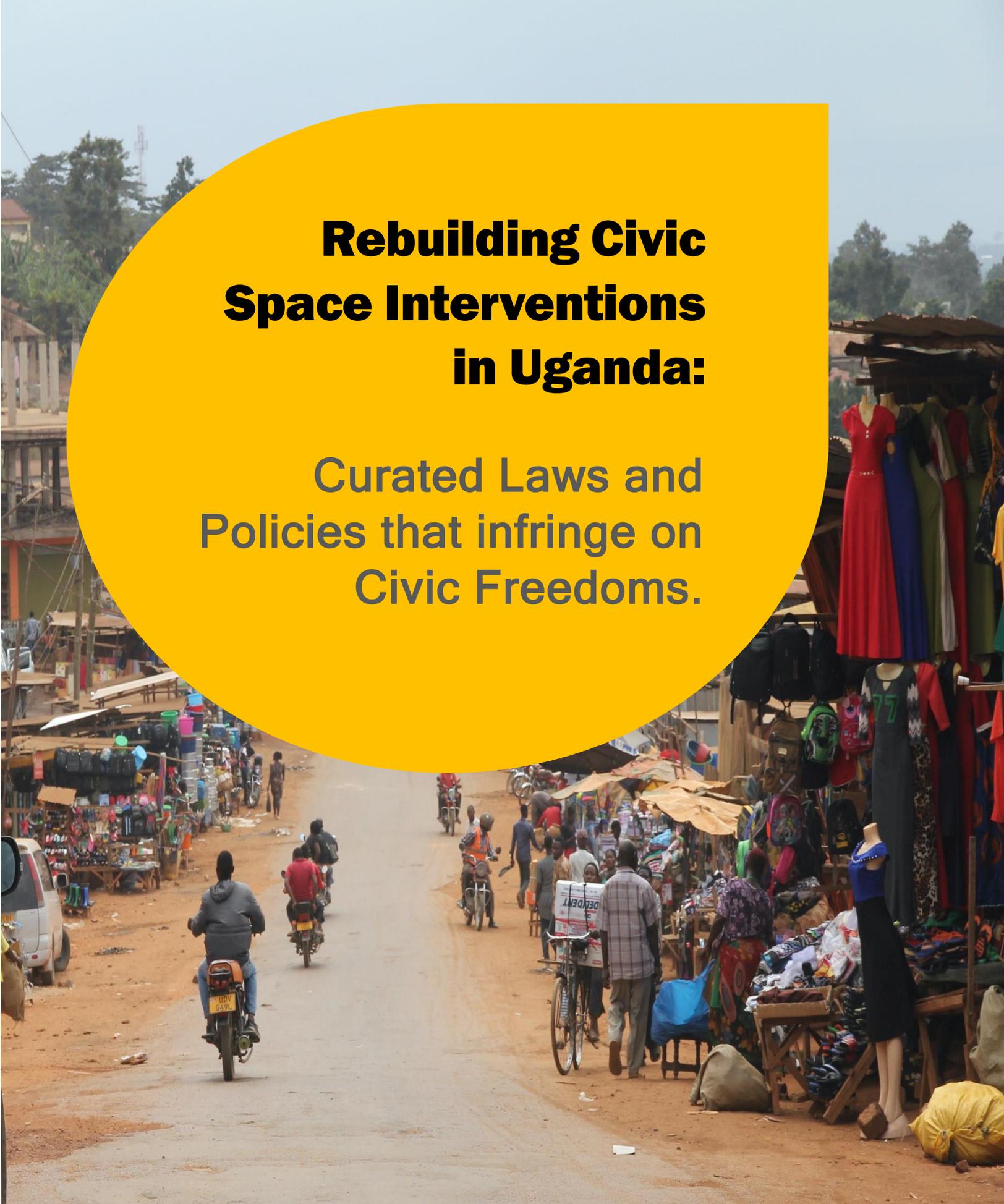


Rebuilding Civic Space Interventions in Uganda:

**Curated Laws and
Policies that infringe on
Civic Freedoms.**





Published under the project ; "Rebuilding Civic Space Intervention in Uganda" implemented by African Youth Development Link (AYDL in collaboration with Covid Watch Africa Initiative (CWA) and Forum for International Cooperation (FIC).

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Table of Contents

LIST OF ABBREVIATIONS/ ACRONYMS.....	4
EXECUTIVE SUMMARY	5
INTRODUCTION	7
PURPOSE AND OBJECTIVES	9
METHODOLOGY AND DELIMITATIONS	9
I-STRUCTURAL FINDINGS.....	10
<i>International legal framework</i>	10
<i>National Legal framework</i>	11
II- DETAILED FINDINGS AND DISCUSSIONS	13
<i>Non-Governmental Organizations Act, 2016</i>	13
RECOMMENDATION	13
<i>The Police Act, Cap 303</i>	13
<i>Press and Journalists Act, Cap 105</i>	13
<i>Public Order Management Act (POMA), 2013</i>	14
III- <i>Relevant case studies</i>	15
<i>Arbitrary detention and unfair trials</i>	15
<i>Freedom of Expression</i>	15
<i>Freedom of movement</i>	16
CONCLUSIONS AND RECOMMENDATIONS	17
REFERENCES	18

List of abbreviations/ acronyms

ACHPR - African Charter on Human and Peoples' Rights

AYDL - Africa Youth Development Link

CBO - Community Based Organisation

NGO Bureau - National Bureau for NGOs

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

CSO - Civil Society Organisation

CWAI - COVID Watch Africa Initiative

DNMC - District Non-Governmental Monitoring Committee

DP - Democratic Party

FDC - Forum for Democratic Change

FIA - Financial Intelligence Authority

FIC - Forum for International Cooperation

HRC -UN Human Rights Committee

ICCPR - International Covenant on Civil and Political Rights

ICCPR - International Convention on Civil and Political Rights

NCHRDU - National Coalition of Human Rights Defenders Uganda

HRDs - Human Rights Defenders

NGO - Non-Governmental Organisation

NGO Act - Non-Governmental Organisations Act, 2016

POMA - Public Order Management Act, 2013

NRM - National Resistance Movement

NUP - National Unity Platform

POMA - Public Order Management Act

UDHR - Universal Declaration of Human Rights

UPDF - Uganda Peoples' Defense Forces

URSB - Uganda Registration Services Bureau

WHRDs - Women Human Rights Defenders

Executive Summary

African Youth Development Link (AYDL) is executing a project called "Rebuilding Civic Space Intervention in Uganda" in collaboration with Covid Watch Africa Initiative (CWAI) and Forum for International Cooperation (FIC). The project's purpose is to increase people's and civil society organizations' freedom of speech and participation in Uganda by advocating for a review of laws, directives, and policies that have resulted in a narrower civic space. The project has been implemented in Uganda, with partners in five districts, namely Arua, Gulu, Soroti, Kasese, and Kampala, pushing for the revision of laws, directives, and policies that have led to the shrinking of civic space. The project's advocacy strategy involves undertaking evidence-based research, generating recommendations for the review and, where appropriate, repeal of laws and directives, and forging stronger alliances with critical partners and stakeholders in the country.

This report as part of that advocacy strategy, highlights some of the laws and decrees in Uganda that infringe on civic freedoms in a bid to rebuild Civic Space in the country. The research reconstructs the various legal processes in the country, portraying what has been changed and what is yet to be changed. It is worth noting that at least a volume of laws has gradually reduced civil society's freedom of action in Uganda, much as some have been nulled.

In addition, the NGO Act was signed into law by President Yoweri Museveni on January 30, 2016. Under Article 29(1)(d) and (e) of the 1995 Constitution (as amended), the right to assemble freely was violated by this Act where Section 44 states that NGOs are not allowed to operate anywhere in the country without first receiving permission from the District Non-Governmental Monitoring Committee (DNMC) and the local government and then signing a memorandum of understanding (MoU) with government officials. Without approval from the National Bureau for NGOs through the relevant DNMC, NGOs are not permitted to open offices in new regions.

At a time when civil society in Uganda is facing major issues like restrictive laws and policies, intimidation, harassment, arrests, physical attacks, frivolous or politically driven prosecutions, and so on, a study on the civic space index in Uganda couldn't come at a more opportune moment. There appears to be an "offense" in the penal code when human rights activists call for government transparency and accountability.

Article 38 of the Constitution of the Republic of Uganda guarantees the right of all citizens to take part in the operations of national government, either directly through their representatives in parliament or indirectly through civic organizations. Citizens need what is generally called "civic space" to exercise and enjoy this right to its maximum degree. "a collection of conditions that allow CSO and individuals to organize, engage, and communicate freely and without prejudice, and in doing impact the political and social structure around them," as stated by Civicus International, is what is meant by "civic space."

Therefore, based on current trends and occurrences in the country, it is clear that these prerequisites are not fully present to the extent that citizens can play a more meaningful role in the political, economic, and

social dialogue. As a result, we sincerely pray that this report will play a significant role in guiding those with the responsibility of creating an enabling environment to put in place adequate mechanisms that promote and encourage free ideas, opinions, and constructive criticisms to enhance governance in Uganda.

Introduction

Located in the eastern part of Africa, Uganda is a small landlocked country that is a former British colony. The country's Constitution enacted in 1995 is the supreme law. In addition to the public sector, a thriving private sector exists, which includes agriculture, marketing, mining, hospitality, and the arts.

In Uganda, civil society continues to remain active, with an estimated 11,500 registered CSOs working on a wide range of issues across the country. Many CSOs, particularly those working on human rights, democracy, corruption, media rights, the rule of law, governance, and electoral reform, are frequently in the position of criticizing and pushing for reforms in government policies and acts that infringe on people's rights.

For the purposes of this study, non-governmental organizations (NGOs) will be referred to as “voluntary, not-for-profit citizen groups, working at the local or national level with some kind of public purpose; they seek to work for the common interests of a particular group or sector”. Globally, there has been an increasing and alarming trend of clamping down on civil society actors, such as NGOs' spaces, under the guise of securing government's sovereignty, combating terrorism, and safeguarding the public from NGOs 'bad. Uganda is among the countries that has in the recent years tightened its grip on the civil society in the country. This phenomenon is alarming, namely because NGOs play an important role in advancing the realization of human rights, and enhancing the democratic process in Uganda, and universally. Additionally, NGOs advocate for law reform and social issues, create platforms for debates, raise civic awareness, and formulate policies, among many other things.

Besides the Constitution, the NGO sector is regulated by the NGO Act of 2016, which establishes the NGO Bureau as the regulatory authority. Uganda has a multiparty political system. The National Resistance Movement (NRM), the National Unity Platform (NUP), the Forum for Democratic Change (FDC), Democratic Party (DP), Justice Forum (JEEMA) and People's Progressive Party (PPP) are the parties represented in parliament following the 2021 general elections.

Restrictive laws, such as the NGO Act (2016), the Public Order Management Act (2013), and the Computer Misuse (Amendment) Bill(2022), have had a negative impact on the operations of civil society. The past two decades have seen measures, including laws, which restrict freedom of expression, association, and assembly. Direct actions such as suspensions, freezing of accounts, break-ins as well as black mail and attacks on funders have crippled the sector, a recent example being that of the DFG departure 2022.

On October 2, 2013, for instance, President Museveni, in power for more than 35 years, assented to the POMA, making it law. Section 9 of the POMA gave police considerable authority to restrict public assemblies. Since the introduction of POMA, disproportionate force has been employed against opposition member and civil society representative-organised gatherings. In 2020, this law was successfully challenged in court and declared unconstitutional, given the joint efforts from the civil society in Uganda, but the state appealed and continues to enforce elements of the same.

Civic space is a broad subject. However, Article 38 of the 1995 Constitution of the Republic of Uganda provides for the core elements of civic space rights. The Article guarantees participation in civic rights and activities by providing that every Uganda citizen shall have a right to exercise the right to participate in the affairs of government, individually or through his or her representatives in accordance with law. The Article further establishes the right of every Ugandan to participate in peaceful activities to influence the policies of government through civic organisations.

The above freedoms are espoused under the narrow definition of civic space that was adopted by the CIVICUS Civic Space Monitor. For purposes of that monitor, CIVICUS defines civic space to include the freedom of peaceful assembly, association and expression. These three freedoms form the core of Article 38 of Uganda's 1995 Constitution. In similar vein, the UN Human Rights Office defines civic space to mean an environment that enables civil society to play a role in the political, economic and social life of our societies.

Purpose and Objectives

The aim is to reveal the laws and decrees that infringe on the very basic rights of people in Uganda, explain the impact and devise a way forward in either repealing them or working with the authorities for the best next solution.

In delving into the abuse of rule of law, the number of violations of the rule of law continues to rise. The Uganda Law Society observed in its April 2021 report on the State of the Rule of Law in Uganda that criminalization of journalism, serial killings of women, and disappearances of citizens were prevalent. With few to no consequences, extrajudicial killings, incommunicado detention, torture, and other practices that violate the rule of law are on the rise.

Methodology and delimitations

Using the existing literature on the shrinking civic space in Uganda, this paper reviews various decrees and laws that have since been passed in Uganda that deprive people their basic rights to freedoms of speech and access to information.

Several groups publishing research on civic space rights in Uganda and elsewhere have drawn the conclusion that the country is trending in the wrong direction. Uganda is listed as "Not free" in Freedom House's Freedom in the World 2021 report. This means that "civic space is considerably constricted" and that "although some civil society organisations exist, their advocacy activity is often hampered and they face threats of de-registration and closure by the authorities" as of July 2021, according to the CIVICUS civic space monitor. According to the World Justice Project's Rule of Law Index 2020, Uganda has fallen two spots to a Global Rank of 117 out of 128 countries on the subject of conformity to the rule of law. Reporters Without Borders' 2021 World Press Freedom Index rated Uganda at number 125, a significant drop from the previous year. The most important findings from this Index analysis are shown here.

This report involves critical analysis of current literature from Human rights groups and organisations in Uganda and those on the international level such as, ICNL, Civicus international, Amnesty international, NCHRDU, Article 19, Chapter Four Uganda, Human Rights Network for Journalists (HRNJ), etc

I-Structural Findings

International legal framework

Civil society rights are frequently interpreted and quantified in terms of three fundamental freedoms: expression, association, and assembly. Both the international and regional human rights frameworks, to which Uganda is a party, recognize the three rights. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees everyone the right to freedom of expression, which includes the "freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

This right is addressed similarly in article 9 of the African Charter on Human and Peoples' Rights (ACHPR). Freedom of expression has been emphasized as a foundation of democratic society and all other civil freedoms, as well as an enabler of a country's social and economic prosperity by permitting the free flow of ideas and inventions, which is required for enhancing transparency and accountability (UNESCO, 2019).

Article 22 of the ICCPR and Article 10 of the ACHPR provide freedom of association, whereas Article 21 of the ICCPR and Article 11 of the ACHPR guarantee freedom of assembly. Indeed, the rights described above are reaffirmed in the 1998 United Nations Declaration of Human Rights Defenders. According to the UN Special Rapporteur on Human Rights' 2011 Commentary to the UN Declaration, the instrument's main goal is to "contribute to the development of a conducive environment for the work of defenders," namely, to recognize their right to defend human rights alongside the other instrumental rights that contribute to its meaningful fulfilment (OHCHR, 2011).

The Ugandan Constitution, which safeguards these rights under article 29, is consistent with the provisions of the ICCPR and ACHPR. However, it is important to emphasize that these rights are not absolute and may be limited for the sake of public safety, public order, security, the preservation of public health or morality, or the protection of others' rights and freedoms. Article 22 of the ICCPR states that any limits on fundamental rights must be specified by law and must be necessary in a democratic society.

As a state party to both the ICCPR and the ACHPR, Uganda is obligated not only to respect but also to preserve and promote the enjoyment of all rights enshrined in both treaties. Despite these fundamental provisions, Uganda's non-governmental organizations continue to face a slew of obstacles impeding their functioning. This is due, in part, to Uganda's regulatory system overseeing the NGO sector failing to adhere to constitutional and international human rights safeguards, as discussed in the following sections.

National Legal framework

The Non-Governmental Organizations Registration Act (1989) and the Non-Governmental Organizations Registration (Amendment) Act 2006 were abolished by the NGO Act 2016, which currently largely oversees NGOs in Uganda. The 2009 NGO Regulations were superseded by the 2017 NGO Regulations. The Public Order Management Act (2013), which governs public meetings in Uganda, was a third legal amendment between 2013 and 2017. According to the NGO Act of 2016, an NGO is "a legally created non-governmental organization...that may be a private voluntary grouping of persons or groups founded to provide volunteer services to the community or any portion of it, but not for profit or commercial interests." Section 3 of the NGO Act.

Section 7 of the NGO Act 2016 gives the National Bureau of NGOs (Bureau), which was formerly known as the NGO Board, much broader and more discretionary powers in terms of controlling, summoning, and punishing organizations than the NGO Board had in the previous Act. These include the authority to 'blacklist the organization,' 'expose the afflicted organization to the public,' or 'rescind an organization's permit.' The Act, however, does not define 'blacklisting,' nor does it specify how long this disciplinary action should endure. Exposing the affected organization to the public could have the unintended consequence of undermining NGOs' efforts to obtain accountability from the state. Furthermore, there is no indication of when the Bureau's powers, as mentioned in the Act under section 7(1)(b), may be applied and what disciplinary measures could be used as a last option. Rather, the Bureau is allowed to exercise its disciplinary powers arbitrarily at any moment, without additional explanation.

Sections 44 (d) and (f) of the Act, which prohibit organizations from engaging in any activities that are prejudicial 'to the security and laws of Uganda' or 'to the interests of Uganda and the dignity of the people of Uganda,' keep the possibility of arbitrary application against human rights and governance NGOs alive. Many NGOs have labelled these rules as draconian owing to their ambiguity and open-endedness, which allows the state to apply any suitable political and selective interpretation to these phrases.

The registration procedure under the NGO Act 2016 and NGO Regulations 2017 remains lengthy and time-consuming and must be completed with the Bureau (Part VIII of the Act). Section 30(1) allows the Bureau to reject registration to an organization whose aims are "in violation of Ugandan legislation." While applying for the permission, the organization must also state many goals, such as the regions that its operations will cover, as well as the organization's geographical coverage (Article 7, NGO Regulations 2017). If the organization wishes to start a new initiative in another region of the nation, it must first obtain permission from the district. The Monitoring Committee and the Local Government of the region have signed a memorandum of understanding (MoU) (Article 44 (a) of the Act).

These provisions run counter to the constitutional right that grants everyone the freedom to work in any part of the country, and, as Jjuuko, a Ugandan human rights lawyer and advocate, stated in an interview with Nassali, it "reduces the right to freedom of association of NGOs to a positive right [...] but not inherent." It is necessary to mention that mandatory registration of NGOs violates international standards of freedom of association (OSCE/ODIHR), but in Uganda, the penalties for organizations providing false

information in order to obtain a permit or conducting operations without registration range from fines to three years in prison (Article 40 of the Act).

Another restrictive element in the Act allows the state inspection powers, stating that an inspector may investigate the premises and "request for any information" from the organization that "appears [to be] required for purposes of giving effect" to the Act after giving at least three days' notice (section 41 of the Act). These laws appear to be broad and arbitrary, with the potential to cripple NGO activity in critical areas such as oil and gas (Mbazira & Namatovu, 2018:87). Other ambiguous clauses in the Act include those in Section 44, which allow the state to interpret them in whatever way it sees fit.

Section 44(d) forbids any NGO operations that are "prejudicial to the security and laws of Uganda," and Section 44(f) forbids any act that is "prejudicial to the interests of Uganda and the dignity of the people of Uganda."

The Public Order Management Act - POMA, which went into effect in 2013, was the third law that altered the legal framework for NGOs in Uganda. This Act, which is intended to govern public meetings, has been a source of conflict since its inception. The POMA has been criticized for impeding the right to freedom of peaceful assembly, association, and protest. Section 8 of the POMA is problematic in that it gives the Inspector General of Police broad discretionary authority to restrict or ban public meetings and protests.

If a meeting with more than three individuals is held, NGOs must notify the authorities. Many of the actions carried out by NGOs can be classified as a "public meeting" under the POMA, creating an environment in which NGOs are unable to function or objectively interrogate without fear of retaliation or punishment.

Additionally, the legislation grants the authority to use force to disperse meetings in the absence of sufficient advice for utilizing other measures to manage public order issues (ARTICLE 19, n.d.). Together with the NGO Act 2016, the POMA has played an important role in narrowing civic space and restricting NGOs' attempts to debate advocacy, human rights, and governance.

II- Detailed Findings and discussions

Non-Governmental Organizations Act, 2016

Sections 7, 44 and 45 of the NGO Act contradict national objectives and directives of state policy ii (vi) and Articles 23, 38 of the Constitution. E.g.-Section 7 provides for powers of the Bureau to summon, discipline, and punish NGO actors without stating the offences contradicts article 23 of the Constitution which states that all offences must be written down with their punishments. Only exception is the offence of contempt of Court.

Recommendation

NGO Bureau powers should be distinct from those of the District NGO Monitoring Committee and should be qualified to restrict powers to the offences created under section 40 of the Act.

The Police Act, Cap 303

Sections 23 – arrest without warrant - A police officer may, without a warrant, arrest a person, if he or she has reasonable cause to suspect that the person has committed or is about to commit an arrest-able offence. The section is open and gives police unlimited powers to arrest citizens whenever they suspect they are about to commit crimes in total disregard of constitutional provisions under article 23 of the Constitution on protection of personal liberty. The provision also violates international protocols on liberties of citizens.

This is unconstitutional, subject to abuse and will be challenged in the constitutional court for repeal under this project. Section 24 (1) (d) (e) - preventive arrest from committing an offence against public decency in a public place; from causing unlawful obstruction on a highway. Aspects of the provision violate article 23 of the Constitution and will be challenged.

Press and Journalists Act, Cap 105

The interpretation section does not define who a journalist is and offers no professional privileges. It should be amended to define who a journalist is.

Section 26 provides for Registration of journalists. This undermines citizenry journalism and the media right to seek, receive and impart information. This contradicts article 29 (1) of the Constitution, article 19 – UDHR and art 19 of the ICCPR which provides that “Everyone has a right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers”.

In order to make freedom of expression a reality, there must be:

- (i) A legal and regulatory environment that allows for an open and pluralistic media sector to emerge.
- (ii) A political will to support the sector and rule of law to protect it.
- (iii) Laws ensuring access to information especially information in the public domain and
- (iv) The necessary media literacy skills among news consumers to critically analyse and synthesize the information they receive to use it in their daily lives and to hold media accountable for its actions.

Public Order Management Act (POMA), 2013

Sections 3, 5, 6 and 8 of The Public Order Management Act contradict articles 29, 43, 212, 214 of the Constitution and article 21 of the International Convention on Civil and Political Rights (ICCPR) as follows: e.g. Section 3 – Power to the IGP to regulate public meetings is very often misconstrued to include authority to allow or deny public meetings.

This provision is susceptible to abuse and contradict articles 29, 43 and 212 of the Constitution.

Initial recommendation: Section 3 of Public Order Management Act (POMA) should be amended to clearly state that power to regulate conduct of meetings does not include power to authorize or deny meetings. The role of Police should be limited to providing security for public meetings in line with Police functions as contained in article 212 of the Constitution.

Update: In March 2020, this law was annulled by the constitutional Court in Uganda, however, government appealed it and sections of it are still being implemented in the country.

III- Relevant case studies

In the framework of the January 2021 presidential elections, security forces utilized intimidating techniques to repress political opposition members and sympathizers, including arbitrary arrests, abductions, lengthy incommunicado incarceration, enforced disappearances, and prosecutions. Freedoms of expression, peaceful assembly, and association were severely limited; human rights organizations were targeted, and the internet was shut down for five days. A delayed COVID19 vaccination rollout was seen. Indigenous peoples were illegally displaced from their ancestral land, according to the Constitutional Court. The president refused to sign a bill that, if approved, would have enhanced protections for survivors of sexual violence but criminalized consensual same-sex sexual encounters. Uganda maintained the continent's largest refugee population.

Arbitrary detention and unfair trials.

It should be noted that after 166 days in military detention, a military court in Kampala released 17 NUP sympathizers and allies on bail of UGX 20 million (about US\$5,670) on June 14. They were among the 126 NUP supporters and employees detained in Kalangala, central Uganda, in December 2020. On 4 January, the Chief Magistrate gave them all bail, but 17 of them were re-arrested the same day and detained for many days. They were accused with illegal possession of ammunition and transferred to Kitalya prison in the Wakiso area.

On September 10, the Director of Public Prosecutions dropped accusations of money laundering against Nicholas Opiyo, the executive director of Chapter Four Uganda, a human rights organization. He was arrested on December 22, 2020, kept in the Special Investigations Unit of the police in Kireka, Kampala, and then transferred to Kitalya prison. He was granted bail and released eight days later.

Armed security personnel arrested novelist Kakwenza Rukirabashaija in Kampala on December 28, 2021, after he posted online criticisms of the commander of the UPDF's Land Forces, who is also the president's son. He continued to be held incommunicado till the end of the year.

Freedom of Expression

On 9th January 2021, Facebook deleted dozens of profiles that it alleged were affiliated with the Ministry of Information and Communications Technology. The company said that the ministry exploited "fake and duplicate accounts" to boost its popularity prior to the elections. On January 12, President Museveni accused Facebook and others of tampering with the electoral process, and the executive director of the Uganda Communications Commission ordered telecoms firms to "immediately suspend any access and use" of social media and online messaging services. Airtel and MTN Uganda sent text messages to its subscribers informing them of the suspension. The authorities stopped the internet for five days the same day.

Freedom of movement

The High Court of Uganda removed Robert Kyagulanyi (leader of the opposition party) and his wife Barbara's house detention on January 25 after security personnel had surrounded their home on January 14. The court held that if the state had evidence against them, it should charge them in court instead of "unjustifiably" detaining them. Robert Kyagulanyi was taken under "preventive arrest," according to a police spokesman, because he "planned to disrupt public order." However, the spokesman did not clarify what disruption was intended.

Prior to the ruling, security officers denied Robert Kyagulanyi and his family access to food even though they were starving. The US embassy in Uganda said that their ambassador was prohibited from visiting the family on January 18. The NUP party headquarters was raided the same day by security agents.

Conclusions and recommendations

It should be noted that while some of these laws are still present and infringes on the rights of citizens in Uganda, civil society efforts have in the recent past achieved positive outcomes, such as the annulment of the Public Order Management Act (POMA), 2012, sections 3, 5, 6 and 8 of The Public Order Management Act contradict articles 29, 43, 212, 214 of the Constitution and article 21 of the International Convention on Civil and Political Rights (ICCPR). Under this context, section 3 of this same Act gave power to the inspector General of Police to regulate public meetings, including the authority to allow or deny public meetings. This provision was fought by CSOs in Uganda, contradicting articles 29, 43, and 212 of the Constitution. In March 2020, Court annulled this law which remains the highest victory of the efforts of CSOs in Uganda through organized advocacy efforts, much as government appealed and some sections of this law remains in action.

Rebuilding Civic Space Intervention in Uganda takes efforts from NGOs, the people and political will to serve the interests of the people. This report highlights laws and policies in Uganda that infringe on civic freedoms and intends to serve as a tool in guiding policy advocacy towards reform.

The current literature reviewed and interviews with Human rights organizations showed that freedoms of speech and movement remain in limbo, with fears of being arrested, teargassed, or even shot dead. The set of laws laid out will need to be addressed in order to harmonise for a bearable environment where people are respected, and their opinions met with.

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