

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. \_\_\_\_\_ OF 2021  
(ARISING FROM CONSTITUTIONAL PETITION NO. 07 OF 2020)

NYALETSOSSI VOULE \_\_\_\_\_ APPLICANT

BETWEEN

1. CHAPTER FOUR UGANDA  
2. CENTER FOR CONSTITUTIONAL GOVERNANCE  
3. ATTORNEY GENERAL

} RESPONDENTS

**AFFIDAVIT IN SUPPORT**

I, NYALETSOSSI VOULE, c/o M/s ALP Advocates, 5<sup>th</sup> Floor Lotis Towers, Plot 16 Mackinnon Road, P.O. Box 28611 Kampala, [info@alp-ea.com](mailto:info@alp-ea.com) do hereby solemnly affirm and state as follows:

1. **THAT** I am a male Togolese adult of sound mind, the Applicant herein, and in that capacity swear this affidavit.
2. **THAT** I currently serve as the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.
3. **THAT** under that mandate as established by Human Rights Council Resolutions 15/21, 24/5, 32/32 and 41/12, I examine, monitor, advise and publicly report on the rights to freedom of assembly and association worldwide. I also receive individual complaints, conduct country visits, issue thematic reports, provide technical assistance to governments, and engage in public outreach and promotional activities – all with the ultimate goal of promoting and protecting the rights to freedom of peaceful assembly and of association worldwide.
4. **THAT** prior to my appointment to the United Nations, I obtained a degree in Fundamental Rights from Nantes University and a Masters Diploma in International Law in Armed Conflict from the Graduate Institute of International and Development Studies, University of Geneva.
5. **THAT** I have also garnered considerable experience in international human rights law and practice through my work with the International Service for Human Rights; the Togolese Coalition of Human Rights Defenders; the Working Group on Extractive Industries, Environment and Human Rights Violations of the African Commission on Human and Peoples' Rights; and the West African Human Rights Defenders Network.
6. **THAT** further information on my work history and publications are detailed in my Curriculum Vitae. (*A copy of my draft curriculum vitae is hereto attached and marked as annexure "A".*)

**MR. NYALETSOSI VOULE'S INTENDED CONTRIBUTION TO THE PETITION.**

7. **THAT** Constitutional Petition No. 7 of 2020 raises questions as to whether provisions of the 2016 Non-Governmental Organisations Act and 2017 Regulations violate the Constitution and Uganda's obligations under international and African law.
8. **THAT** by implication, Constitutional Petition No. 7 of 2020 seeks to interrogate the impact of Uganda's Non-Governmental Organisation law on the rights to freedom of peaceful assembly and of association, which are the core of my mandate as a Rapporteur to the United Nations.
9. **THAT** I intend to share my expertise on the international law, standards and principles with regard to the right to freedom of association and the right to freedom of peaceful assembly as pillars of democracy and rule of law, while taking into account the obligations of Uganda under international law.
10. **THAT** I believe that in determining this petition fully, the Court will examine the following aspects of the Non-Governmental Organisations Act of 2016 and the Non-Governmental Organisations Regulations of 2017:
  - (a) the requirement to register and regularly renew a permit in order to operate;
  - (b) offences and penalties to organizations for breach of the Act;
  - (c) inspection and reporting requirements of activities of the organizations;
  - (d) internal structure and employment of foreigners by organizations; and
  - (e) national security exception.
11. **THAT** I wish to address this Honourable Court on the said aspects of the Non-Governmental Organisations Act of 2016 and the Non-Governmental Organisations Regulations of 2017 and provide a comparative analysis of the prevailing jurisprudence; best practices; and guiding principles across various jurisdictions on the rights to freedom of peaceful assembly and of association.
12. **THAT** my brief shall also advise on the status of Uganda's compliance with her international obligations on the rights to freedom of peaceful assembly and of association. (*A copy of my draft brief is hereto attached and marked as annexure "B".*)
13. **THAT** because of my mandate as the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, as well as my extensive history of conducting research, collecting data, drafting policy papers and publications on the rights to freedom of peaceful assembly and of association, my submissions would be of assistance to this Honourable Court as it determines the questions of great public importance raised in the petition.
14. **THAT** the novelty of the intended brief flows from the nature of perspective on which it seeks to inform this Honourable Court, that is; a comparative analysis of the evolving international practices on the rights to freedom of peaceful assembly and of association as observed by the office of the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

15. **THAT** I have no relationship with either Petitioner, and only seek to offer an impartial brief that will assist this Honourable Court in its independent determination of the Petition.
16. **THAT**, if admitted as an Amicus Curiae, I am able and willing to take on any further research that this Honourable Court may wish to assign.
17. **THAT** no prejudice shall be occasioned whatsoever to any party to these proceedings if I am enjoined herein as an Amicus Curiae.
18. **THAT** I make this application on a voluntary basis, without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations, to which Uganda is party since 9 July 2001.
19. **THAT** authorization for the positions and views to be expressed, in full accordance with the independence afforded to my mandate, will neither be sought nor be given by the United Nations, the United Nations Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, or any of the officials associated with those bodies.
20. **THAT** what is sworn to herein is true to the best of my knowledge and belief.

**SWORN** at Geneva by the said **NYALETSOSI VOULE** this 27 day  
of September 2021.

*CV* 

\_\_\_\_\_  
**DEPONENT**

**BEFORE ME**

  
\_\_\_\_\_  
**COMMISSIONER FOR OATHS**



**DRAWN & FILED BY:**

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**Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and association**

**Request for leave to intervene as Curriculum Vitae (brief)**

submitted by

**The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association**

Before the

**Constitutional Court of Uganda**  
In the Constitutional Petition No. 7 of 2020

**Clément Nyaletsossi VOULE, UN Special Rapporteur on Rights to Freedom of Peaceful  
Assembly and of Association**

Clément Nyaletsossi VOULE, a national of Togo, was appointed as United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and took up his functions in April 2018.

Prior to his appointment, he led the International Service for Human Rights (ISHR) to support human rights defenders from States in transition and coordinated the organization's work in Africa as the Advocacy Director.

Mr. Voule also worked as Secretary-General of the Togolese Coalition of Human Rights Defenders, as a campaigner for the Togolese Coalition for the International Criminal Court and as Secretary-General of the Amnesty International section in Togo.

Since 2011, he has been an Expert Member of the Working Group on Extractive Industries, Environment and Human Rights Violations of the African Commission on Human and Peoples' Rights.

As a founding member and Vice-Chair of the West African Human Rights Defenders Network, he has coordinated and participated in the elaboration of several studies and guidelines, including two studies on freedom of association and the situation of Women Human Rights Defenders in Africa and the guidelines on the rights of Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights.

A long-time activist and jurist, Mr. Voule has supported State and civil society efforts to develop and adopt specific laws for the protection of human right defenders and contributed to the publication of the Model law for the recognition and protection of human rights defenders and a human rights defenders guide to the African Commission on Human and Peoples' Rights.

Mr. Voule has a degree in Fundamental Rights from Nantes University and a Masters Diploma in International Law in Armed Conflict from the Graduate Institute of International and Development Studies, University of Geneva.

Currently, he holds positions in Geneva in the field of human rights.



The undersigned, Notary Public in Geneva, Switzerland, certifies the above signature of Mr Nyaletsossi VOULE, who signed according to the original sample of his signature filed in his Office. The undersigned doesn't assume any liability as to the content of this document. Geneva, this 28th day of September, 2021.





**Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and association**

**Request for leave to intervene as Amicus brief**

submitted by

**The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association**

Before the

**Constitutional Court of Uganda**  
In the Constitutional Petition No. 7 of 2020

## I. STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

Mr. Nyaletsossi Voule is the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereinafter also referred to as “Special Rapporteur”).

Special Rapporteurs are part of the Special Procedures mechanism of the Human Rights Council, made up of independent human rights experts with the mandate to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As of 6 August 2019 there were 44 thematic and 12 country mandates.

The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association was established by Human Rights Council resolution 15/21 in October 2010. The mandate was renewed in three-year increments in September 2013, June 2016 and July 2019 by Human Rights Council resolutions 24/5, 32/32 and 41/12 respectively. Mr. Nyaletsossi Voule took up his duties as Special Rapporteur on the rights to freedom of peaceful assembly and of association on 1 April 2018.

The Special Rapporteur examines, monitors, advises and publicly reports on the rights to freedom of assembly and association worldwide. As such, the Special Rapporteur receives individual complaints, conducts country visits, issues thematic reports, provides technical assistance to governments, and engages in public outreach and promotional activities – all with the ultimate goal of promoting and protecting the rights to freedom of peaceful assembly and of association worldwide.

The Special Rapporteur shares his expertise on the international law, standards and principles with regard to the rights to freedom of association and the right to freedom of peaceful assembly as pillars of democracy and rule of law. He does so taking into account the obligations of Uganda under international law.

In the performance of his mandate as Special Rapporteur, Mr. Nyaletsossi Voule is accorded certain privileges and immunities as an expert on mission pursuant to Article VI of the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946, and to which Uganda is party since 9 July 2001. This intervention is made by the Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied of the privileges and immunities of the United Nations.



In full accordance with the independence afforded to the mandate of the Special Rapporteur, authorization for the positions and views expressed in this intervention, will neither be sought nor be given by the United Nations, the United Nations Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, or any of the officials associated with those bodies.



## II. Introduction

1. Despite Uganda's formal commitment to the protection of human rights, including through the ratification of the several human rights treaties, several provisions of the NGO Act are not in conformity with the requirements for the protection of freedom of association. Several human rights bodies have questioned whether the NGO Act and regulations No. 21 and 22 of 2017 (*NGO Regulations*),<sup>1</sup> are compatible with Uganda's legal obligations.<sup>2</sup>
2. Certain provisions of the NGO Act are not consistent with Uganda's obligation to protect freedom of association under the International Covenant on Civil and Political Rights (ICCPR), acceded to by Uganda on 21 June 1995, and the African Charter. Although the NGO Act appears to have incorporated comments submitted by human rights bodies and provides certain limited due process guarantees, it also includes provisions which discourage and restrict the formation and operation of NGOs in Uganda.
3. In particular, five areas of the NGO Act are not consistent with international law: (i) the requirement to register and regularly renew a permit in order to operate; (ii) offences and penalties to organizations for breach of the NGO Act; (iii) inspection and reporting requirements of activities of the organizations; (iv) internal structure and employment of foreigners by organizations; and (v) national security exception. In these five areas, the language of the NGO Act is overly broad, imposes burdensome obligations and allows local authorities significant discretion in restricting the freedom of association without providing a justification, as required by international human rights law.

<sup>1</sup> Statutory Instruments 2017 No. 22, The Uganda Gazette No. 25, Volume CX, 05-05-2017.

<sup>2</sup> See, e.g., Human Rights Council, National report submitted in accordance with paragraphs 5 of the annex to the Human Rights Council resolution 16/21 concerning Uganda, Oct. 3, 2016, U.N. Doc. A/HRC/34/10, para.16; Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Uganda, 8 July 2015, E/C.12/UGA/CO/1, para.11; Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Uganda, 8 July 2015, U.N. Doc. E/C.12/UGA/CO/1, para.12; Letter by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to peaceful assembly and association, and the Special Rapporteur on the situation of human rights defenders to the Government of Uganda, 27 April 2015, U.N. Doc. OL UGA 1/2015; Letter by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to peaceful assembly and association, and the Special Rapporteur on the situation of human rights defenders to the Government of Uganda, 2 November 2017, U.N. Doc. OL UGA 2/2017; Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Feb. 16, 2018, UN Doc A/HRC/37/51/Add.1, para.129.

### III. International standards

4. The right of freedom of association protects the right of individuals acting alone or collectively to organize their activities for a common interest. Uganda is a State Party to several human rights treaties which protect freedom of association, such as the ICCPR,<sup>3</sup> the African Charter,<sup>4</sup> and the African Charter on Democracy, Elections and Governance.<sup>5</sup>
5. Article 22 of the ICCPR guarantees the right of each individual to “freedom of association with others.”<sup>6</sup> Article 22 also requires the State not to impose restrictions on the exercise of freedom of association (a *limitation*), unless certain requirements are met:
  2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
6. The UN Human Rights Committee (*UNHRC*), in its interpretation of Article 22.2 of the ICCPR, has set three cumulative requirements that must be met for a limitation to conform with international law: (i) it must be provided by law; (ii) it only may be imposed for “national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”;<sup>7</sup> and (iii) it must be “necessary in a democratic society in the interest of one of those purposes and proportionate in nature.”<sup>8</sup>
7. The rights of specific groups to freedom of association are also protected by treaties to which Uganda is a State Party, such as the Convention on the Elimination of All Forms

<sup>3</sup> International Covenant on Civil and Political Rights, art. 22, Dec. 16, 1996, 999 U.N.T.S. 171; acceded to by Uganda on 21 June 1995. [ICCPR]

<sup>4</sup> African Charter on Human and People’s Rights, arts. 10, 11, O.A.U. Doc. CAB/LEG/67/3, entered into force Oct. 21, 1986.

<sup>5</sup> African Charter on Democracy, Elections and Governance, arts. 2.10, 3.7, 12.3, 27.2 and 30, Jan. 30, 2007.

<sup>6</sup> ICCPR, art. 22.1

<sup>7</sup> ICCPR, art 22.2; See also see Case of *Escher et al. v. Brazil*, Preliminary Objects, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 200, para.173 (July 6, 2009).

<sup>8</sup> *Romanovsky v. Belarus*, No. 2011/2010, U.N.Doc. CCPR/C/115/D/2011/2010 (Dec. 7, 2015), para.7.2.; *Katsora v. Belarus*, No. 1383/2005, U.N. Doc CCPR/C/100/D/1383/2005 (Nov. 3, 2010), para. 8.2; *Zvozkov v. Belarus*, No. 1037/2001, U.N. Doc. CCPR/C/88/D/1039/2001 (Oct. 17, 2006), para.7.4; *Kalayakin v. Belarus*, No. 2153/2012, CCPR/C/112/D/2153/2012 (Nov. 20, 2014), paras 9.3, 9.4.

of Discrimination against Women,<sup>9</sup> the Convention on the Rights of the Child,<sup>10</sup> the Convention on the Elimination of Racial Discrimination,<sup>11</sup> and the Convention on the Rights of Persons with Disabilities.<sup>12</sup> Regional treaties that protect freedom of association include the American Convention on Human Rights<sup>13</sup> and the European Convention on Human Rights.<sup>14</sup> While Uganda is not a State Party to these treaties, the relevant provisions protecting the right of freedom of association are similar to those found in the international instruments and the respective regional human rights bodies have developed case law and interpretations analyzing the conduct required by States under its treaty-commitments.

#### IV. Points of Concern in the NGO Act

The following characteristics of the NGO Act are inconsistent with international standards for freedom of association and Uganda's obligations under human rights treaties.

<sup>9</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 7 (c), Dec. 18, 1979, 1249 U.N.T.S. 13; ratified by Uganda on 22 July 1985. (“(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”)

<sup>10</sup> Convention on the Rights of the Child, art. 15, Nov 20, 1989, 1577 U.N.T.S. 3; ratified by Uganda on 17 August 1990. (“1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.”)

<sup>11</sup> Convention on the Elimination of Racial Discrimination, art. 5 (d)(ix), Dec. 21, 1965, 660 U.N.T.S. 195; acceded by Uganda on 21 November 1998.

<sup>12</sup> Convention on the Rights of Persons with Disabilities, art. 29 (b), Dec. 30, 2006, 2515 U.N.T.S. 3; ratified by Uganda on 25 September 2008.

<sup>13</sup> American Convention on Human Rights, art. 16, Nov. 22, 1969, 1144 U.N.T.S. 143, reads: (“Article 16. Freedom of Association. 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. 2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others. 3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.”)

<sup>14</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11, Nov 4, 1950, E.T.S. No 5. (“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others [...]”)

**a. The Requirement to Register and Regularly Renew a Permit in Order to Operate**

8. Sections 31 and 47 of the NGO Act require organizations and their affiliates operating in Uganda to obtain a valid permit,<sup>15</sup> and organizations that fail to do so are subject to fines if found operating without permit or with an expired permit.<sup>16</sup> To obtain or renew a permit, an organization is required to submit an application to the National Bureau for Non-Governmental Organizations, which is created by the NGO Act (*National Bureau*). The application requires the organization to identify the location of the headquarters, specific details of its operations, and staffing.<sup>17</sup> In addition, pursuant to Section 44(a), organizations wishing to operate in Uganda must also enter into a Memorandum of Understanding with the “Local Government”, but it does not specify the contents of such an instrument.<sup>18</sup>
9. Section 30 of the NGO Act permits local authorities to refuse to register an organization when the objectives of the organization contravene Uganda’s laws; when the requirements provided in the NGO Act are not met; or when the applicant “has given false or misleading information.”<sup>19</sup>
10. This complex and detailed web of registration requirements, which permits local authorities to decline to register an organization for vague and ill-defined reasons, conflict with Uganda’s obligation under various international legal instruments. The Guidelines on Freedom of Association and Assembly of the African Commission on Human and People’s Rights (*African Guidelines*), developed pursuant to the African Charter of Human and People Rights, provide that the registration of associations shall be governed by a “notification rather than an authorization regime” and associations shall not be required to register more than once.<sup>20</sup> Similarly, the Venice Commission has noted that the ability to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.<sup>21</sup> The Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association states that:

“[A] regime of *notification to establish an association should be in force. Association should be established after a process that is*

<sup>15</sup> NGO Act of 2016, Sections 31(1), 47(1).

<sup>16</sup> NGO Act of 2016, Section 32 (6).

<sup>17</sup> NGO Act of 2016, Sections 29 (1), 29(2), 32; NGO Regulations Sections 4,7,8,9, 12, 15.

<sup>18</sup> NGO Act of 2016, Section 44(a).

<sup>19</sup> NGO Act of 2016, Section 30.

<sup>20</sup> Guidelines on Freedom of Association and Assembly, paras.13, 17.

<sup>21</sup> Venice Commission and OSCE, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, (Dec. 17, 2014).

*simple, easily accessible, non-discriminatory, non-onerous or free of charge. Registration bodies should provide a detailed and timely written explanation when denying the registration of an association. Associations should be able to challenge any rejection before an impartial and independent court.”<sup>22</sup>*

11. The UNHRC has determined that, as a general rule, the State seeking to implement measures that restrict individual exercise of the right to free assembly and expression bears the burden of justifying the measure, a test which includes the strict tests of necessity and proportionality.<sup>23</sup>
12. In *Koretsky v. Ukraine*, the European Court of Human Rights held that a law setting out registration requirements for civil organizations must be sufficiently precise “to enable them [the persons concerned] to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.” In *Koretsky*, the Court held that the right to freedom of association requires registration requirements provided for in a national law to indicate clearly the requirements for the State authorities to refuse registration and the specific circumstances to exercise of such discretionary power.<sup>24</sup>
13. Similarly, in *Mikhailovskaya v. Belarus*, the UNHRC held that requiring the dissolution of an organization for failing to register and comply with Belarussian legal requirements was “disproportionate” and therefore in violation of Belarus’ international obligations.<sup>25</sup> In *Mikhailovskaya*, Legal Aid to the Population, a civic organization, was denied registration and ordered to shut down by a court based on the breach of domestic laws concerning the provision of legal services and the rules requiring an organization to register with the government. Since Belarus did not present any arguments in the case in defense of the refusal to register or explaining the requirements of organizations providing legal services, the UNHRC held that because the organization’s members had corrected the deficiency in the organization’s operation and local authorities had previously affirmed the right of individuals to receive legal assistance from non-lawyers, Belarus could not order the dissolution of the organization.
14. Here, the NGO Act contravenes the legal obligation to allow simple and easily accessible registration of organizations in two ways. First, Uganda has not, and cannot, establish that requiring organizations to obtain a permit prior to their commencing operations is necessary and proportional for the protection of a public interest. Nor can Uganda

<sup>22</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27 (May 21, 2012), para. 95.

<sup>23</sup> *Sekerko v. Belarus*, No. 1851/2008, U.N. Doc. ICCPR/C/109/D/1851/2008 (Oct. 28, 2013), para.9.6.

<sup>24</sup> *Koretsky v. Ukraine*, App. No. 40269/02, Eur.Ct. H.R. (2008), para. 47.

<sup>25</sup> *Mikhailovskaya v. Belarus*, No. 1993/2010, U.N. Doc. CCPR/C/111/D/1993/2010, (Jul. 24, 2014), para.7.4.

demonstrate the necessity of the application regime, which affords Uganda the discretion to deny an organization's application. In this regard, Uganda's regime differs from those in other jurisdictions which do require registration, but do not require an organization to apply for a permit to commence operations. Thus, by permitting local authorities to decline to issue a permit to an organization because the organization's goals are contradictory to Ugandan law or for "giving misleading information", Uganda has failed to establish "clear legal grounds" which govern the formation and authorization of an organization. Uganda is accordingly in violation of its obligation to set clear legal grounds for its authorities to reject applications for registration of associations.<sup>26</sup>

15. Additionally, by requiring existing organizations to renew their permit every five years and requiring existing associations to request a new permit, Uganda unduly restricts the exercise of free association because it imposes unnecessary restrictions on the ability of organizations to operate. Individuals involved in unregistered activities should be able "to hold and participate in peaceful assemblies" especially when the procedure to establish associations is burdensome and subject to administrative discretion or criminalization and could be used to quell dissenting views or beliefs.<sup>27</sup>
16. The Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association states that "*newly adopted laws should not request all previously registered associations to reregister so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities*".<sup>28</sup> For instance, the Committee on the Rights of the Child, in its concluding observations on Nepal, expressed concerns over the wide-ranging restrictions, such as re-registration requirements, placed by the authorities on civil society organizations (CRC/C/15/Add.260, paras. 33 and 34).
17. Uganda may attempt to justify these restrictions suggesting that the NGO Act seeks to promote organizations which are "suitable and able to deliver services professionally."<sup>29</sup> However, this justification is insufficient to overcome Uganda's obligations under Article 22 of the ICCPR as there is no correlation between the requirement for organizations to request permission to operate, and the obligation to protect of the right of individuals to gather for a common cause, even in a small scale or in a non-professional manner. The permitting requirements under the NGO Act should be brought into conformity with the standards of protection of freedom of association. Registration should be simple and

<sup>26</sup> African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly, (May 22, 2017), para. 13.

<sup>27</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27 (May 21, 2012), para. 56.

<sup>28</sup> Ibid., para 62.

<sup>29</sup> NGO Act, Section 4(e).

accessible and should not be overly burdensome to the point as to discourage the possibility of individuals to associate peacefully for a common cause.

**b. Offences and penalties to organizations for breach of the NGO Act**

18. Section 7(b) of the NGO Act contains open ended language that appears to empower the Bureau to “discipline” organizations. The sanctions provided in the NGO Act range from public shaming to “blacklisting the organization.”<sup>30</sup> In addition, an organization whose permit expires but which continues operating is subject to monthly fines.<sup>31</sup> Also, a permit may be revoked if the organization: (i) does not operate in accordance with its constitution, or (ii) contravenes any of the conditions or directions in the permit.<sup>32</sup>
19. On the other hand, the NGO Act does provide certain limited due process guarantees. For example, Section 7 requires the Bureau to give the organization the opportunity to be heard.<sup>33</sup> Thus, upon being served with a notice of intent of revocation, the organization is afforded 30 days to present its reasons as to why the permit should not be revoked. Even after the permit is revoked, the organization must be informed of the reasons for any revocation decision and the organization may apply again for a permit.<sup>34</sup>
20. In the regional context, in Africa the Guidelines on Freedom of Association and Assembly require that sanctions imposed by states in the context of associations and assemblies should be “strictly proportional to the gravity of the harm in question and applied only as a matter of last resort and to the extent necessary.”<sup>35</sup> In the case of *Kungurov v. Uzbekistan*, the UNHRC analyzed the denial of the registration of a local organization, “Democracy and Rights”, and the legality of the operation of unregistered organizations. The UNHRC observed that the right of freedom of association relates not only to the formation of an association, but also guarantees the right of the association to freely carry out its activities.<sup>36</sup> Thus, as noted above, any restriction on the association’s freedom to operate must be necessary, serve a legitimate purpose, and be proportional to the needs at hand. Therefore, the UNHRC has ruled that organizations should only face sanction when the regulated conduct poses a real danger to a country’s citizens, not merely when a risk is hypothetical.<sup>37</sup> Penalties such as suspension or dissolution of the permit of an association to operate are the most severe form of restrictions to this right

<sup>30</sup> NGO Act of 2016, Section 7(1)(b)(iv); NGO Regulations, Section 36.

<sup>31</sup> NGO Act of 2016, Section 32(6).

<sup>32</sup> Statutory Regulations, Section 13.

<sup>33</sup> NGO Act of 2016, Section 7 (2).

<sup>34</sup> NGO Act of 2016, Section 33.

<sup>35</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, (May 22, 2017), para. ix.

<sup>36</sup> *Kungurov v. Uzbekistan*, No.1478/2006, U.N. Doc. CCPR/C/102/D/1478/2006 (Sep. 15, 2011), para.8.2.

<sup>37</sup> *Lee v. Republic of Korea*, No. 1119/02, U.N. Doc. No. 1119/2002, (Jul. 20, 2005), para.7.2.



and should only be used as a last resort only “where there has been a serious violation of national law.” Such a “death penalty” sanction has only been authorized where the organization pursues illegitimate purposes such as “intimidation of members of the general population, for instance on the basis of a racially-motivated position.”<sup>38</sup>

21. Consistently, the African Commission’s Guidelines on Freedom of Association and Assembly require States to avoid criminal sanctions in the context of NGOs and avoid monetary penalties to the extent possible, suggesting that organizations be given a period of time to comply with the relevant requirements and regulations in question.<sup>39</sup> The Special Rapporteur on freedom of peaceful assembly and of association has suggested that dissolution is only permissible when there is an imminent danger and should be proportional to the aim pursued, so as to maximize the potential for an organization to bring its operation into conformity with domestic laws.<sup>40</sup>
22. In this case, Uganda’s NGO Act provides that operations without a permit or which fail to produce information required by local authorities can give rise to a fine or result in severe penalties, such as dissolution, or criminal sanctions. Moreover, Uganda has not provided a justification for such severe penalties and there appears to be no link between the severity of the violation and the severity of the contemplated sanction, as is required by international human rights standards. Furthermore, the NGO Act authorizes the dissolution of an organization because the organization (i) defrauded the public or (ii) is guilty of a gross violation of Ugandan law. However, such provisions are inherently vague and create substantial uncertainty over which conduct may result in an NGO’s dissolution. Thus, for example, the provision that permits the dissolution of an organization because it “defrauded” the public is susceptible to abuse because it allows State authorities to assess the performance of the work of the association, scrutinize the compliance with the organization’s own objectives or even determine the veracity of the information it disseminates. That risk is higher still because the NGO Act does not define what would constitute fraud, or how the public could be defrauded.
23. Moreover, the NGO Act authorizes the Bureau to “summon and discipline” organizations by warning, suspending the permit, exposing the organization to the public, blacklisting it, or revoking its permit,<sup>41</sup> without providing any justification of the sanction’s necessity,

<sup>38</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, footnote 44.

<sup>39</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, paras. 55, 59.b.

<sup>40</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27 (May 21, 2012), paras. 38(e), 75.

<sup>41</sup> NGO Act of 2016, Section 7(1)(b).

legitimate objective or proportionality. This omission substantially negates the right of free association.

24. Here, the provisions allowing local authorities to suspend the activities, prosecute, and stigmatize civil organizations do not appear to be justified by a legitimate objective. Even if such a legitimate objective existed, the prescribed sanctions are not the least intrusive means to freedom of association. Uganda's restriction of the right of freedom of association by establishing sanctions and penalties without meeting the standards of justification under international law are therefore not permissible under the ICCPR and violate the rights of members of organizations to associate freely.

**c. Inspection and reporting requirements of the activities of organizations**

25. Section 41 of the NGO Act provides that an inspector “may request any information that appears to him or her necessary for purposes of giving effect to this act.”<sup>42</sup> During the inspection, failure to comply with any order or refusal to grant access to “any property, books of account, records, returns document or information” or “to comply with any order or direction of the inspector” without a reasonable excuse are considered an offence subject to fines “or to imprisonment not exceeding one year, or both.”<sup>43</sup>
26. In addition, the NGO Act provides for unrestricted monitoring by various local entities. Under Section 20(4)(f), a District Non-Governmental Organizations Monitoring Committee is obligated to “monitor and provide information to the [National Bureau] regarding activities and performance of organizations in the district.”<sup>44</sup> Likewise, under Section 21(3)(d), a Sub-County Non-Governmental Organizations Monitoring Committee is tasked with providing information on the activities of organizations in the sub-counties to the District Committee.<sup>45</sup> Thus, in the name of transparency, organizations are subject to invasive monitoring of their operation, which conflicts with Uganda's international obligations to guarantee freedom of association.
27. These provisions of the NGO Act are inconsistent with Uganda's obligations under international law. As mentioned above, the ICCPR requires any measure limiting the freedom of association to meet the requirements of legality, necessity and proportionality. With regard to powers of inspection, the African Guidelines suggest that inspections of associations should be allowed “only by judicial order in which clear legal and factual grounds justifying the need for inspection are presented” and there is “well-founded

<sup>42</sup> NGO Act of 2016, Section 41(1).

<sup>43</sup> NGO Act of 2016, Section 41(7).

<sup>44</sup> NGO Act of 2016, Section 20(4)(f).

<sup>45</sup> NGO Act of 2016, Section 21(3)(d).

evidence of a serious legal violation.”<sup>46</sup> In the event that inspection powers are provided by law, the regulations shall “clearly define the powers of inspecting officers” and “ensure respect for privacy.”<sup>47</sup>

28. Further the Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that the right of independent bodies to examine the records of associations “should not be arbitrary” and must respect the principle of non-discrimination and the right to privacy, as it would otherwise put the independence of associations and the safety of their members at risk.<sup>48</sup> The African Guidelines provide that authorities should respect associations’ right to privacy and “shall not subject them to undue surveillance.” Examination of records is only permissible where reasonable suspicion of an infraction has led to a court warrant authorizing such surveillance.<sup>49</sup>
29. The NGO Act violates Uganda’s international law obligations to refrain from interfering in the freedom of organizations in two ways. First, Uganda does not, and cannot, establish that administrative inspection without a court order is necessary and proportional for the protection of a public interest. Second, Uganda has failed to “clearly define the powers of inspecting officers”<sup>50</sup> by permitting an inspector to review an organization’s documents and premises without a court order, or even a duty to justify on “clear legal and factual grounds”<sup>51</sup> the need of the inspection. The general power of the District and Sub-County Non-Governmental Organizations Monitoring Committees to monitor and report the activities of organizations, without a court warrant, is similarly inconsistent with Uganda’s legal obligations. Uganda cannot justify this detailed surveillance of organizations, or the lack of regulation defining the monitoring and reporting powers of inspectors.

#### **d. Internal Structure and Employment of Foreigners by Organizations**

30. As part of the application process to obtain a permit, Section 31 of the NGO Act requires an organization to produce a chart of the staff that will be part of their operation and the

<sup>46</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, (May 22, 2017), para. 34(b).

<sup>47</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, (May 22, 2017), para. 34(c).

<sup>48</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27 (May 21, 2012), para. 65.

<sup>49</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, (May 22, 2017), para. 35.

<sup>50</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, (May 22, 2017), para. 34(c).

<sup>51</sup> African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly, (May 22, 2017), para. 34(b).

organization's geographical area of coverage.<sup>52</sup> Organizations must also report detailed information on their income, expenditures, budget, work plan and information concerning the funds received and their source of income.<sup>53</sup>

31. Furthermore, Section 45 provides that if any foreign staff is employed by an organization, a statement must be made indicating “the period for the replacement of the foreign employees with qualified Ugandans.”<sup>54</sup> The organization is then required to ensure that the remuneration of their staff is comparable to the employment market in Uganda or “reasonably comparable to those of their foreign counterparts.”<sup>55</sup> Additionally, under Section 34, foreign organizations must obtain additional approvals to operate in Uganda and hold a recommendation from the government of their country of origin and the Ministry of Foreign Affairs of Uganda.<sup>56</sup> In the event that a foreign citizen is employed by an organization, a clearance is required by the diplomatic mission of Uganda in the employee's state of origin, indicating suitability for employment, academic credentials and certification of the absence of criminal records.<sup>57</sup>
32. The protection of the right of freedom of association under Article 22 of the ICCPR includes the freedom of individuals to decide their means of such association with others. The Special Rapporteur has stated that the right to freely associate entails not only the right to organize as a group, but also the right for organizations to be “free to decide on their internal governance in a way that would help them most effectively to reach their mission” without fear of repercussions.<sup>58</sup> Similarly, the Special Representative of the Secretary-General on human rights defenders has noted that the freedom of association seeks to allow individuals to “interact and organize among themselves to collectively express, promote, pursue and defend common interests.”<sup>59</sup> The Venice Commission has determined that NGOs should not be required to seek authorization to establish branches either in their country or abroad.<sup>60</sup>

<sup>52</sup> NGO Act of 2016, Sections 31(5)(c), 31(5)(d).

<sup>53</sup> NGO Act of 2016, Section 39(b), an organization shall: “declare and submit to the District technical planning committee, the DNMC and SNMC of the area in which it operates, estimates of of (*sic*) its income and expenditure, budget, work plan, information on funds received and the sources of funds.”

<sup>54</sup> NGO Act of 2016, Section 45(a)(iii).

<sup>55</sup> NGO Act of 2016, Section 45 (d).

<sup>56</sup> NGO Act of 2016, Section 34, NGO Regulations Section 1.

<sup>57</sup> NGO Act of 2016, Section 45 (c).

<sup>58</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/73/279 (Aug. 7, 2018), para. 18.

<sup>59</sup> U.N. Secretary-General, Human Rights Defenders, Note by the Secretary General, U.N. Doc. A/59/401 (Oct. 1, 2004), para. 46.

<sup>60</sup> Venice Commission and OSCE, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, (Dec. 17, 2014), para. 220. See also Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27 (May 21, 2012), para. 59.

33. Similarly, in the case of *Baena Ricardo v. Panama*, the Inter-American Court of Human Rights held that freedom of association includes the rights of members of an organization to put in place their internal structure, programs, and activities.<sup>61</sup> In *Baena Ricardo*, Panama allowed the dismissal of workers who held positions in trade unions, and no justification was made to show that the measures were proportional or necessary to safeguard public order. The Court determined that the issue on the protection of freedom of association “is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.”<sup>62</sup> Thus, freedom of association includes the obligation of States not to interfere with the internal structure of the organization without a justification to protect other interests in a proportional manner.
34. In this case, Uganda’s NGO Act requires the disclosure of particular information regarding the organization’s internal structure at the moment of its request for permit and during the performance of its work, which subjects the organization to a level of scrutiny that cannot be justified under the Act. Further, the limits placed on foreign employees places Uganda in violation of the obligation to allow the organizations to determine their internal governance “without fear of repercussion.” The requirement for extensive and nearly impossible recommendations from Ugandan authorities, from an employee’s country of origin, and proof of academic and professional qualifications is not justified and violates Article 22 of the ICCPR, as it discourages and prevents foreign nationals from exercising their right to freedom of association in Uganda. Sections 34, 39 and 45 of the NGO Act should be brought in conformity with the standards of protection of freedom of association by providing the same requirements for local and foreign organizations and proportional requirements for the grant of permits that does not discourage peaceful associations.
35. Uganda may attempt to justify these provisions of the NGO Act by noting that it is the practice of many states to request foreign workers to apply for and obtain work permits. However, the NGO Act provides a specific and burdensome procedure for non-nationals based on the nature of the work to be performed at an organization, which goes beyond from standard regulations requiring visas for non-nationals. Members of foreign associations or foreigners associating with Ugandan nationals should be able to “to hold

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<sup>61</sup> Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas, 2011, para.70. See also Inter American Court of Human Rights, *Baena Ricardo v Panama*, Judgment, Merits, Reparations and Costs, 2, February 2001, Serie C No 72, para.156.

<sup>62</sup> *Ibid.*

and participate in peaceful assemblies,”<sup>63</sup> pursuant to reasonable requirements that allows individuals to “collectively express, promote, pursue and defend common interests.”<sup>64</sup>

#### e. National Security Exception

36. Section 50 of the NGO Act grants courts the power to dissolve an organization for reasons of national security or a violation of the laws of Uganda.<sup>65</sup> Section 44 of the NGO Act prohibits organizations from engaging in any act which is prejudicial to the security and laws of Uganda,<sup>66</sup> or which is prejudicial “to the interests of Uganda and the dignity of the people of Uganda.”<sup>67</sup>
37. In *Lee v. Korea*, the UNHRC provided that in order for a security exception to freedom of association to apply, a state party must demonstrate that the prohibition of an association is necessary to avert a real danger to national security or the democratic order, and demonstrate that less intrusive measures would be insufficient to achieve this purpose.<sup>68</sup> In *Lee*, a student member of an organization pursuing democratization was sentenced to one year of imprisonment and “suspension of eligibility” as punishment for engaging in an “enemy-benefiting group” under a national security law. The UNHRC rejected Korea’s argument that the student organization in which Lee participated endangered national security and liberal democratic principles, since the activities did not pose a real danger for national security and less intrusive means could be available for the State.
38. Similarly, the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR indicate that the national security exception for the limitation of human rights shall be used to justify the need to “protect the existence of the nation or its territorial integrity or political independence against force or threat of force.”<sup>69</sup> The invocation of national security is therefore reserved for extreme scenarios and cannot be invoked to prevent local or isolated threats to public order, nor to impose vague or arbitrary limitations.<sup>70</sup>

<sup>63</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27 (May 21, 2012), para. 56.

<sup>64</sup> U.N. Secretary-General, Human Rights Defenders, Note by the Secretary General, U.N. Doc. A/59/401 (Oct. 1, 2004), para. 46.

<sup>65</sup> NGO Act of 2016, Section 50 (2).

<sup>66</sup> NGO Act of 2016, Section 44(d).

<sup>67</sup> NGO Act of 2016, Section 44(f).

<sup>68</sup> *Lee v. Republic of Korea*, No. 1119/02, U.N. Doc. No. 1119/2002, (Jul. 20, 2005), para.7.2.

<sup>69</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1984/4 (Sep. 28, 1984) para. 29.

<sup>70</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1984/4 (Sep. 28, 1984) paras. 30-31.

39. In its resolution 22/6, the Human Rights Council has urged States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights<sup>71</sup>.
40. The NGO Act fails to define “national security” in a way that is consistent with Uganda’s treaty obligations. In this case, there is no clear definition of what “threatening national security” means under the NGO Act, how the activities of an organization could threaten national security, or a specific burden of proof that must be met to show a threat to national security. Uganda has not put forward any convincing or compelling reasons justifying such broad, undefined powers, which do not meet a pressing social need and are not proportionate to their legitimate aim.<sup>72</sup> Furthermore, threatening the existence of an organization or preventing individuals from constituting an association that may be seen as contravening undefined “national interests” is the most severe form of restriction on the freedom to associate, and has been characterized as having “an exceptional nature.”<sup>73</sup>
41. The national security exception, contained in Sections 44 (d), 44(f) and 50(2) of the NGO Act, thus violates the right to freedom of association protected by Article 22 of the ICCPR. These sections must be brought in conformity with international law, in particular by limiting their application to existential dangers to national security where less intrusive measures could not suffice.

## V. Conclusion

42. The provisions analyzed above allow significant state interference in the formation and operation of NGOs in Uganda without meeting the requirements for necessity and proportionality in Article 22.2 of the ICCPR, and are thus inconsistent with Uganda’s international human rights obligations.

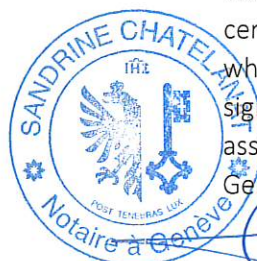
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<sup>71</sup> UN Human Rights Council, Protecting human rights defenders: resolution / adopted by the Human Rights Council, 12 April 2013, A/HRC/RES/22/6, OP 10.

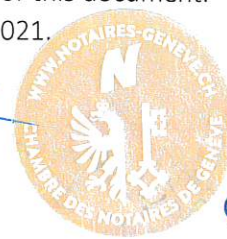
<sup>72</sup> Venice Commission and OSCE, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, (Dec. 17, 2014), para. 35.

<sup>73</sup> Venice Commission and OSCE, Joint Guidelines on Freedom of Association, CDL-AD(2014)046, (Dec. 17, 2014), para. 239 (“Sanctions amounting to the effective suspension of activities, or to the prohibition or dissolution of the association, are of an exceptional nature.”).

The undersigned, Notary Public in Geneva, Switzerland, certifies the above signature of Mr Nyaletsossi VOULE, who signed according to the original sample of his signature filed in his Office. The undersigned doesn’t assume any liability as to the content of this document. Geneva, this 28th day of September, 2021.



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