

# PARLIAMENTARY SUBMISSION ON THE PROTECTION OF SOVEREIGNTY BILL, 2026

Submitted by:

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## 1. INTRODUCTION

This submission is presented to assist Parliament in evaluating whether the *Protection of Sovereignty Bill, 2026* meets the constitutional threshold required of legislation in a democratic state governed by the rule of law.

The Bill is premised on a legitimate concern—the need to protect Uganda’s sovereignty from undue foreign influence. However, the constitutional question is not whether the objective is valid, but whether the **means adopted are lawful, necessary, and proportionate within the framework of the Constitution of the Republic of Uganda, 1995.**

It is respectfully submitted that, when subjected to constitutional scrutiny and compared with existing statutory frameworks—particularly the **Non-Governmental Organisations Act, Cap 109**, the **Anti-Money Laundering Act, Cap 118**, the **Penal Code Act, Cap 128**, the **Political Parties and Organisations Act, Cap 178**, and the **Electoral Commission Act, Cap 176**—the Bill reveals itself to be **duplicative, overbroad, and constitutionally infirm**, not because its objective is illegitimate, but because its design departs from established constitutional and statutory safeguards.

## 2. THE CONSTITUTIONAL FOUNDATION: RIGHTS ARE NOT STATE PERMISSIONS

The starting point must be **Article 20(1) of the Constitution**, which provides that:

“Fundamental rights and freedoms of the individual are inherent and not granted by the State.”

This provision is not decorative—it is foundational. It establishes that Parliament does not *create* rights; it may only regulate them within strict constitutional limits.

Further, **Article 29(1)(a)** guarantees freedom of expression, including the freedom to receive and impart ideas, while **Article 38(1)** guarantees every Ugandan the right to participate in the affairs of government.

The Supreme Court in *Charles Onyango Obbo & Another v Attorney General (Supreme Court of Uganda, Constitutional Appeal No. 2 of 2002)* made this point emphatically, holding that:

“Freedom of expression is one of the essential foundations of a democratic society... it is applicable not only to information or ideas that are favourably received but also to those that offend, shock or disturb.”

The Court went further to emphasise that democratic governance presupposes **the free flow of ideas, including those originating beyond national borders**, because insulation from external perspectives is itself inconsistent with constitutional democracy.

The implication for this Bill is immediate: **any law that restricts policy influence, civic engagement, or public discourse must satisfy the strict limitation test under Article 43**, which requires that such limitation be acceptable and demonstrably justifiable in a free and democratic society.

### **3. CLAUSE 1 AND THE PROBLEM OF OVERBREADTH: REDEFINING CIVIC SPACE AS FOREIGN AGENCY**

The Bill defines an “agent of a foreigner” so broadly that it includes any person whose activities are directly or indirectly financed by a foreign entity . This is not a narrow regulatory definition; it is an expansive reclassification of civic actors.

When this definition is read alongside the existing legal framework under the **Non-Governmental Organisations Act, Cap 109**, a fundamental problem emerges. Under that Act,

particularly Sections 27 to 31, NGOs are required to register, obtain permits, comply with operational conditions, and are subject to monitoring and revocation mechanisms.

**Section 27 of the NGO Act Cap 109 provides (verbatim):**

“An organisation shall not operate in Uganda unless it is registered with the Bureau.”

**Section 29 further provides:**

“The Bureau shall... issue a permit to the organisation where it is satisfied that the organisation has complied with the requirements of this Act.”

This statutory framework already:

- Recognises foreign-funded entities
- Subjects them to regulatory oversight
- Provides sanctions for non-compliance

The Bill does not refine or strengthen that system. Instead, it **superimposes a parallel legal identity**—“agent of a foreigner”—without repealing or harmonising the NGO Act.

The Supreme Court in *Paul Ssemogerere & Others v Attorney General (Supreme Court of Uganda, Constitutional Appeal No. 1 of 2002)* cautioned against such legislative inconsistency, holding that:

“Laws must be certain, coherent and capable of consistent application.”

The result here is that the same entity is simultaneously:

- A lawful organisation under Cap 109; and
- A potentially criminalised “agent” under the Bill

This duality introduces **regulatory contradiction and enforcement uncertainty**, exposing lawful actors to punitive risk without corresponding unlawful conduct.

The practical implication is stark. A health NGO operating in northern Uganda, funded by international donors and fully compliant under Cap 109, would not merely be regulated—it

would be **presumptively suspect**, its legality contingent not on its conduct but on its funding origin.

#### **4. CLAUSE 2: CRIMINALISING PARTICIPATION IN GOVERNANCE**

Clause 2 extends the application of the Act to persons who influence public opinion, contribute to political processes, or engage with government policy . This provision strikes at the core of **Article 38**, which guarantees participation in governance.

##### **Article 38(2) provides (verbatim):**

“Every Ugandan has a right to participate in peaceful activities to influence the policies of Government...”

The difficulty is not theoretical. Uganda already has a detailed statutory regime governing political participation under the **Political Parties and Organisations Act, Cap 178**.

##### **Section 13 provides (verbatim):**

“A political party or organisation shall not accept or receive funds or other contributions from a foreign government or any foreign organisation.”

This provision directly addresses foreign influence in political processes with precision.

The question then arises: **what gap is this Bill filling?**

It is not filling a gap. It is expanding control. Where Cap 178 regulates political parties specifically, the Bill extends regulation to **any person influencing opinion**, including civil society, academia, and informal civic actors.

The Supreme Court in *Onyango Obbo* warned that suppressing the flow of information and ideas undermines democratic governance. A law that criminalises influence—without distinguishing between lawful advocacy and unlawful interference—effectively **renders Article 38 hollow**.

A civil society organisation conducting voter education funded by an international partner would, under existing law, be acting lawfully. Under the Bill, that same conduct may attract criminal liability, not because of its nature, but because of its association.

## **5. CLAUSE 5: THE VAGUENESS OF “INTERESTS OF UGANDA” AND THE DOCTRINE OF LEGAL CERTAINTY**

Clause 5 creates an offence for promoting the interests of a foreigner “against the interests of Uganda” .

The phrase “interests of Uganda” is not defined. It is inherently subjective and capable of shifting depending on political, economic, or ideological context.

In *Andrew Karamagi & Others v Attorney General (Constitutional Court of Uganda, Petition No. 5 of 2014)*, the Court held:

“A law is void for vagueness if it does not define the prohibited conduct with sufficient precision... leaving citizens to guess at its meaning.”

This clause suffers from precisely that defect.

By contrast, the **Penal Code Act, Cap 128** already provides clear offences.

**Section 36 provides (verbatim):**

“Any person who publishes any information... prejudicial to the security of Uganda commits an offence.”

Here, the law identifies:

- The act (publication)
- The harm (prejudice to security)

The Bill replaces this clarity with a broad and undefined standard.

The consequence is that criminal liability becomes dependent not on objective conduct, but on **interpretive discretion**, which is constitutionally impermissible.

## **6. CLAUSE 6: DISRUPTING ESTABLISHED GOVERNANCE AND SERVICE DELIVERY SYSTEMS**

Clause 6 prohibits persons from performing functions of government without approval.

Uganda's governance model already incorporates non-state actors. The **Non-Governmental Organisations Act, Cap 109** expressly recognises partnership:

“...to strengthen and promote the capacity of Non-Governmental Organisations and their mutual partnership with Government...”

The Bill introduces an additional requirement—central approval—which restructures this relationship.

A donor-funded maternal health programme, fully compliant with Cap 109, would now require additional executive approval. The legal effect is not regulation but **centralisation**, and the practical effect is delay, uncertainty, and potential interruption of essential services.

## **7. CLAUSES 7 AND 8: TRANSFORMING A CONSTITUTIONAL RIGHT INTO A STATE-CONTROLLED PROCESS**

Clauses 7 and 8 restrict participation in policy development and implementation.

This directly engages **Article 38(2)** and must be read alongside *Muwanga Kivumbi v Attorney General (Constitutional Court of Uganda, Petition No. 9 of 2005)*, where the Court held:

“A restriction that defeats the essence of a right cannot be justified.”

Policy development in a modern State is inherently participatory. It draws from civil society, academia, private sector actors, and international experience. To subject all such engagement

to state approval is to **convert a constitutional right into an administrative privilege**, thereby defeating its essence.

## **8. CLAUSES 11–13: DUPLICATION OF ELECTORAL AND SECURITY OFFENCES**

The Bill criminalises electoral interference and related conduct.

However, under the **Electoral Commission Act, Cap 176**:

**Section 16 provides (verbatim):**

“The Commission may accredit any individual or organisation to observe elections...”

This includes international observers.

At the same time, the **Penal Code Act, Cap 128** criminalises:

- Incitement to violence (Section 47)
- Unlawful assemblies and riots (Sections 61–63)

The Bill does not refine these provisions. It overlaps them, creating the possibility that conduct authorised under one law is criminalised under another. This undermines **legal certainty and coherence**.

## **9. CLAUSES 21–26: FROM FINANCIAL REGULATION TO POLITICAL CONTROL**

The **Anti-Money Laundering Act, Cap 118** already provides a detailed framework.

**Section 8 provides (verbatim):**

“A reporting person shall keep records of all transactions...”

**Section 9 provides:**

“A reporting person shall report suspicious transactions...”

This framework is enforced through the Financial Intelligence Authority.

The Bill introduces ministerial approval, shifting regulation from:

- **Objective compliance**  
To
- **Executive discretion**

The legal effect is that lawful funding becomes contingent not on compliance with statutory standards, but on administrative approval.

## **10. WHAT IS LEGALLY ALLOWABLE WITHIN THE BILL**

It is important, for both constitutional balance and legislative integrity, to recognise that the Bill is not wholly defective. Certain components are **legally permissible in principle**, and if properly framed, may be retained.

The requirement for **registration or disclosure of persons acting on behalf of foreign entities** is not inherently unconstitutional. Registration is already a recognised regulatory tool under Ugandan law, as seen in Section 27 of the **Non-Governmental Organisations Act, Cap 109**, which requires organisations to register before operating. A similar transparency-based register, limited to disclosure and not criminal presumption, would be consistent with this framework.

Equally, provisions requiring **disclosure of foreign funding** are aligned with existing law under the **Anti-Money Laundering Act, Cap 118**, which already mandates record-keeping and reporting of financial transactions. Enhancing transparency within this framework is lawful. The constitutional difficulty only arises where such disclosure is converted into **discretionary approval controlled by the Executive**.

Further, the objective of **protecting electoral processes from foreign interference** is clearly legitimate. This is already reflected in Section 13 of the **Political Parties and Organisations Act, Cap 178**, which restricts foreign funding of political parties. Provisions that reinforce this

objective—provided they are narrowly tailored and harmonised with the **Electoral Commission Act, Cap 176**—are constitutionally defensible.

Finally, measures aimed at safeguarding **national security and preventing covert foreign control of State institutions** are permissible, provided they are grounded in clear legal definitions and do not rely on vague or subjective standards.

What emerges is that the Bill does not fail because of its objectives, but because it **extends beyond what is necessary to achieve them**, moving from transparency to control, and from regulation to criminalisation.

## 11. CONCLUSION

When the Bill is examined in its entirety, it does not operate as a targeted regulatory instrument but as a **broad and discretionary framework that risks redefining lawful civic engagement as suspect activity**.

The Constitution permits regulation. It does not permit:

- Vagueness
- Duplication
- Disproportionate limitation

This Bill, in its current form, fails that standard.

## 12. FINAL POSITION

It is therefore respectfully submitted that:

**The Protection of Sovereignty Bill, 2026 should not be enacted in its current form but substantially amended to align with the Constitution and existing statutory frameworks.**

## **MY CLOSING STATEMENT**

*“Sovereignty is best protected not by restricting participation, but by strengthening institutions, ensuring transparency, and upholding the Constitution. A law that introduces uncertainty and discretion risks weakening the very sovereignty it seeks to defend.”* **Owek.**

**Patrick Katende**