The Non-Governmental Organisations (NGO) Act, 2016

Impact on operations of NGOs in Uganda’s Oil and Gas sector

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List of Acronyms

ACODE: Advocates Coalition on Development and Environment
CRED: Civil Response on Environment and Development
CSCO: Civil Society Coalition on Oil and Gas
CSO: Civil Society Organisation
DNMC: District Non-Governmental Organisations Monitoring Committee
DRC: Democratic Republic of Congo
GRA: Global Rights Alert
HRDs: Human Rights Defenders
ICCPR : International Covenant on Civil and Political Rights
IFIs; International Financial Institutions
ISO: Internal Security Organisation
NAVODA: Navigators for Development Association
NAPE: National Association of Professional Environmentalists
NGO: Non-Governmental Organisation
PBA: Public Benefits Act
PBO: Public Benefits Organisation
POMA: Public Order Management Act
PWYP : Publish What You Pay
SNMC: Sub-county Non-Governmental Organisations Monitoring Committee
UCCA : Uganda Consortium on Corporate Accountability
ULGA: Uganda Local Government Association
UHRC: Uganda Human Rights Commission
UNDP: United Nations Development Programme
ICNL: International Center for Not-for-Profit Law
Legal disclaimer:
This publication is based on information provided to Global Rights Alert and individuals acting on behalf of Global Rights Alert. The conclusions presented herein are based only on information so provided. Global Rights Alert and those acting on behalf of Global Rights Alert have strived towards acquiring full overview of all relevant information and data to prepare this publication. We do not accept liability whatsoever for any inadequacies of the information this publication is based on.
The discovery of oil and gas in Uganda precipitated a myriad of human rights violations especially in the Albertine Graben where oil activities are concentrated. These violations range from land grabbing, unlawful evictions, compensation irregularities, lack of participation by host communities in the exploitation and governance of natural resources, lack of transparency and lack of access to information regarding the oil sector, among others. The acquisition of land for oil related infrastructure, for example, is changing land use patterns. People are already experiencing negative impacts such as loss of livelihoods and resources and breakdown of community networks and social services. Loss of resources for subsistence and income is leading to hardship, social tensions, and impoverishment. In order to mitigate and or address human rights violations, a number of Civil Society Organisations (CSO) are undertaking several initiatives targeting host communities, government and investors. However, CSO efforts aimed at addressing these human rights issues in the sector have faced a number of hurdles despite the constitutional protection and ratification of international instruments that guarantee the fundamental rights for CSO operations in the country.

The legislative framework governing CSO activities has in essence created several stumbling blocks that have frustrated several CSO efforts in the fulfilment of their mandate. Before the enactment of the Non-Governmental Organisations Act of 2016 (NGO Act 2016), CSOs were governed by the Non-Governmental Registration Act that had been in force since 1989 and later amended in 2006. The repealed law was the subject of a court battle challenging its constitutionality. CSOs presenting the petition contended that the law was a clear violation of the freedom of association as well as expression. The repealed law was also complimented by other legislation such as the Public Order Management Act (POMA) that presents retrogressive and draconian provisions vividly aimed at stifling free and open engagement. Members from civil society have expressed concerns about the CSO legal regime and its ripple effect on self-censorship by most organisations out of fear of reprisal or prosecution. In addition to the legal regime, several procedural and non-procedural hurdles were created that in effect frustrated CSO efforts. It is amidst this environment that the NGO law of 2016 was passed.

CSOs have expressed concern that the new law is going to compound and reinforce the prior challenges they faced before its enactment. Furthermore, the wrath of these laws will especially be faced by NGOs working on sensitive issues like oil and gas because of the high stakes and interests characterised by the industry. Although the government views the law as a mechanism to improve the regulation of CSOs in the country, CSOs have expressed a contrary view with most describing the law as part of a series of laws intended to tighten the state’s grip over NGOs in the country.

The law has in fact created unnecessary and stringent prerequisites for registration and operation that essentially frustrate and make a number of CSO efforts futile such as thick bureaucracies, tedious registration processes. The Act also creates vague and ambiguous provisions such as ‘prejudicial to national security’ and ‘interests of Ugandans’ that are open to broad interpretation and malleable to the purpose and motive of the interpreter. These in essence can be used to clamp down the freedom of association and expression especially for NGOs working on sensitive issues like oil and gas.

A closer look at other jurisdictions like the United Kingdom (UK), South Africa and Kenya, reveals that strenuous registration processes and thick bureaucracies are unnecessary prerequisites in the regulation of CSOs by governments. In these countries the registration and operation requirements are not as tedious as they are in Uganda. The laws of these countries are generally designed to promote rather than stifle civil society work.

In this paper, the following recommendations are made for both CSOs and Government, to ensure that the NGO Act 2016 does not stifle CSOs work.
For CSOs

i. CSOs should as practically as is “possible” try to abide and work within the law but challenge it.

ii. Advocacy for a review of some of the provisions of the Act. This process could be catalysed with litigation that challenges the provisions of the law. Such litigation, if successful, would give impetus to the campaign.

iii. Inform the Regulations of Act to mitigate some of the harsh provisions of the Act, and ensure that they are not used to enhance the restrict provisions.

iv. Seek dialogue on the regulation and role of CSOs at regional level with the aim to harmonise legal regimes at East African level

v. Civil Society as a sector to rally together and advocate for regulatory regimes that promote their work.

vi. Form, strengthen and maintain partnerships and loose coalitions to enhance protection and spread the risk.

vii. Place emphasis on evidence-based advocacy to mitigate governmental overreaction to CSOs working in the sector.

viii. Build a constituency of communities to avoid accusations about serving self interests. Communities are vital to defend the CSO if benefits to them are evident.

For Government

ix. Enhance information sharing between the different government ministries, departments and agencies as established by law to avoid duplication of work.

x. Invest in capacity of government officials responsible to implement the NGO Act and the various laws affecting the operations of CSOs.

xi. Government should improve its legal framework for the regulation of NGOs by borrowing best practices from comparative jurisdictions, including from the United Kingdom, South Africa and Kenya as highlighted above.

xii. Government should transform the NGO Bureau into an independent body, determined by process of appointment of Bureau staff in a public manner by an independent entity.

Winfred Ngabiirwe
Executive Director - Global Rights Alert
This research was generously funded by International Center for Not-for-Profit Law (ICNL), and was conducted by Assoc. Prof Dr. Christopher Mbazira, with research assistance from Ms. Teddy Namatovu.

The research aims to interrogate the 2016 NGO Act and the potential threats it poses to the operations of NGOs working on issues of oil and gas in Uganda. The purpose is to secure and expand spaces CSOs require to operate in their efforts towards contributing to an inclusive and sustainable natural resources sector.

GRA appreciates James Muhindo, Richard Orebi and Belinda Katuramu who coordinated this work as well as Winfred Ngabiirwe who provided timely supervision and invaluable advice regarding the study and production of the report. GRA also acknowledges its partners and all respondents to this study.
The Ugandan Constitution under Articles 29 and 38 provides for the Freedoms of Expression, Assembly and Association, and the right to participate in the affairs of government respectively. The country is also a signatory to various human rights treaties and instruments that protect human rights. Notwithstanding Uganda’s ratification of several of these international human rights instruments providing for freedom of expression and association, civic space in the country has constantly been under threat. Civil society operations in the country are continually affected by the enactment of legislation that either directly or indirectly affects civil society work. Such legislations as the Public Order Management Act (POMA) are used by security agencies to frustrate civic engagement, in some cases by deploying security personnel to disperse gatherings and arrest people involved\(^1\).

This state of affairs could be understood in the context of the global war against terrorism, which has seen many governments use terrorism as the pretext for undermining civil liberties. The Arab spring uprisings which saw the fall of governments in Egypt and Tunisia also pushed governments, especially across Sub Saharan Africa, into paranoia and frenzied restriction of freedoms of assembly and expression.

It is in vein of the above that the 2016 promulgation of the Non-Governmental Organisations Act (2016 NGO Act) was received by civil society organisations (CSOs) in Uganda. Many CSOs perceived the law as a ploy by the state to tighten its grip on civil society engagements in the country. Right from its inception as the NGO Bill, the proposed law was received with so much apprehension from CSOs, with a number of them publishing position papers challenging some clauses and the spirit of the law\(^2\). The CSOs urged government to ensure that the proposed law conformed to internationally acceptable standards on freedom of expression and association.\(^3\) CSOs called for the revision of several clauses in the Bill. Nonetheless, although some contentious provisions were eventually removed, the Act as it currently stands still presents threats towards the operations of CSOs.

Within the civil society sector, the organisations which have been affected most by state regulation include those working on issues of anti-corruption, electoral democracy, governance, human rights and most particularly those working on accountability and social justice issues in oil and gas sector for which this study is aimed. These particular CSOs have committed time and resources to promote access to information so that citizens can ably participate in shaping and monitoring the sector developments. In addition to informing the policy and legal framework for the oil and gas sector, a number of organisations have been involved in advocacy for fair and respectful acquisition of land for sector activities, environmental protection, as well as advocacy for transparency and accountability in the management of extractive revenues to mention but a few roles they have played.

Whereas the Albertine region has been a beehive of activities since 2006 when government announced commercial oil deposits there, this has not erased the secrecy all too often associated with the sector. For instance, while the three foreign oil companies operating in Uganda; Total, CNOOC and Tullow- have been issued production licences with control stakes of 54.9%, 33.3% and 11.76% respectively. The oil sector remains characterised by some controversies arising,


among others, from the government’s secrecy as regards matters concerning concessions to oil companies, the exact size of deposits, the impact on the environment, the players in the sector and revenue collected so far and how these revenues are managed. Other concerns relate to acquisition of land by both the government and the private sector to facilitate oil activities and revenue sharing with local communities. Indeed, negative experiences of other African countries have encouraged CSOs in Uganda to pick interest in this sector, albeit with some discomfort on the part of government. For this reason, government has moved fast to regulate the activities of CSOs in this sector, sometimes by imposing ad hoc regulations only applicable to organisations working on oil and gas and in the oil rich region. These organisations have often battled procedural and non-procedural restrictions in their operations with serious concerns. The 2016 NGO Act is viewed as part of the range of regulatory laws that could negatively impact on the work of CSOs working on oil and gas.

1.1. Purpose of Study

The study sought to interrogate the 2016 NGO Act and the potential threats it poses to the operations of NGOs working on oil and gas in Uganda. The impact of the 2016 NGO Act will be examined vis-à-vis existing legislation that has previously been cited to cripple open and democratic discussions on oil governance in the country. This legislation is examined in light of the country’s obligations under international human rights law as well as internationally acceptable standards on the freedom of expression and association in Uganda. The essence of the study is to highlight potential hurdles to NGOs working on oil and gas issues as posed by the law and make recommendations to foster free and open engagement on oil and gas issues in Uganda.

1.2. Methodology

This study relies on a desk review of legislation and relevant literature with a bearing on civic space in Uganda and beyond. The purpose is to establish comparative approaches in regulating civil society from other countries including the United Kingdom (UK), South Africa and Kenya. The UK was selected because of its traditional influence on Uganda’s legal system and also the fact that in 2016 it reviewed its law to introduce some new regulations for charities. South Africa has a rich history of civic engagement birthed as a tool to fight apartheid, and the country has continued to have a vibrant civil society. Additionally, for quite some time since the mid-1990s, South Africa was hailed as a growing democracy and has had a liberal civil society regulatory legal regime. The same applies to Kenya, a country that shares a lot with Uganda and since the adoption of a new Constitution has embarked on legal reforms that promote human rights, prevailing challenges notwithstanding. Indeed, as Uganda was grappling with the NGO Bill in 2016, Kenya was operationalising its 2013 Public Benefit Organisations Act, which has been adjudged as progressive even by CSOs. They had incessantly campaigned for three years for the law to be effected because of its progressive nature. Indeed, the new law has a lot that could be replicated in Uganda.

The desk review was complimented by direct interviews with strategically selected respondents from CSOs in the oil and gas sector and beyond. Persons interviewed included officials from the NGO Bureau, police, academia, oil and gas civil society actors, journalists and community based groups in the Albertine region.
1.3. Outline

The paper is divided into four parts. Part I introduces and gives a general background to the study. Part II analyses the context of oil and gas and civil society work. The section is designed to highlight the socio-economic and rights issues in the sector, the work of CSOs in this regard and the challenges they face. Some of the CSO formations working on oil and gas in Uganda are highlighted. Part III discusses the subject of civic engagement and the human rights standards. The purpose of this section is to paint a conceptual picture that helps understand the normative basis for CSOs work, particularly using the human rights standards that allow for civic engagement and organisation formation and operation. Part IV examines the legal framework governing the regulation of NGOs in Uganda. This includes the 2016 NGO Act and other legislations that have the effect to cripple the activities of CSOs working on oil and gas in Uganda. Part V cover comparative reviews the legal frameworks governing CSOs in the United Kingdom, South Africa and Kenya, drawing out lessons and best practices that could be emulated by Uganda. Part VI discusses the likely and perceived impact of the 2016 NGO Act on CSOs working on oil and gas in Uganda. Part VII comprises the conclusion and the recommendations of the study.
2. The Context of Oil and Gas and Civil Society Work

Natural resource wealth, has for quite some time been viewed as the vehicle through which countries can attain economic development and overcome poverty because it brings in huge revenues for those countries lucky to be endowed. In fact, the extractives sector in Uganda has been identified by government as an important segment of the economy towards the transformation of the country. The flagship Vision 2040 has earmarked oil and mineral resources as critical in changing “the country from a predominantly low income to a competitive upper middle income country within 30 years with a per capita income of USD 9,500.”

The paradox though is that with a few exceptions such as Botswana, mineral wealth in Africa has not brought in the much needed economic change. For instance, some countries with immense mineral wealth such as the Democratic Republic of Congo (DRC), Chad and The Sudan are among the countries at the bottom of the United Nations Development Programme (UNDP) Human Development Index. The paradox, dubbed “the oil curse”, has been associated with a number of factors, most important of which being bad resource governance. Among others, bad governance in the sector has been characterised by a lack of transparency at different levels. The World Bank has identified the following: (i) award of contracts and licenses; (ii) regulation and monitoring of operations; (iii) collection of taxes and royalties; (iv) revenue management and allocation; and (v) implementation of sustainable development policies and projects. As a result of this, since the 1990s a lot of time and resources have been invested in campaigns aimed at promoting transparency in the oil sector and putting in place norms and standards for this purpose. The justification for this direction came after a number of civil society expositions and publication of corruption and abuse in the extractives sector. The campaigns were successful to an extent that such International Financial Institutions (IFIs) as the World Bank started including conditions related to transparency as prerequisites for funding some extractives related projects.

In addition to the governance deficits, but also a result of them, activities in the extractive industry have given rise to a number of human rights issues. As indicated below, these have ranged from simple violations to serious ones, including allegations of commission of crimes against humanity. There have been issues around both economic, social and cultural rights as well as civil and political rights, and ones which have been viewed from the perspective of both the violations of state actors and the abuses by non-state actors. It has indeed been asserted that oil, gas and mining industry operations too often go hand in hand with allegations of human rights abuses. According to Oil Change International:

There is an alarming record of human rights abuses by governments and corporations associated with fossil fuel operations, resulting in appropriation of land, forced relocation, and even the brutal and sometimes deadly suppression of critics. In addition to strong evidence for a ‘repression effect’ from oil production, in which resource wealth thwarts democratization by enabling governments to better fund internal security, dependence on oil is associated with a higher likelihood of civil war. Additionally, oil production has been found to negatively impact gender equality by reducing the number of women in the labour force, which reduces their political influence.

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3 As above, at 49.
5 See Gillies A ‘Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm’ (2010) 54 International Studies Quarterly 103 - 126.
6 The example could be given of conditions given to the Government of Chad as part of the agreement to fund the construction of a pipeline from Chad to Cameroon.
To prove the above, cases of human rights violations associated with oil are given, including from such countries as Nigeria, Burma, the United States of America and Canada, showing among others that this problem is not restricted to developing countries. The Energy Justice Network, for instance, lists a total of 29 conflicts associated with oil from countries across the world, yet these are but a tip of the iceberg. The Niger Delta in Nigeria stands out in Africa as an area where oil activities have wrecked people’s lives and brought untold suffering resulting from serious environment degradation, unlawful evictions and destruction of houses and gardens, as well as death. The killing of Ogoni human rights activist Ken Saro-Wiwa by the Nigerian Government under Sani Abacha is fresh on the minds of many.

A 2016 Report published jointly by Publish What You Pay (PWYP) and CIVICUS paints a grim picture for activists working on natural resources issues, highlighting the dangers they face. According to the Report:

Speaking up about natural resource governance is a risky undertaking because the sector is characterised by strong power imbalances between influential actors and marginalised groups. Few countries have managed to escape the resource curse – the negative economic, social and political effects that accompany the apparent blessing of plentiful mineral resources. As a result, natural resource activists tend to operate in environments that are opaque, with weak institutions prone to corruption, or internal armed conflict over access to natural resources.

The Report shows the number of reported killings associated with advocacy for natural resources justice, standing at 185 in 2015, compared to 88 in 2010. The total number between 2010 and 2015 was 753. Some of the means used to restrict the work of activists, according to PWYP and CIVICUS, include law and extra-legal means. The legal means include: regulations that suffocate civil society, tight control of public space and criminalisation of activists. The extra-legal means include vilifying those who speak, unwarranted surveillance, and intimidation and violence. Examples with live cases of where all these have been used are given. In this respect, the following is said of Uganda:

Uganda’s new Non-Governmental Organisations Act, signed into law in January 2016, also seems to have drawn inspiration from the Ethiopian experience. Allegedly seeking to establish wider space for CSO participation, the NGO Act consolidates the role of the National NGO Bureau (a government agency in the Ministry of Internal Affairs). This regulates civil society by issuing operating permits, monitoring CSO activities and scrutinising their sources of income. In addition, the law bans CSOs from engaging in “any act which is prejudicial to the security and laws of Uganda”. Given that energy and mineral resources are considered by the state to be vital to national security, these provisions present a further threat to groups addressing mining, oil and gas exploitation. Provisions contained in older laws, such as the Public Order Management Act, have also long been used against organisations such as PWYP-Uganda, whose members have repeatedly been summoned on allegations of inciting violence. They have also been denied authorisation to hold community meetings or conduct awareness-raising workshops about oil extraction.

It is on the basis of the above that human rights defenders (HRDs) have embarked on work in this sector, with the aim, according to the Eastern & Horn of Africa Human Rights Defenders Project,
of seeking to influence both the regulatory frameworks governing the extractive sector as well as the public discourse. This further influences policy-making, while raising the alarm when actors diverge from their responsibilities or when abuses go unaddressed.\textsuperscript{21} Indeed, the work of HRDs is beginning to pay off as seen from the recent suspension of Azerbaijan from the Extractive Industries Transparency Initiative (EITI) for failing to lift restrictions on civil society freedoms.\textsuperscript{22}

### 2.1. Oil and Gas Context in Uganda

In Uganda, oil exploration began way back in the early 1930s but was halted following a sharp fall in the prices of oil. It was, only aggressively resumed in the early-2000s, a period which witnessed a sharp and steady rise in the price of a barrel of oil.\textsuperscript{23} The first commercially viable discoveries were made in 2006. Since then the country has made strenuous efforts to establish the requisite legal and administrative infrastructure to enable it produce so far about 1.7 billion barrels estimated to be recoverable out of the total estimated 6.5 billion barrels that have been discovered to date.\textsuperscript{24}

In December 2013, the Uganda Human Rights Commission (UHRC) published a report on emerging human rights issues in the Albertine region where much of the oil deposits are located.\textsuperscript{25} It followed investigations conducted in the districts of Hoima, Bulisa, Nebbi, Nwoya and Amuru, which had been prompted by various petitions alleging human rights violations in these districts. The Commission found issues with respect to compensation by government of those whose land was expropriated to pave way for the oil exploitation and processing activities, especially in Hoima District. In some respects, compensation rates used were inadequate, yet in some places in Nebbi the land had been taken away before compensation was done.\textsuperscript{26}

UHRC has found issues with regard to the extent to which people were consulted and involved in making decisions on matters that affected them, thereby implicating the right to participation.\textsuperscript{27} There were participation deficits in determining the compensation rates as well as with respect to the choice of services that some corporations provided as part of corporate social responsibility. Equally so, the traditional institutions in the area, including the Kingdom of Bunyoro, had not been involved in the oil activities, which implicated the right to self-determination. The Commission looked at this issue from the perspective of the right of peoples to dispose of natural resources, stating that:

\textit{It is important that people are not denied meaningful say in government and in decisions on disposal and benefit of natural resources. The African Commission clearly underscored the obligations of the states to take precautionary steps to protect their citizens to exercise the right to freely dispose of wealth and natural resources. It was held that the non-participation of the Ogoni people and the absence of any benefits accruable to them in the exploitation of oil resources by the Nigerian government and the oil companies was a breach of its obligations under the ACHPR to exercise this right in the exclusive interest of the people and to eliminate all forms of foreign economic exploitation.}\textsuperscript{28}


\textsuperscript{23}Augé B Oil and Gas in Eastern Africa: Current Developments and Future Prospects (2015) French Institute of International Relations and OCP Policy Center, at 8.

\textsuperscript{24}John Aglionby, 2017, Uganda’s Oil Reserves Bring Promise of Work and Infrastructure. Published by the Financial Times on 27th April, 2017. Available at https://www.ft.com/content/e057c978-1555-11e7-b0c1-37e417ee6b76


\textsuperscript{26}UHRC (2013), at 17.

\textsuperscript{27}UHRC (2013), 18 - 19.

\textsuperscript{28}UHRC (2013), at 20 - 21.
Similar deficits were found with respect to the related right of access to information. In some cases, people were never given information on how their compensation had been determined. The authorities were also not adequately responding to requests to access information as required by the law.

Other human rights violations identified by the UHRC include violation of the right to a clean and healthy environment, resulting from pollution of the environment by dust, noise and smells, among others. With respect to workers’ rights, there were accusations of discrimination against the locals as far as access to work was concerned since, most of the work positions have been given to persons from other parts of the country. Related to this was the limited monitoring of labour standards at the work sites, in some cases because of denial of access to labour inspectors to the sites.

The Commission found a number of issues related to the right to land, including selling off of communal land without following proper procedures; lack of clarity over the government ban on acquisition of land titles in the Albertine Graben; inadequate compensation that did not put into consideration land use rights; delayed restoration of the derelict land; and alleged forced signing of compensation disclosure agreements by some residents.

The above concerns recorded by the UHRC confirm similar concerns raised by a number of civil society actors over the years. Surveys conducted by GRA further indicate how the livelihoods of people affected by developments have been destroyed. The organisation has documented several violations and challenges such as limited and or biased information, lack of opportunities for participation and limited access to justice.

In addition, the Uganda Consortium on Corporate Accountability (UCCA) has also documented a number of unlawful evictions in the oil region that had deprived people of their land and homes. Action Aid and International Peace Information Service commissioned Study illustrate the likely and actual impact of oil activities on the following: governance; environment; water; health; livelihood; land rights; indigenous populations; labour rights; freedom of expression and conflict.

It is a result of the above concerns, among others, that GRA and a number of partners continue to focus attention on the oil and gas sector in Uganda. Through networks such as the Civil Society Coalition on Oil and Gas CSCO, PWYP-Uganda, and Oil Watch Network, CSOs contribute to shaping the governance of the sector as well as promoting human rights of Ugandans whether they are affected persons, actors and general public. These networks aim at contributing to inclusive development and are continuously advocating for an environment that can make that possible. As PWYP has noted, :-

"We need more openness in the sector – contracts should be published and made accessible to the public for scrutiny, revenue payments and receipts should be published and tracked, communities should be given all the information they need to make an informed choice about whether to move ahead with the extraction. Transparency and accountability is needed along every step of the value chain from finding out the natural wealth of a country to winding down an extractive project."
Outside these networks, there is a host of NGOs and CBOs working on various issues related to the oil and gas sector in the Albertine region. These include the African Institute for Energy Governance, Green Watch, Advocates Coalition for Development and Environment (Acode), National Association of Professional Environmentalists (NAPE); Bagungu Community Association, Bullisa Initiative for Rural Development; Kakindo Orphan Care Bullisa, Kitara Heritage Development Agency, and Caritas Hoima. Global Rights Alert (GRA) has impacted work in the sector through its advocacy activities, as well as working directly with communities and CBOs among others in the oil region.

It is against the above background that the impact of the 2016 NGO Act on CSOs in the oil sector should be understood. Yet, these cannot be understood fully without an understanding of the national and international standards and rights relevant for CSOs.
The rights of civil society should in the first place be understood in the context of two fundamental freedoms; that of association and assembly. It is on the premise of these freedoms that different civic formations, including NGOs and CBOs operate and base their existence on as a matter of right. Indeed, freedom of expression has been highlighted as the cornerstone of democracy as the latter is essentially based on free debate and open discussion. Democracy demands that every citizen be entitled to participate in democratic processes to enable him or her to intelligently exercise the right of making free choices, and generally participate in discussions of public matters.

The freedoms of expression and association are rights recognised by the international and regional human rights framework. The International Covenant on Civil and Political Rights (ICCPR) recognises the right of everyone to hold opinions without interference. The right further entails the freedom of expression, the right to seek, receive and impart information including ideas of all kinds in any form. The ICCPR also recognises the right to freedom of peaceful assembly under Article 21 and the freedom of association under Article 22. These rights are equally protected under the African Charter of Human and Peoples’ Rights. Suffice to note that these rights are not absolute and can be limited for purposes of security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. However the restrictions placed on these rights must be prescribed by law and necessary and justifiable in a democratic society.

Uganda’s constitution is in tandem with the ICCPR and the African Charter in as far as it protects the above rights in Article 29 and prescribes allowable limitations on non-derogable rights. Article 43(1) provides that in the enjoyment of the rights and freedoms in the Constitution, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. Commendably the Constitution prohibits the use of ‘public interest’ as a shield for political persecution and detention without trial.

Article 43(2) provides that public interest under the provision shall not permit: (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution.

The above constitutional guarantees notwithstanding, civic space in Uganda is a whirlwind with CSOs encountering a myriad of hiccups in the course of their operations and which have cumulatively shrunk the space within which these CSOs operate. A myriad of these hiccups among others stem from legislations that both directly and indirectly govern the activities of CSO. The impediments in the laws include hurdles in the form of procedural setbacks that affect CSO efforts in fostering democratic governance. The wrath of these hurdles is primarily felt by prodemocracy CSOs as well as those working on crucial and sensitive areas such as oil and gas that call for accountability from government. This kind of working environment has orchestrated a difficult and suspicious relationship between the organisations and the state. There is also limited coordination between

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38 Manika Ghandhi Union of India [1978] 2 SCR 621.
39 As above.
40 Article 19(1) ICCPR.
41 Article 19(2) ICCPR.
42 See articles 9 and 10 of the African Charter on Human and Peoples Rights.
43 Article 22 (2) Banjul Charter.
44 Article 22 (2) Banjul Charter.
45 Article 43 (1) of the Constitution.
46 Article 43 (2) (a) & (b) of the Constitution.
47 Interview with Nicholas Opiyo, Executive Director Chapter Four Uganda. Interview held on 31st February 2017.
48 As above.
the government and organisations working in areas that demand accountability from the state.\textsuperscript{49} This relationship has created a harsh working environment for CSOs. On some occasions, CSOs have publicly been threatened and in some cases summoned by government bodies like Ministry of Internal affairs as well the Police. Indeed, the fraught relationship has seen CSOs accuse government of being responsible for some office break-ins that some NGOs, especially around Kampala, have suffered.\textsuperscript{50}

\textsuperscript{49} Interview with Patrick Tumwine, Advocacy Officer Human Rights Network. Interview held on 30th January 2017.

The legal regime governing CSOs in Uganda is characterised by a number of legislation that either directly or indirectly govern aspects of CSOs work or regulate the environment in which they operate. Prior to the enactment of the 2016 NGO Act, CSOs were governed by the Non-Governmental Registration Act that had been in force since 1989 and later amended in 2006. The 1989 Act as it stood then was specifically intended to provide for the registration of NGOs. All NGOs were required to register with the National Board of Non-Governmental Organisations (NGO board) prior to their operation. The rest of the Act was specifically focused on establishment of the Board and providing for its functioning. The Act was later amended in 2006 to provide for closer monitoring of NGOs by the state in addition to its earlier intended purposes. To this end, the composition of the NGO Board was maintained to include state security representatives from Internal Security Organisations (ISO) and External Security Organisations (ESO). The presence of these security officials on the Board was perceived as subjecting CSOs to continuous and intrusive monitoring by the state with the potential of coercing self-censorship in calling for state accountability and in the end curtailing their freedom of expression.

The Act also introduced vague provisions that gave the board discretionary powers like refusal to register an organisation if its constitution were in contravention of the law. It has been argued though that the Act also introduced some progressive provisions, which included providing for gender representation on the NGO Board and giving NGO automatic legal personality on registration.

The Act and its attendant regulations posed serious challenges to the freedom of association and expression by CSOs and was the subject of a court battle challenging their constitutionality. However, the petition lay in the Constitutional Court’s archives undecided since its filing in 2009. Amidst this controversy a new law governing NGOs was proposed in 2015. The judgment was only delivered in April 2016, a month after the NGO Act 2016 had been passed.

In addition to the controversies surrounding the circumstances under which the NGO Act 2016 was passed, like alleged lack of quorum in Parliament, the substantive provisions of the proposed law (while it was still a Bill) presented a number of contentious provisions which some actors thought were incongruent with internationally acceptable standards on the freedoms of expression and association. The Government through the NGO Board justified the Bill on the ground that it was intended to effect the Non-Governmental Organisation Policy of 2012, which was adopted after promulgation of the 1989 Act and its 2006 amendments, which called for harmonisation. It was however felt by CSOs that the Bill was consistent with the spirit of the Policy which was more about promotion and acknowledgement of the role of NGOs. The Bill was perceived as intended to stifle rather than promote civil society work. In spite of this, CSOs still found problems with the Bill. It was, for instance, felt that the Bill was designed to legislate the draconian provisions of Regulations promulgated after the 2006 amendment.

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4. The Legal Regime Governing CSOs in Uganda

Section 4 (2) (e) & (d) of the NGO Registration Act Cap 113.


Section 2(2) of the Non-Governmental Organisations Registration (Amendment) Act, 2006.


As above.

Human Rights Network and 7 others v Attorney General, Constitutional Petition No.5 of 2009

The case essentially challenged the repunged law in far as it set burdensome encumbrances on NGOs such as compulsory registration, the requirement under the regulations to present work plans, budgets to the NGO Board as part of the registration process, the unfettered power of the Board to annually renew permits. The petitioners argued that these were unnecessary restrictions on the freedom of association for CSOs. However the court ruled in favour of the respondents and stated that all restrictions on the freedom of association under the repunged NGO law were necessary in a free and democratic society.


As above.
Resilient civil society efforts called for the revision of several provisions in the proposed law such as Clause 33(1)(d) of the NGO Bill 2015 that provided for the revocation of a permit of any organisation if in the opinion of the NGO Bureau it was in public interest to do so. Following stern lobbying efforts by CSOs, a number of provisions were later removed from the proposed legislation when it was later passed into an Act of Parliament. Nevertheless, the Act as passed still poses a number of threats to the operations of CSOs more especially to those prodemocracy organisations that seek accountability from the government and those working on areas the government deems sensitive like the oil and gas sector.

The NGO Board’s powers are open to be exercised by the Bureau at its discretion at any given time as a disciplinary measure. Based on the Bureau’s discretion it can exercise any of its powers under section 7 including the revocation of an organisation’s permit at any time. Equally, the power of the Bureau to expose an affected organisation to the public has an overall potential effect of discrediting CSO efforts in seeking accountability from the state or advocating for human rights.

Unlike the expunged legislation where state security officials of ISO and ESO were members of the National NGO Board, the new Act has moved these officials to the district and sub-county committees. Sections 20(2)(d) and 21(2) (d) of the Act respectively provide for the presence of state security officials on District Non-Governmental Organisations Monitoring Committees (DNMC) and Sub-county Non-Governmental Organisations Monitoring Committees (SNMC). The SNMC has been clothed with power under section 20(3)(e) to report to DNMC on matters of organisations in the sub-county. The DNMC in turn monitors and provides information to the Bureau regarding activities and performance of organisations in the district under article 20(4)(f). Suffice to note, most activities by NGOs working on oil and gas issues take place at the community level in the districts and sub-counties in the Albertine Graben. Therefore, the presence of state security officials on DNMCs and SNMCs creates a platform for continuous security monitoring of NGO activities by the state. This creates the potential of the security apparatus being used to coerce CSOs and even force them into self-censorship in the exercise of their freedom of peaceful assembly and expression due to fear of reprisal.

In addition, and as is discussed in detail in Part VI below, the Act appears to create a long and tedious registration process under its part VIII. This has the potential of making registration of new NGOs unnecessarily tedious and could stifle operations of NGOs/CBOs working in various parts of the country. During the application and issuance of a permit for an NGO, the Act requires that an organisation specifies the areas under which it will carry out its activities, as well as the geographical area of coverage of the organisation. This implies that an organisation cannot operate or carry out any of its activities outside the areas prescribed in its permit. This section is not alive to the nature of NGO work whose largest part of activities and areas of operation are flexible affected among others by the project based nature of funding. This section has the potential to geographically limit NGO operations as well as curtail their constitutionally established freedoms to work in any part of the country. The section also creates a protracted requirement that each time an NGO commences a new project which requires the organisation to expand its areas of operation, it should go through the process of acquiring authorisation from the Bureau through the DNMC of the specific area (section 44(b)). Otherwise, it faces the threat of revocation of its permit under section 33(1) (b) of the Act.

The Act further reinforces the state’s grip over CSOs by providing for inspections of NGO premises and their archives. The Act grants powers to an inspector after giving notice of at least three working days to an organisation (notice should specify the time and purpose of the inspection) to inspect the premises of an organisation and request for ‘any information’ which appears necessary ‘for purposes of giving effect to the Act.’ The inspection powers under section 41 of the Act are wide and discretionary and present the effect of unwarranted searches of NGOs working on sensitive areas like oil and gas. These powers equally have the effect of opening the floodgates to unfounded disciplinary actions of these organisations, which are merely aimed at crippling their activities.

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The Act under section 44 creates vague and open ended special obligations on the part of NGOs that can be awarded any convenient interpretation by the state. Some of these obligations include the prohibition of organisations from engaging in any acts that would be prejudicial to the security and laws of Uganda under section 44 (d) of the Act. The act equally prohibits organisations from engaging in any act which is prejudicial to the ‘interests of Uganda and the dignity of the people of Uganda under section 44 (f). The effect of this provision is discussed in Part VI below.

The Act further obligates organisations to be non-partisan under section 44 (g). This obligation equally poses a threat to NGO activities and has the potential to curtail meaningful collaborations between NGOs and pertinent opposition stakeholders as these collaboration efforts will be viewed as ‘political’ or ‘partisan.’

4.2. The Public Order Management Act

In addition to the principal NGO legislation, retrogressive and draconian legislation, have been adopted whose purpose to further control people’s fundamental freedoms. Collectively, the legal regime governing NGOs has created a clear systemic narrowing civic space that is vividly intended to stifle free and open engagement. The legal regime has created an environment where CSOs cannot objectively interrogate issues without fear of reprisal or prosecution. The Public Order Management Act (POMA) 2013, which presents a myriad challenges that curtail the right to freedom of peaceful assembly. Headlines this list. The restrictions provided by the act exceed the internationally acceptable limitations on the freedoms of expression and association. A number of activities by CSOs involve what would constitute a public meeting under the POMA.

The POMA has generally been criticised for its failure to create a presumption in favour of the exercise of the right to freedom of peaceful assembly or the duty of the state to facilitate peaceful assemblies by creating a de facto authorisation procedure for peaceful assemblies that is unnecessarily bureaucratic with broad discretion for the state to refuse notifications. The Act further grants law enforcement authorities the mandate to use force to disperse assemblies, without proper guidance for alternative methods of managing public order disturbances. It equally criminalises organisers of assemblies for the unlawful conduct of third parties. Conversely, the Act has the effect of shrinking civic space in Uganda and stifling civil society efforts in the discussion of governance, accountability, rule of law and human rights.

The above deficits in the legal regime makes a comparative survey of other countries legal regimes necessary to determine whether there are any lessons that could be learnt from these and internationally best practices. Thus the section that follows examines the NGO regulatory regimes in the United Kingdom, South Africa and Kenya. The reasons why these countries were selected are given in Part I above.

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62 Keynote address on the Global Day of Citizen Action by The Centre for Constitutional Governance (CCG) titled ‘The shrinking civic space in Uganda undermines human rights and governance’ delivered on 16 May 2015 by Joshua Joseph Niyo
63 As above
64 As above
66 As above
5. Comparative Approaches in NGO Regulation

5.1 Brief review of the UK Charities Act

In the United Kingdom, CSOs are designated as “charities” and regulated under a legal regime that pertains to charities. The country has had various laws that govern this sector, the most recent comprehensive law being the Charities Act of 2011. The 250 pages and 358 sections Act regulates various aspects, including registration and names, information powers, land and property, accounts and returns, annual reports, incorporation, amalgamation and conversion, and unincorporated charities. The Act also establishes the Charity Commission and a Tribunal to deal with various disputes related to the regulation of charities. In addition, the Act prescribes several offences related to the establishment and management of charities.

In section 1, the Act defines “charity” as an institution which is established for charitable purposes, which purposes are described in section 3(1). They include, among others, prevention or relief of poverty, advancement of education, religion, arts and culture, community development, human rights, dispute resolution, racial harmony, and environmental protection; and relief for those in need. According to section 4, all these must be for the public benefit to qualify as a charitable purpose.

The Act establishes a Register of Charities, kept by the Charity Commission, and requires every charity, unless exempted, to register in that register. To be registered, a charity must submit the following documents: An on-line application form, the charity’s governing document, a trustees declaration, indicating that the trustees are eligible to serve in that capacity, and evidence that the charity has an income of at least £ 5,000, unless the organisation is a charitable incorporated organisation under the Act. Section 36 gives the right to any person opposed to the registration of an institution to register such objection and may even apply for the removal of such charity from the register.

The Act in Part 2 of Chapter Two establishes and prescribes the objectives, powers and functions of the Charity Commission. The objectives of the Commission are described under five heads: (1) public confidence objective - to increase public confidence and trust in charities; (2) public benefit objective - to promote awareness and understanding of the operation of the public benefit requirement; (3) compliance objective - to promote compliance by charity trustees with their legal obligations in exercising control and administration of their charities; charitable resources objective - to promote the effective use of charitable resources; and accountability objective - to enhance the accountability of charities to donors, beneficiaries and the general public.

A closer scrutiny of the objectives of the Commission above in effect summarises the objectives of the Charities Act. As part of its functions, the Commission has powers to determine whether institutions are or are not charities; encouraging and facilitating better administration of charities; identifying and investigating misconduct or mismanagement; and giving information and advice, among others.

Interestingly, at the same time when Uganda promulgated the 2016 Act, the United Kingdom also reviewed its laws and adopted the Charities (Protection and Social Investment) Act, 2016, which amends the 2011 Act in a number of areas. Similar in some respects to the Uganda process, the amendments in the United Kingdom enhance the supervision, monitoring and suspension of...
The amendment was motivated by incidents that showed mismanagement of trustees, which reports associated to the failure of the Commission to effectively exercise its regulatory powers. Thus, among others, the purpose of the trust was to tighten the regulatory powers of the Commission. The amendment was motivated by incidents that showed mismanagement of trustees, which reports associated to the failure of the Commission to effectively exercise its regulatory powers. Among others, the Commission has powers to issue and publish warning notices and act on them in case of non-compliance. In addition, the Act creates new offences and enhances the factors which disqualify a person from being a trustee. Other provisions deal with policing fundraising as well as allowing charities to make social investments. A Fundraising Regulator is established. Generally, apart from a few concerns, the Charity Sector welcomed the amendment, especially the provisions to regulate fundraising, which came on the heels of various fundraising scandals in the sector.  

5.1.1. Lessons offered by the UK Act

There are number of lessons that can be drawn from the United Kingdom regulatory and legal regime. These include:

a) The registration process in the UK is not as tedious as the Uganda process. The 2011 Act in the first place exempts charities whose income is less than £5000. This removes the burden from small charities to have to go through the registration process. In effect, this encourages people to engage in small charitable causes.

b) Related to the above, the on-line registration system and the lean nature of the documents required make it easy for institutions to register. The limited paper-work, in addition to the lean documents makes the process cheap. Indeed, looking at the documents and processes, one does not require a lawyer to register. There are even templates provided.

c) The overall objectives of the 2016 UK legal framework review are generally the same as Uganda’s. Both countries wanted to strengthen the regulatory framework. The difference though is that the UK process was more specific and limited to certain areas, including fundraising, social investment and powers of suspension by the Commission. In Uganda, the review encompassed registration and set up of various tedious regulatory and monitoring processes.

d) Apart from the registration process and requirement for the filing of returns, the UK regime does not require licenses and permits and does not establish a tedious process for this the same way the Uganda regime does.

5.2. South Africa

South Africa has an interesting history of civil society work and perhaps on the African continent still stands out as the country with the most organised grassroots based civic organisations. This is related to the country’s apartheid history that saw people organise at grassroots level and created social movements that were used to resist the draconian apartheid administration. Indeed, the transition from apartheid to democracy included an express recognition of the role which civil society formations played in the struggle for democratic rule. This could explain why the country has a generally generous legal regime for the operation of civil society.

The main law regulating civil society in the country is the Non-Profit Organisations Act, No. 71 of 1997. In section 2, the Act sets out its objects to include: creating an environment in which non-profit organisations can flourish; establishing an administrative and regulatory framework within which non-profit organisations can conduct their affairs; encouraging non-profit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards; creating an environment within which the public may have access to information concerning registered non-profit organisations; and promoting a spirit of co-operation and shared responsibilities.  

\footnote{See Governance and Leadership How the Charities Act 2016 will affect the sector at <https://www.civilsociety.co.uk/governance/how-the-charities-act-2016-will-affect-the-sector.html> (accessed on 20th February 2017).}
responsibility within government, donors and amongst other interested persons in their dealings with non-profit organisations.

In section 2, the Act defines “non-profit organisation” to mean a trust, company or other association of persons—25 (a) established for a public purpose; and (b) the income and property which ‘may not be distributable to its members or office-bearers except as reasonable compensation for services rendered.

The Act imposes an obligation on the state to create an enabling environment for non-profit organisations. The Act requires every organ of state to determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions.

With respect to the regulatory institutional framework, the Act establishes the Directorate of Non-profit Organisations and among others tasks it with the function of implementing programmes, including programmes that support non-profit organisations in their endeavor to register and ensuring that the standard of governance of the organisations is maintained and improved.24 In addition, the Directorate is required to prepare and issue model documents, including model organisation constitutions and narrative reports, as well codes of good practice for the organisations and their donors.75 Also established is a Panel of Arbitrators and an Arbitration Tribunal to handle a number of disputes in the implementation of the Act,76 including for instance those related to cancellation of registration.77

In Chapter 3, the Act addresses the issue of registration of the organisations. Interestingly, the first provision in this section appears to be intended to provide motivation for registration by giving the Minister power to prescribe benefits or allowances applicable to registered organisations.78 Benefits organisations may receive include financial resources and tax exemptions.79 The registration itself is relaxed and does not appear tedious. The documents to be submitted include an application form, two copies of the organisation’s constitution and any other documents the Directorate may require.80 The Directorate is given two months to handle the application for registration.81

There are no periodic licensing procedures in the law. The only periodic obligations relate to submitting narrative reports and financial statements nine months after the end of an organisation’s financial year.82

5.2.1. Lessons offered by South Africa

The following best practices from the South African regime could be emulated:

a) It is clear in its objects and provisions that the Non-Profit Organisations Act of 1997 is designed to facilitate rather than hinder the operation of organisations. There is an express obligation on the state to create an enabling environment.

b) The requirements for registration are not burdensome, yet they appear to be designed as motivation for the organisations to enjoy some benefits, including state support.

c) The law does not have intrusive monitoring and inspection provisions. This though does not mean that the state does not have power to regulate. The Directorate indeed has powers to cancel the registration of an organisation, following due process of course.

d) The law does not have burdensome periodic licensing requirements.
5.3. Kenya

Until 2013, the law governing CSOs in Kenya was the Non Governmental Organisations Coordination Act of 1990. The Act, among others, provided for mandatory registration of all Non NGOs and defined the phrase NGOs to mean any private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organised themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry and the supply of amenities and services.

In 2013, the Kenyan Parliament adopted the Public Benefits Act (PBO), which borrows in some respects from the South African Non-Profit Organisations Act. The Kenyan Act defines a “public benefit organisation” to mean a voluntary membership or non-membership grouping of individuals or organisations, which is autonomous, non-partisan, non-profit making and which is—

(a) organised and operated locally, nationally or internationally; (b) engages in public benefit activities in any of the areas set out in the Sixth Schedule; and (c) is registered as such by the Authority. The provisions define entities which are exempted from its provision to include trade unions; public bodies established under law; political parties; religious organisation primarily devoted to religious teaching or worship; a society within the meaning of the Societies Act (Cap. 108); co-operative societies; Saccos; micro-finance institutions; and community based organisation whose objective include the direct benefit of its members.

The PBO defines a public benefit activity as an activity that supports or promotes public benefit by enhancing or promoting the economic, environmental, social or cultural development or protecting the environment or lobbying or advocating on issues of general public interest or the interest or well-being of the general public or a category of individuals or organisations.

The Act in section 3 sets out its objects and purposes, principal of which is encouraging and supporting public benefit organisations in their contribution to meeting the diverse needs of the people of Kenya. This, among others, is to be achieved by creating a conducive environment for the growth of the public benefit organisations sector and for the operations of the registered public benefit organisations; (ii) establishing an administrative and regulatory framework within which public benefit organisations can conduct their affairs; (iii) encouraging public benefit organisations to maintain high standards of governance, transparency and accountability and to improve those standard. Other objectives include giving meaningful protection to the internationally recognised freedoms of expression, association, and peaceful assembly; facilitating a constructive and principled collaboration between public benefit organisations, the government, business, donors and other actors in order to advance public interest; facilitating mechanisms for government collaboration with public benefit organisations, including funding of public benefit organisations activities and involvement of public benefit organisations in the implementation of government projects; and facilitating the establishment and growth of public benefit organisations in order to generally strengthen civil society, promote social welfare and improve the conditions and quality of life for the people of Kenya.

The Act under section 6 also creates a mandatory registration requirement for all PBOs before operation. However, Organisations registered as NGOs are not obligated to register as PBOs, registration of an organisation can only be done under one law. In section 8, the requirements for registration are set out to include a copy of the constitution or other constitutive document; names and addresses of founders; public benefit objects and activities; and postal and physical addresses. Guidance is given with respect to the form and aspects which the constitution of the organisation should have. The Public Benefit Organisations Regulatory Authority is given sixty days within which to consider an application for registration, and to issue a certificate of registration upon acceptance of such application. Interestingly, the Act makes provision for presumptive
registration if upon expiry of the sixty days the Authority has not registered the organisation. Section 12 provides as follows:

If, upon the expiry of sixty days from the date a public benefit organisation made an application for registration under section 9(1), no decision has been made by the Authority, the public benefit organisation may apply to the Tribunal for an order requiring the Authority to issue to it a certificate of registration or communicate to the organisation that the registration has been refused, together with the reasons therefor.

The grounds upon which the Authority may decline to register an organisation are set out in section 16 to include: (a) the application for registration does not comply with the requirements of this Act; (b) the objectives of the proposed public benefit organisation contravenes any written law; (c) the applicant organisation has committed a serious violation or repeated violation of this Act, other laws or regulations; (d) the applicant has given false or misleading information in any material particular; (e) the name of the proposed public benefit organisation is similar to the name of another institution, other organisation or entity as to be likely to mislead the public as to its true identity.

Other parts of the Act cover such subjects as suspension and cancellation of registration; 88 self-regulation, which includes self-governance and ethical standards; 89 and financial and fiscal discipline. 90 The Act makes provision for annual reporting under which, within six months after the end of each financial year, organisations are required to submit to the Authority audited statements of their accounts, certified financial reports, and a report on the programme activities.

The Act establishes the Public Benefit Organisations Authority and defines its composition, powers and functions in Part V. The functions, among others, include: (a) register and de-register public benefit organisations in accordance with this Act (b) maintain a register of public benefit organisations registered under this Act with the precise sectors, affiliations and locations of their activities; (c) interpret the national policy on public benefit organisations so as to assist in its smooth implementation and observance by government ministries, departments and agencies at various levels; (d) receive and review annual reports of public benefit organisations; (e) advise the government on the activities of public benefit organisations and their role in development within Kenya; (f) issue forms, instructions, and model documents; (g) facilitate information sharing and networking between public benefit organisations and the government; (h) institute inquiries to determine if the activities of public benefit organisations do not comply with this Act or any other law; (i) provide advice and training to public benefit organisations; and (j) do anything incidental or conducive to the performance of any of the preceding functions. 91

The powers of the Authority are mild and are defined in the context of the powers of the Board of the Authority and relate mainly to the internal administration of the Authority. These include: (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established; (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority; (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom; (d) open such banking accounts for its funds as may be necessary; (e) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 60; (f) undertake any activity necessary for the fulfilment of any of its functions. 92 Under section 63 the Authority is authorised to institute an inquiry with regard to any organisation which under section 42(1)(h) is for the purposes of determining whether the activities of an organisation do not comply with Act.

The Kenyan legal framework as defined by the PBA sets out a mild regulatory regime for public benefit organisations. Indeed, civil society organisations have welcomed the law as being consistent with
the Constitution and as having been designed to promote civil society work. According to Article 19, the law encourages public benefit organisations to maintain high standards of governance and management through effective self-regulation. It is further indicated that constitutionally, the Act is in line with the Spirit of Article 36 of the Constitution which guarantees the freedom of association and includes the right to form, join, or participate in the activities of an association of any kind.

5.3.1. Lessons offered by Kenya

The following are some lessons that Uganda could learn from the Kenyan law:

• Registration in Kenya is less tedious compared to that in Uganda. Unlike Uganda where NGOs first get incorporated then seek a permit from the Bureau, NGOs in Kenya are simply required to register with the Authority after which they are granted a certificate which is conclusive evidence and authority to operate and corporate existence. There is also no need for permits or periodic licenses to operate.

• The Kenya law does not prescribe tedious obligations and put in place intrusive supervisory procedures that could stifle the operations of NGOs.

• The Kenyan law sets out detailed provisions defining ethical standards for NGOs and promoting proper internal governance.

• The law encourages the work of civil society and gives assurances that civil society have a right to operate in the country. Section 66 spells out what NGOs can do. They include:

  (1) A public benefit organisation may engage freely in research, education, publication and advocacy with respect to any issue affecting the public interest, including criticism of the policies or activities of the state or any officer or organ thereof.

  (2) A public benefit organisation may also express its views on any issue or policy that is or may be debated or discussed in the course of a political campaign or election.

  (3) A public benefit organisation may not engage in fundraising or campaigning to support or oppose any political party or candidate for appointive or elective public office, nor may it propose or register candidates for elective public office.

  (4) The government shall engage with public benefit organisations on all matters of development and shall invite them to participate in policy making.
6. Potential Impact of the 2016 NGO Act on CSOs Working on Oil and Gas

It should be noted that the potential impact of the 2016 NGO Act on CSOs working on oil and gas can be understood in the context of the overall impact on CSOs generally in Uganda. Nonetheless, the unique experiences of CSOs working on oil and gas need to be highlighted. This section presents findings based on the interviews conducted by the research team, as well as reviews of the Act that have been done by some CSOs, in addition to the author’s own deductions. The most recent comprehensive review of the Act was published in December 2016 by the Human Rights Awareness and Promotion Forum (HRAPF) under the title: The Potential Impact of the Non-Governmental Organisations Act 2016 on Marginalised Groups. The section is also based on responses received from some government officials, including from the Executive Director of the National Bureau for Non-Governmental Organisations and security personnel.

As already illustrated, fears that the NGO Act would negatively impact on CSOs in Uganda were raised as early as when the Bill that birthed the Act was published on 10th April 2015. It has been reported that concerted advocacy resulted into a review of the Bill to remove some provisions considered repressive.97 For instance, CSO lobbying saw the removal of clauses which had given RDCs a lot of power at the district levels and influenced the composition of the DNMCs. In the changes, most of the powers previously given to RDCs went to Chief Accounting Officers (CAOs).98 The initial Bill had also given the NGO Bureau a lot of power, in some clauses these were judicial powers.99 Also, lobbying saw the removal of clauses that would have required all NGOs to re-register when the Act came into force. Nonetheless, the Bill was still passed with some contentious clauses which have now become law. It has been argued that the major thrust of the Act is to establish a dense regulatory framework under whose broad discretion and subjective rules even the most compliant organisation could be warned, sanctioned or ultimately deregistered.100 This has partly been achieved through what has been described as a “thick bureaucracy”.101 The bureaucracy has various regulatory structures, right from the national level in the form of the National Bureau for Non-Governmental Organisations through to structures right at district and sub-county levels.

The Government has argued that the Act was made to help improve and harmonise the operations of NGOs and is not intended to target any NGOs as government acknowledges and appreciates the good work NGOs are doing.102 Unfortunately, the CSOs perceive the Act as elevating the level of state control on their operations and creates an environment where they would operate under fear and self-censorship to avoid issues like refusal to renew their permits or refusal to renew or sign new MOUs with local governments.103

It has been argued that the Act was not done in good faith and with good intentions but was rather promulgated to increase avenues and processes that could be used to “deal” with CSOs this is why Act creates many opportunities for the state to get at CSOs at various levels, national and through local bureaucracies.104 Although it has been acknowledged that there are briefcase CSOs that exploit people, the Act went far beyond dealing with this and instead punishes legitimate CSOs.105 As a matter of fact, the CSOs view the Act as imposing a tedious registration process and creating a thick layer of bureaucracy that could negatively impact on their operations. The concerns raised by CSOs are discussed below. It was established though that some CSOs are yet to appreciate the requirements of the 2016 Act and appear oblivious with respect to its likely negative impact.

97 Adrian Jjuuko “Speaking Out Against the Non-Governmental Organisations Act, 2016 so that we may keep our Voice” in Human Rights Awareness and Promotion Forum The Potential Impact of the Non-Governmental Organisations Act 2016 on Marginalised Groups (December 2016), at 8.
98 Interview with Winfred Ngabiirwe, Executive Director Global Rights Alter, 5th March 2017.
99 As above.
100 Kabumba Busingye “Forest from Trees: Placing the Non-Governmental Organisations, 2016 in Context” in HRAPF, 2016, at 18.
101 As above.
102 Interview with Mr. Okello Stephen, Acting Executive Director, NGO Bureau 8th February 2017
103 As above.
104 Interview with Mr. Okello Stephen, Acting Executive Director, NGO Bureau 8th February 2017
105 Focus group discussions in Hoima on 17th February 2017.
106 Interview with Bashir Twesigye, Executive Director, Civil Response on Environment and Development (CRED), interviewed was conducted on 15th March 2017.
107 Interview with Peter Magela Peter Gwayaka, Programme Office, Chapter Four, done on 20th March 2017
6.1. Tedium registration processes

The thick bureaucracy is characterised by tedious procedures and requirements of registration and obtaining a permit to operate. As already indicated, the Act requires several layers of registration, each with its requirements and paperwork, under a law that has not promoted document sharing by different government agencies. In the first place, an organisation has to be incorporated under a legal regime that provides for incorporation, which could be for companies, trustees or any other form of incorporation. It is only after this that the organisation may apply to be registered by the Bureau. Indeed, to be registered, the Act requires that the organisation shall make an application accompanied by a certificate of incorporation, a copy of the organisation’s constitution and “evidence of statements made in the application as the Minister may prescribe”. A review of the Draft Non-Governmental Organisations Regulations shows that if promulgated in their form, they will require an application for registration in addition to the above documents to be accompanied by a chart showing the governance structure of the organisation; a copy of valid identification documents of at least two founder members; a work plan and budget; minutes and resolutions of the founders of the organisation; a statement complying with section 45 of the Act; recommendations from the following: the district NGO monitoring committee of the district where organisation is headquartered, a responsible ministry or ministries, and two sureties. Indeed, if this is implemented, it will result into a tedious process of registration and could result into some organisations failing to register altogether. It is also not clear what the purpose of “two sureties” would be and if implemented would be the first requirement of its kind in laws that govern incorporation and entity registration in Uganda. The requirement defeats the purpose of incorporation, which is designed to give legal entities personality, separate from those who run or “own” it. The requirement could be interpreted as imposing undefined obligations on the sureties, which could at any time be used to intimidate or force an organisation into submission.

6.2. Permission to operate and reporting obligations

Yet, even after fulfilling the above registration requirements, an organisation still has to apply for a permit from the Bureau, a process with its set of paperwork and which comes with a number of obligations. The application for a permit has to give information in a number of areas, including the operations of the organisation, areas of operation, areas where organisation may carry out activities, staffing of the organisation, geographical area of coverage, and location of the organisation, in addition to paying the prescribed fees. It has been argued that it is not proper that a person gets an entity incorporate, which in itself amounts to authorisation to operate countrywide, yet is required to obtain a permit and get other approvals from other local government structures. The maze of bureaucracy continues even after successfully going through the tedious process of incorporation, registration and obtaining a permit. As illustrated above, an organisation that wishes to carry out activities in any part of the country still has to get approval from the District NGO Monitoring Committee from each district it wishes to operate in, as well as enter into a memorandum of understanding with the district. CSOs working on oil and gas issues in the Albertine region have argued that this requirement may escalate the challenges they already face as it may be manipulated by some districts to make operations hard for CSOs. Indeed, a close scrutiny of the process shows that the permit obtained from the Bureau is useless since it can be defeated by a district refusing to enter into an MOU with a CSO.
To illustrate the potential effect of section 44(a) bureaucracy, Dr. Kabumba Busingye has argued thus:

For instance, to take but one example, in terms of section 44 of the Act no organisation may carry out activities in any part of the country unless it has received the approval of the District NGO Monitoring Committee and Local Government of that area and has signed a memorandum of understanding with the Local Government to that effect. The essence of this provision is that, in addition to the requirement to register with the NGO Bureau, an NGO wishing to operate throughout Uganda would be required to seek and obtain the permission of 112 District NGO Monitoring Committees and as many Local Governments. The difficulty of such an undertaking, even for the better-resourced NGOs, cannot be over exaggerated.\(^{116}\)

Indeed, some CSOs are already experiencing problems related to the above. For instance, it has not been easy for some to extend their activities to new districts, affected mainly by the bureaucracy of having to secure a memorandum of understanding with district authorities.\(^{117}\) It has been argued that the requirement for memoranda can be abused by local leaders who may want to avoid public scrutiny and accountability by locking out CSOs they consider aggressive and those working against their interests. For instance, a leader who gets a bad review from CSOs may work to ensure that the MOU is not renewed.\(^{118}\) Indeed, some of the CSOs working on oil and gas also work on other accountability and governance issues. The example here is ACODE, which has a local government performance scorecard programme under which the performance of district councils and local leaders are assessed. It is feared that local leaders who do not like the project may decide not to sign MOUs. Previously, ACODE has not had these challenges as it enjoys a good partnership with the Uganda Local Government Association (ULGA).\(^{119}\)

Yet, it is not clear what challenge the requirement to sign memoranda was designed to deal with.\(^{120}\) In addition, it has been reported that some district officials are abusing the law by reminding CSOs that their memoranda with the districts are about to expire and have demanded for bribes to facilitate the renewals.\(^{121}\) This is suspected to be arising from the fact that requirement for memoranda is now legislative. Previously, some CSOs had entered into memoranda with some districts on a purely voluntary basis as a way of promoting collaboration. With the new law, the districts have now been given powers over CSOs, which explains why some officials are now demanding for bribes.\(^{122}\) It is feared that the Act and the influence of security personnel and members of the DNMCs and SNMCs may result into previously cooperative districts shunning the work of CSOs working on oil and gas.\(^{123}\)

It was established though that some CSOs have a cordial collaborative relationship with the district authorities. In the case of Hoima, this was associated with the presence in the District of a RDC and District Police Commander who are more understanding and have supported the work of the organisations.\(^{124}\) It is feared though that this could be because at this point in time there are no controversial activities in the region. This could change when serious work on the pipeline starts.\(^{125}\)

The maze of bureaucracy continues with the section 39 reporting requirements. The provision, among others, requires organisations to declare and submit to the district technical planning committees, the DNMCs and the SNMCs of the areas in which they operate estimates and sources of their funds. In addition to this, the provision in an open ended manner requires the organisation “to submit to the Bureau, DNMC and SNMC in the area of operation, any other information that may be required”.\(^{126}\) This adds to the wave of bureaucracy and administrative requirements which are

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\(^{116}\) As above.

\(^{117}\) Interview with Winfred Ngabiirwe, Executive Director, Global Rights Alert, on 5th March 2016 at GRA Office, Kampala.

\(^{118}\) Interview with Peter Magel'a Peter Gwayaka, Programme Office, Chapter Four, done on 22nd March 2017.

\(^{119}\) Interview with Onesmus Mugenyi, Deputy Executive Director Advocates Coalition for Development and Environment, conducted on 16th March 2017

\(^{120}\) Interview with Gad Benda, Chairperson PWYP - Uganda and Executive Director, World Voices on 15th March 2017.

\(^{121}\) As above.

\(^{122}\) Interview with Bashir Twesigye, Executive Director, Civil Response on Environment and Development (CRED), interviewed was conducted on 15th March 2017.

\(^{123}\) As above.

\(^{124}\) Interview with Richard Orebi, Hoima Field Officer for Global Rights Alert, interviewed on 16th March 2017.

\(^{125}\) Interview with Benon Tusingwire, Executive Director Navigators of Development Association (Navoda), conducted on 15th March 2017.

\(^{126}\) As above.

\(^{127}\) Section 39(2)(b).

\(^{128}\) Section 39(2)(c), [Emphasis added]

\(^{129}\) Interview with Onesmus Mugenyi, Deputy Executive Director Advocates Coalition for Development and Environment, conducted on 16th March 2017.
likely to negatively impact on CSOs. Failure to comply can be used to deny an organisation a permit or to revoke the same. To see the magnitude of the burden, the Albertine region, for instance, has up to 22 districts, which means that an organisation working in this area would have to prepare 42 returns. This is not only tedious but resource consuming and could eat into the administrative time CSOs allocate for activities.

It should be noted that some organisations that work on oil and gas in addition to the grassroots work also operate at the national level. The wave of administrative bureaucracies that run through the local government structures creates the potential of stifling the work of organisations that are hard to stifle at the national level. The bureaucracy could be used to make it impossible for them to operate at the local levels, which would deny them access to the communities.

6.3. Public interest and security

One of the provisions which have been described as disquieting is section 44(d) and (f). These provisions are set out verbatim:

44. Special Obligations -

An organisation shall -

(d) not engage in any act which is prejudicial to the security and laws of Uganda

(e) ...

(f) not engage in any act which is prejudicial to the interests of Uganda and the dignity of the people of Uganda

CSOs have faulted the above provisions on the ground that they are vague and could be abused in ways which negatively impact on CSO work. It has been argued that the provisions use words which are broad and undefined and could be used to limit the enjoyment of the right to freedom of association. Indeed, the use of such vague provisions is not uncommon. The phrase “prejudicial to security” could for instance be used to clamp down on freedom of expression. It is also demonstrated that the phrase “laws of Uganda” could be abused.

Adrian Jjuuko has argued that the terms “prejudicial” and “interests of Ugandans” can be interpreted very broadly and is malleable according to the purpose and motive of the interpreter. To quote Dr. Busingye Kabumba, “[t]hese apparently benign words in essence incorporate into the NGO regulatory regime the whole gamut of laws increasingly used to restrict not only civic space but human rights generally in Uganda”. It has also been argued that there is a risk that security personnel could misuse this provision to their selfish benefit since some of them are involved in such aggressions as land-grabbing in the oil rich region. It has been argued that the section was deliberately crafted in a vague manner so that it can be “bent” anytime and used against CSOs if deemed necessary by the state. Although there is no evidence of the Act being used for these purposes now, it has been argued this is because there is no serious activity stirring controversy at the moment. It is feared that when serious activities such as the pipeline and refinery works start, the Act will be dusted and used against CSOs that will set out to scrutinise the impact of these activities. This is likely, as has been the case, to target those organisations that seek to interface with communities at the grassroots level. It is reported that some organisations have already feared the effects of the law and decided to stop activities in the sector of oil and gas.

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128 Interview with Onesmus Mugyenyi, Deputy Executive Director Advocates Coalition for Development and Environment, conducted on 16th March 2017.
129 Interview with Peter Magela Peter Gwayaka, Programme Office, Chapter Four, done on 20th March 2017.
130 Interview with Peter Magela Peter Gwayaka, Programme Office, Chapter Four, done on 20th March 2017.
131 Interview with Peter Magela Peter Gwayaka, Programme Office, Chapter Four, done on 20th March 2017.
132 Jjuuko (note 99 above) (HRAPF, 2016), at 8.
133 Busingye (note 104 above) at 19.
134 Interview with Gad Benda, Chairperson PWYP - Uganda and Executive Director, World Voices on 15th March 2017.
135 Interview with Bashir Twesigye, Chairperson PWYP - Uganda and Executive Director, World Voices on 15th March 2017.
136 Interview with Bashir Twesigye, Chairperson PWYP - Uganda and Executive Director, World Voices on 15th March 2017.
137 As above.
Organisations working on oil and gas issues in the Albertine area have testified that for a long time working on oil and related issues has been considered sensitive and taboo. This was the case even when organisations engaged in such activities as empowering people to demand for adequate and prompt compensation. At a certain point, government threatened to revoke the permits of some organisations. Indeed, the perception by many government agencies, including security personnel, is that CSO work is intended to oppose government and interferes with its programmes while promoting donor interests. Nonetheless, these agencies also prefer a collaborative relationship between CSOs and government in dealing with the problems society faces.

What makes the oil sector unique is the fact that this industry is globally characterised by serious rights violations, including land grabbing and environmental degradation, among others. In addition, the sector is controlled by giant actors such as multi-national corporations and powerful state agencies and individuals appear to have a vested interest in the sector, which the state has positioned as the country’s “saviour”. The recent fracas dubbed “golden handshake” where government officials shared millions of oil money for “winning” an oil tax dispute is an example. Evidence emerging shows that laws on rewarding civil servants were not followed. Another good illustration of this is the outburst by the President of Uganda, Yoweri Kaguta Museveni in 2012 when he accused some organisations working on oil and gas as being purveyors of foreign interests. This followed advocacy work by these organisations around draft laws in this sector which was intended to ensure that the laws promote transparency. Indeed, following some engagements with members of parliament, the legislature appeared to see the need for this transparency. This angered the President, who indicated that he had written to the Inspector General of Government (IGG) to investigate AFIEGO, GRA, ACODE and NAPE, organisations that had led the advocacy. This attitude flies in the face of the National Oil and Gas Policy for Uganda, which recognises the role of civil society in the oil and gas sector. The Policy provides thus:

Civil Society Organisations (CSO’s) and Cultural Institutions can play a role in advocating, mobilising and holding dialogue with communities; contributing to holding the different players accountable with regard to oil and gas issues; participating in getting the voices of the poor into designing, monitoring and implementation of programmes in the oil and gas sector. CSOs may also be contracted in the delivery of various services, especially in the communities where oil and gas activities will be undertaken.

Although it has been reported that the situation of CSOs working on oil has gradually been improving, oil related issues still remain sensitive, with CSOs experiencing problems accessing information on oil related issues in the Albertine region. The challenges of accessing information are among others associated with the fact that at the government level issues related to oil and gas are highly centralised and controlled mainly in Kampala where some people may not be able to reach yet there is too much bureaucracy. One respondent has described the sector as “opaque” as far as information is concerned.

Some NGOs have reported in the past experiencing incidents of being summoned after holding meetings with communities, and on some occasions their meetings being stopped by RDCs when the same were sanctioned by Police. This was the case even for some meetings attended by security officials, with unsubstantiated accusations of inciting people being made against CSOs. Other incidents included RDCs stopping meetings and demanding clearance from the Permanent Secretary, Ministry of Energy even when there is no law that requires anyone to do so. Indeed, there was no criteria in the Ministry and getting authorisation was so hard. Although the situation later improved, the 2016 Act appears to rekindle this approach. For instance, as illustrated above, clause 4 of the Draft Regulations lists a recommendation from a “responsible ministry” as a requirement for registration.

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138 Focus Group discussions in Hoima on 17th February 2017.
139 Interview with Benon Tusingwire, Executive Director Navigators of Development Association (Navoda), conducted on 15th March 2017.
140 Confirmed for instance in an interview with Retired Assistant Superintendent of Police Stephen Kamanyiro. Until December 2016 Community Liaison officer oil and gas police. Interview was conducted in Hoima on 17th February 2017.
141 As above.
142 Interview with Winfred Ngabiirwe, Executive Director, Global Rights Alert, on 5th March 2016 at GRA Office, Kampala.
143 See National Association for Professional Environmentalists (NAPE) “MPs were bribed to fail Oil Bill says President Museveni”.
145 As above, para 3.3.
146 Interview with Winfred Ngabiirwe, Executive Director, Global Rights Alert, on 5th March 2016 at GRA Office, Kampala
147 As above.
148 As above.
One respondent, who preferred anonymity, narrated how his organisation had applied for renewal of their permit and seen on the notice board of the then NGO Board that the renewal had been granted. In spite of this, they were tossed about for weeks without being given their certificate as their file could not be traced. The organisation learnt later that their file had been sent to the Internal Security Organisation (ISO) for investigation. This, the respondent alluded to work they were doing on oil and gas issues. Another respondent testified to seeing files from State House marked “Confidential” in the offices of the NGO Bureau. Equally so, Civic Response on Environment and Development (CRED) was one time summoned by the Ministry of Internal Affairs. This followed CRED’s work that had resulted into the adoption of a Tool to Monitor the Country’s Resettlement Action Plan. Community members had been trained to use the tool. CRED was accused of undermining government programmes. GRA has been summoned by the Ministry of Internal Affairs at least three times over allegations of inciting oil communities against government programmes.

6.4. The Public Order Management Act and the threats

It has been established that with or without the 2016 Act, CSOs working in the Albertine region have been facing challenges accessing communities mainly as a result of the application of the POMA. As illustrated above, although POMA does not give the Police powers to authorise public meetings and only requires notice, these provisions have been (mis)interpreted by the Police to mean that every person organising a public meeting must seek the permission of Police to do so.

Based on experiences with POMA, there is a real threat that the NGO Act could also be misinterpreted by authorities in the chain of bureaucracy which may result into abuse. CSOs in the Albertine region are worried that if they engage in activities the authorities do not like it may compromise their chances of having their operational permits renewed. For instance, it is feared that although the Act does not appear to give RDCs a role in the bureaucracy for the supervision of CSOs, there is fear that RDCs may still interfere in the operations of the legitimate structures. This is based on the previous conduct of some RDCs and their forceful style of work. As seen above, there are experiences of RDCs stopping meetings that had already been cleared by Police using the argument that they are the chairpersons of the district security committees.

The Executive Director of the NGO Bureau has acknowledged that weaknesses at the local level may result into some officials abusing their positions to intimidate CSOs. According to Mr. Okello, this is a matter which requires capacity building of the local structures which should be continuous and open to all stakeholders to enable every person understand the Act and its application. Apparently the Bureau is working on a road map for this. Indeed, there is fear that even when the Act is properly interpreted and applied, POMA could still be misapplied, in addition to the possibility of other laws being promulgated and existing laws in such areas as terrorism and money laundering being used to clamp down on CSO work.

6.5. Other issues of concern

Part IX of the Act which deals with “self-regulation” could also cause some problems for CSOs working on oil and gas. Section 38 provides that a self-regulatory body shall inform the Bureau of its existence and mode of operations. Section 36(a) defines a “self-regulatory body” to refer to a body set up by registered organisations that have come together and agreed that the body exercises some degree of regulatory authority over them. Upon consent or resolving they would abide by a set code of conduct, rules and procedures. It is not very clear what the purpose of this provision is and the challenge it seeks to deal with. What is the purpose of registering the body? The danger with this provision is that it could be used to stifle the coalitions and networks which organisations working oil and gas have formed such as CSCO and PWYP. The effect of this is that it may discourage organisations from forming coalitions and networks, which are vital to harness advocacy efforts and to spread risk in face of attacks from the State.

152 Interview with Bashir Twesigye, Executive Director, Civil Response on Environment and Development (CRED), interviewed was conducted on 15th March 2017.
153 Interview with Winfred Ngabirwe, Executive Director Global Rights Alert on 5th March 2017.
154 Interview with Winfred Ngabirwe, Executive Director Global Rights Alert on 5th March 2017.
155 Interview with Mr. Stephen Okello, 8th February 2017.
156 Interview with Peter Magela Peter Gwayaka, Programme Officer, Chapter Four, done on 20th March 2017.
Section 45 (c) deals with the issue of employment of non-citizens, who shall not be employed unless before proceeding to Uganda for the purposes of employment by an organisation have submitted to the diplomatic mission of Uganda in their country certain credentials, including academic papers and recommendations as well a certificate of good conduct. This provision is in the first place discriminatory, to the extent that it imposes such conditions only on non-citizens seeking to work with CSOs. Secondly, the provision could be used to keep certain non-citizens from working with organisations in Uganda. This is likely to affect CSOs working on oil and gas to the extent that this being a new sector, CSOs in Uganda are yet to adequately build their expertise and now and again rely on foreign experts.\textsuperscript{158} Secondly, the provision could be used to stifle the activities of an organisation by refusing entry to foreign experts.\textsuperscript{159}

\textsuperscript{158} Interview with Peter Magela Peter Gwayaka, Programme Officer, Chapter Four, done on 20th March 2017.

\textsuperscript{159} As above.
7. Conclusion and Recommendations

The relationship between the Government of Uganda and CSOs, mainly NGOs, has been described as “dicey”. This is because, although the government appears to appreciate the role NGOs play in socio-economic development of the country, it has also taken steps to closely monitor NGOs in ways that interfere with their work. Among others, the control has been exerted using laws that govern the registration of NGOs, in addition to laws on public order management and security. It is in light of this that CSOs in the country have received the 2016 NGO Act, which was promulgated amidst controversy. The Act among others imposes tedious processes of registration, defined by a number of pre-requisite documents. Yet, the registration is dual in nature, characterised by incorporation and then registration with the NGO Bureau. The Act also creates a thick layer of bureaucracy, which includes obtaining operational permits and entering into memoranda of understanding with districts.

It is feared that among those who will be affected most by the 2016 Act are CSOs working on oil and gas issues. This is because of the sensitivity of this sector, which has previously seen government closely monitor their activities and impose stringent requirements of accessing the community and doing work in the Albertine region. It is on the basis of this that the CSOs in the sector have expressed their fears on the likely impact of the Act, which they suspect could be used to clamp down on their activities and interfere with their work through the bureaucratic procedures of obtaining a permit and permission to work in districts. The provisions that prohibit activities which are prejudicial to security and peace could also be used with the same effect.

In light of all this, the following recommendations are made to protect the CSOs and improve the conditions under which they work in order to boost their contribution to Uganda’s socioeconomic development.

For CSOs

xiii. CSOs should as soon and practically as is possible abide and work within the law even while they seek to legally challenge it.

xiv. Advocate for a review of some of the provisions of the Act. This process could be catalysed with litigation that challenges the provisions of the law. Such litigation, if successful, would give impetus to the campaign.

xv. Seek dialogue on the regulation and role of CSOs at regional level with the aim to harmonise legal regimes at East African level.

xvi. Form, strengthen and maintain partnerships and loose coalitions to enhance protection and spread the risk.

xvii. Place emphasis on evidence-based advocacy to mitigate governmental overreaction to CSOs working in the sector.

xviii. Build a constituency of communities to avoid accusations about serving self interests. Communities are vital to defend the CSO if benefits to them are evident.

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160 Nassali (note 56 above).
For Government

xxi. Enhance information sharing between the different government ministries, departments and agencies as established by law to avoid duplication of work.

xxii. Invest in capacity of government officials responsible to implement the NGO Act and the various laws affecting the operations of CSOs.

xxiii. Government should improve its legal framework for the regulation of NGOs by borrowing best practices from comparative jurisdictions, including from the United Kingdom, South Africa and Kenya as highlighted above.

xxiv. Government should transform the NGO Bureau into an independent body determined by process of appointment of Bureau staff in a public manner by an independent entity.