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Uganda

Submission to the UN Universal Periodic Review
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Submitted by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC

1. (A) Introduction

1.1. CIVICUS: World Alliance for Citizen Participation (CIVICUS) is an international movement with members and partners in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizens' freedom of association are threatened.

1.2. In this document CIVICUS outlines key concerns related to civil society space focusing on the restrictive legal framework for NGOs in Uganda and threats to human rights defenders, in particular those defending the rights of sexual minorities including Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals.

- Under section B, CIVICUS focuses on the Restrictive Aspects of the Uganda NGO Registration Act 1989, the NGO Registration (Amendment) Act 2006 and the NGO Regulations 1990.

- In section C, CIVICUS focuses on growing intolerance towards the work of human rights defenders, highlighting the repugnant provisions of the Anti Homosexuality Bill, the murder of gay activist David Kato and the ongoing abuse and intimidation of LGBTI activists as well the drawing up of a restrictive Public Order and Management Bill.

- In section D, CIVICUS makes a number of recommendations in the areas of concerns listed.

2. (B) Concerns Regarding Restrictive Aspects of the Uganda NGO Registration Act 1989, the NGO Registration (Amendment) Act 2006 and the NGO Regulations 1990

2.1 Overall Concerns

2.1.1 CIVICUS recognises the constitutional commitment of the Republic of Uganda to guarantee every person the freedom of association, including the freedom to form and join associations. This right is also guaranteed to the Ugandan people under the International Covenant on Civil and Political Rights to which Uganda is a party.

2.1.2 CIVICUS and partner organisations in Uganda have expressed concern about the legislative framework governing NGOs in the country and the restrictions it places on their ability to function independently and contribute to national life. CIVICUS believes that the legal framework for the registration and operation of NGOs reflects a deep distrust of their activities and discounts their vital role in socio-political development. Key provisions in regard to the registration of NGOs create a web of bureaucratic red tape, which constitute a significant hurdle for individuals wishing to form an NGO.

2.1.3 Moreover, the functioning of NGOs is impeded by excessive executive interference in their activities. Provisions introducing personal liability for office bearers in addition to organisational liability serve to deter civil society activities. The National Board of Nongovernmental Organisations mandated to oversee NGO activity has a notably unbalanced composition including representation from security organs. Conspicuously, the Ministry for Internal Affairs - as opposed to the Ministry for Justice and Constitutional Affairs - is charged with the overall regulation of the NGO sector.

2.2 Cumbersome registration procedures

2.2.1 Ideally the process of registration should be quick, simple, inexpensive, in line with the law and consistently applied.

2.2.2 Nevertheless, a lengthy and elaborate procedure is prescribed for the registration of domestic NGOs, which serves to obstruct rather than enable the freedom of association. All organisations are required to submit a written work plan to the Ministry of Planning and Economic Development and obtain its approval for the same. Applications by domestic NGOs must also be accompanied by a written recommendation by two sureties acceptable to the National Board of Nongovernmental Organisations (hereinafter the ‘Board'). No criteria are prescribed on what is deemed "acceptable", leaving ample scope for the exercise of discretion by the Board. Furthermore, a written recommendation is required from the chair of the Resistance Committee I which is to be endorsed by the chairs of Committees II and III as well as by the District Administrator of the area where the organisation intends to operate. By prescribing multiple authorities from whom recommendations or endorsements are required, the procedure is made complicated and time consuming, which can be daunting for people who wish to form an NGO but do not ordinarily have access to the bureaucracy or political representatives.

2.2.3 At the time of formation, certificates of registration are issued to NGOs for only one year. After the first year, registration is renewed for three years and thereafter every five years. Uncertainty regarding the renewal of registration is a serious deterrent to NGOs wishing to express independent views on contentious political issues and thereby contribute meaningfully to public debates.

2.3 Barriers to functioning

2.3.1 The legal framework governing the operation of NGOs should lean towards minimum official interference in their lawful activities.

2.3.2 NGOs are not permitted to operate in Uganda without being duly registered with the Board and without a valid permit issued by the Board. Wide discretion is given to the Board to impose "conditions or directions as it may think fit" to insert in the certificate of registration. It is also not permitted for NGOs to engage in any act prejudicial to the "national interest" of Uganda. It is submitted that the term “national interest” as opposed to ‘public interest' is subjective and can be manipulated to suit the politics of the government of the day and prevent NGOs from offering legitimate dissent against official policies.

2.3.3 Furthermore, NGOs are prevented from making direct contact with the people in rural areas unless they have given seven days notice in writing of their intention to do so to the Resistance Committee and the District Administrator of the area. This amounts to excessive supervision and monitoring which can impede day to day project work that requires constant contact with the local population. It can also particularly hamper fact-finding missions on matters of public importance. Additionally, it prevents NGOs from swiftly moving to assist local populations on the occurrence of natural or human induced disasters in the normal course.

2.3.4 NGOs are also required in their operations to "cooperate" with Resistance Councils and Committees in the area. Such a stipulation hinders the independence and autonomy of the NGO sector. Excessive control over NGO activity is reinforced through the requirement to furnish to the District Development Committee in each area of operation with estimates of income and expenditure for consideration and *approval*. This is in addition to the requirement to submit to the Board a comprehensive annual return indicating the names of the office bearers and a list of immovable assets owned or acquired by the organisation as well as the manner in which they were acquired.

2.4 Notably unbalanced composition of the NGO Board

2.4.1 Civil society must have adequate representation and voice on any regulatory body mandated to oversee its functioning. Additionally, the regulatory body should comprise experts and those closely connected with the work of NGOs.

2.4.2 The 13 member National NGO Board only envisages three representatives of the public in its composition. The rest are representatives of various ministries, as a well as a representative each of the Prime Minister's Office, the Internal Security Organisation and the External Security Organisation. It is highly irregular to have representatives of security organisations sit on the Board who may have neither the expertise nor full comprehension of the full range of civil society activities. Moreover, their inclusion reflects a corrosive official distrust of NGOs and their contribution to society.

2.5 Negation of well established legal principles

2.5.1 It is good - and well established - practice to include in legislation an appeals process for judicial review of executive actions. However, the legislative framework provides for an appeal against the Board’s refusal or revocation of a registration only to the Minister for Interior Affairs (who also appoints the chair, vice chair and other members of the Board and can give it written directions of a general or specific nature which it is bound to comply with) and does not envisage an independent appeals process in the courts of law.

2.5.2 Furthermore, the principle of limited liability (i.e. employees should not be held personally responsible for official acts committed on behalf of their organisations) should inform entities with legal personality. In contrast, when an organisation contravenes (i) any provisions of the NGO Act or, (ii) operates contrary to conditions or directions specified in its permit or, (iii) carries out any activity without a valid permit or certificate, any director or officer whose act or omission gave rise to the offence is made personally liable with a fine and/or imprisonment, in addition to a fine being imposed on the organisation. Moreover, an organisation is made liable for "all acts of its members and employees". It is unfair and unreasonable to hold an organisation responsible for the private acts of its members and employees.

3. (C) Growing Intolerance towards the work of Human Rights Defenders

3.1 Anti-homosexuality Bill 2009

3.1.1 In October 2009, the Anti Homosexuality Bill 2009 was introduced in the Uganda Parliament as a private member's bill. The Bill contains derogatory references to members of the lesbian, gay, bisexual and transgender (LGBT) community as well as sexual rights activists -- whom it accuses of "seeking to impose their values of sexual promiscuity on the people of Uganda." Although the Bill has been put on hold at present, its introduction in Parliament is a blow to the protection and promotion of human rights in Uganda and a cause for serious concern.

3.1.2 The Bill through its wide ambit seeks to criminalise the work of civil society organisations that promote the rights of LGBT persons through cancellation of registration and punishment of the head of the organisation with seven years imprisonment. Other repugnant provisions of the Bill included punishment by death for HIV infected persons if they had sexual relations with a person of the same gender; life imprisonment for attempting to contract a marriage with a person of the same gender; extradition to Uganda of citizens or permanent residents if they had sexual relations with a person of the same gender; and enhanced punishment of life imprisonment for sexual relations between people of the same gender.

3.2 Murder of Gay Activist David Kato and intimidation of LGBTI activists

3.2.1 On 26 January 2011 prominent human rights activist David Kato was reported murdered in his own home after suffering several blows to the head. Previous reports indicate that he had faced increasing threats and harassment after his photograph appeared on the front page of a tabloid paper that published pictures, names and residential addresses of some members of the gay community in Uganda under the headline "Hang Them".

3.2.2 As part of a study on the Challenges Faced by Women in Civil Society in Africa, CIVICUS interacted with a number of human rights defenders who affirmed the failure of the government to address the widespread homophobia existing in Ugandan society. Testimonies by human rights defenders shared with CIVICUS reveal that rather than acting as protectors, members of the security forces are often complicit in the abuse and intimidation of LGBTI individuals and human rights defenders working to protect their rights.

3.3. Public Order Management Bill 2009

3.3.1 The Public Order Management Bill 2009 drafted by the government provides another indication of the growing intolerance for the work of human rights defenders and the shrinking civil society space in Uganda. If passed, the Bill will seriously impede the freedom of expression and peaceful assembly.

3.3.2 The Bill seeks to create a web of bureaucratic red tape to impede the holding of public meetings by requiring advance permission from a senior police officer. In addition, meeting organisers have to fulfil a number of onerous legal obligations. The Bill gives police wide powers to limit the discussions at the meetings including ensuring statements made at them to the public and the media "do not conflict with the laws of Uganda". Furthermore, the police are empowered to disperse meetings if they have "reasonable grounds to believe that a breach of peace is likely to occur".

4. (D) Recommendations to the Ugandan Government

4.1. CIVICUS urges the Government of Uganda to protect civil society space and freedoms of association, assembly and expression in the spirit of the ICCPR to which Uganda is a party and to its own Constitution which guarantees these freedoms. In light of this, the following recommendations are made.

4.2 Regarding the Legal Framework for NGOs:

- The Uganda NGO Registration Act 1989, the NGO Registration (Amendment) Act 2006 and the NGO Regulations 1990 be repealed on account of their incompatibility with international best practices and principles guaranteeing freedom of association under international human rights law.
- Consultations be carried out with representatives of civil society on the essential elements of a new regulatory framework for NGOs.

4.3 Regarding the protection of human rights defenders and the creation of an enabling environment for civil society:

- Allegations of intimidation or attacks against human rights defenders should be investigated by senior police officials.
- An information campaign should be launched to educate the public about the work of human rights defenders and the right of individuals to privacy and control over their sexuality.
- Consensual relations between people of the same sex be decriminalised to prevent human rights defenders working on issues related to LGBTI individuals from being unduly harassed.

4.4 Regarding the drafting of Bills impacting democratic freedoms:

- Bills likely to impact upon the freedoms of expression, association or assembly should be subject to an extensive public and civil consultation process before being introduced in Parliament.