (DISO), one representative of the NGOs in the district, the District Education Officer (DEO), and the Secretary for gender and

community services for each DNMC. The DNMC may co-opt technical officers to handle specific issues. The SNMC comprises of the Senior Assistant Secretary (or sub-county chief), who is the Chairperson of the committee, the sub-county Community Development Officer of the sub-county, who is the secretary to the committee, the sub-county health inspector, the Gombolola Internal Security Officer (GISO), and a representative of NGOs in the sub-county (Section 20).

A number of members of these bodies are not involved in the direct regulation of NGOs, and these have tended not to attend DNMC and SNMC events, such as meetings. This has made the committees fail to work. There is a need to reduce on the size of DNMCs and SNMCs.

3.6 Lack of guidelines

The Act mandates the NGO Bureau, under Section 6(b), to formulate, develop, and issue policy guidelines for DNMCs and SNMCs for the effective and efficient monitoring of the operations of the organizations. The lack of clarity and guidelines for how DNMC and SNMC business should be conducted has given way to political interference. This has been mainly from Local Council (LC) Vs and LC IIIs councils of the different districts and sub-counties, who, at times, demand to determine the operation and nature of the work of NGOs. There are situations where the leaders, for political reasons, push NGOs to provide services in their areas at the expense of other areas in need. There has also been interference with the work of DNMCs and SNMCs from Resident District Commissioners (RDCs). The lack of clarity on work has also promoted corruption, where NGOs are required to facilitate DNMCs and SNMCs to work.

3.7 Registration of NGOs and CBOs

Under the Act, NGOs and CBOs are required to submit more than 15 documents for them to apply for registration. Some of the documents have to be approved by other government agencies. For example, NGOs have to submit recommendations from the line ministry, which takes a long process to acquire, sign a Memorandum of Understanding (MOU) with the local government, and get a recommendation from the same local government. These create unnecessary bureaucracy and levels of approval.

3.8 Restrictions on NGO permits and the nature of work of NGOs

Once an entity is registered with the Bureau, it has to get a permit. Both NGOs and CBOs are required to get permits, though in practice there has been confusion on CBO permits, as most districts do not issue them. The permits have geographical and subject limits. An NGO or CBO is not allowed to operate in an area outside the permitted area. The permit has broad subject area limitations such as environment, gender, governance etc., An NGO is not allowed to work outside this scope. The last restriction is on time, where a permit is given for a period not exceeding 5 years. These tend to limit how and where the organization can provide its services.

3.9 Excessive Fines

There are several fines provided in the Act. The fines come from the nonperformance of particular roles. Two key fines are the fine for non-registration of an NGO, which attracts a fine of about UGX 1,400,000, and a fine of operating without a permit which is UGX 2,000,000 per month an organization operates without a permit. These fines have resulted in some NGOs closing due to being excessive.

3.10 Filing returns and other paperwork

All NGOs are required to file returns every six months and every 12 months. Every six months, an NGO is required to file its financial statements developed six months after the end of their financial year. These have to be accompanied by a statement that shows that in preparation for their financial reports, the NGOs followed the provisions of the NGO Act, its policy, and the governing documents, and that the governing documents and policy meet the required standards.¹

On top of filing the above return every six months, NGOs are required to file annual returns to the NGO Bureau, which include audited books of accounts, a return (form R), and an annual report² to the NGO Bureau. Then, an NGO should file with the DNMC, District Planning Technical Committee (DPTC), and SNMC its work plan, budget, sources of funding, and information on funds received for each district and sub-county where the NGO works.³

The above is not only repetitive but also costly to NGOs that have to make a lot of paperwork across different entities and, at times, the same government agencies or offices. There is need to streamline the filing of returns and limit them to only key offices.

3.11 Affiliates

Section 47 of the NGO Act provides that an NGO in Uganda shall not affiliate with another organization unless that organization is registered in Uganda by the NGO Bureau. It defines an affiliate as an organization which is formally or closely connected to or controlled by a nationally or internationally incorporated organization or group. From the definition of an affiliate, the law seems to suggest that if an NGO in Uganda is working closely with another NGO from anywhere in the world, that other NGO should be registered in Uganda. This presents a challenge, especially for networks such as entities that network with global organizations. It may also mean a donor agency that gives funds to an organization operating in Uganda needs to be registered in Uganda.

4.0 Recommendations for review of the NGO Act

1. There is a need to review the definition of NGOs that is less restrictive. The definition needs to look at NGOs that are not voluntary and doing business but for the benefit of the community. This should be able to cater to the present

¹ S. 39(1) and (2) of the NGO Act

² S. 39(3)(a) of the NGO Act, 2016 and R. 30(3) of the NGO Regulations, 2017

³ S. 39(3)(d) of the NGO Act, 2016

needs of social enterprises, which are ideally for-profit entities being run by NGOs.

2. The definition of CBOs needs to be improved to expand CBOs beyond operation at the sub-county level. CBOs should be defined by their character and not by their area of work.
3. The categorization of NGOs should be removed since all NGOs are ideally the same, and the only effect the change has is when it comes to payment of fees. In the alternative entities that have the majority of Ugandans as members, they should be categorized as national/indigenous entities.
4. Amend the Act to change the composition of the DNMC and SNMC to provide for only entities that carry out work related directly to NGO regulation to be the ones in charge of DNMCs and SNMCs. This will help ease the work of DNMCs and SNMCs.
5. There should be a term limit for members of the DNMCs and SNMCs, especially representatives of NGOs on these bodies, so as to give a chance for other members of the NGOs to serve.
6. The Act should provide for a proper mechanism through which NGOs can participate in the process of getting NGO representatives on the Bureau as well as on the DNMCs and SNMCs.
7. Amend the Act to remove unnecessary paperwork that not only undermines the work of the Bureau, but also specifically remove
 - i. The requirement for NGOs to get permission to work in the district after acquiring a permit and an MOU with the district
 - ii. The requirement for MOU with every district where an NGO works. MOUs should be need-based.
 - iii. The requirement to file returns at DNMCs, DTPC, and SNMC where the same documents are submitted to the same office or supervisor
 - iv. The need to register at the DNMC level when the entity is already registered at the national level.
8. Review the Act to provide for proper self-regulation of NGOs in line with FATF recommendations and other international entities.