



Africa Philanthropy Network
VOICE AND ACTION FOR AFRICAN PHILANTHROPY

THE LEGAL ENVIRONMENT
FOR
CIVIL SOCIETY ORGANISATIONS INCLUDING
PHILANTHROPIC ORGANISATIONS
IN UGANDA

Analysing Options For How To Engage

ACKNOWLEDGEMENTS

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Giving for Change is an international alliance of organizations that work around community-led philanthropy.

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Table of Contents

ACKNOWLEDGEMENTS	1
INTRODUCTION	3
<i>Methodology.....</i>	<i>4</i>
OVERVIEW OF THE WORKING ENVIRONMENT FOR CIVIL SOCIETY, INCLUDING PHILANTHROPY ORGANISATIONS, IN UGANDA.....	5
<i>A good working environment is critical for the effectiveness of CSOs, including philanthropy organizations; this environment is framed by the legal protections offered by the State to deliberately ensure citizens can participate in peaceful activities to influence policies of government through civic organizations.....</i>	<i>5</i>
THE IMPACT OF UGANDA’S LEGAL FRAMEWORK ON THE FREEDOM OF ASSOCIATION OF CSOs AND PHILANTHROPY ORGANISATIONS	6
<i>REGISTRATION</i>	<i>7</i>
<i>FUNDRAISING.....</i>	<i>8</i>
<i>TAXATION</i>	<i>10</i>
<i>POLICY ENGAGEMENT</i>	<i>12</i>
<i>OVERSIGHT, TRANSPARENCY, AND ACCOUNTABILITY.....</i>	<i>13</i>
RECOMMENDATIONS.....	15
Part II: BREAKDOWN OF OVERARCHING AREAS	1
PART III: MAPPING ISSUE PRIORITIES AND TIMELINE FOR POSSIBLE RESPONSES.....	9
POTENTIAL CHANGE MAKERS AND ALLIES	15

INTRODUCTION

According to The Uganda National NGO Forum's State of Civil Society Report, when respondents were asked to assess an individual's freedom to participate in formal and informal organizations, nearly half of the respondents reported having difficulty in freely participating in informal and formal civil society activities. The main reason given was the misapplication of regulations by government officials that interfere with CSO activities.¹ The vibrancy of organized civil society has a direct bearing on the capacity of citizens to hold governments to account and to protect human rights in settings where the authorities turn too easily to repressive means.² It also has an impact on individuals freely joining or supporting civil society programs in their communities.

This report offers information on Uganda's legal environment for CSOs, including philanthropy organisations, how restrictions in the legal environment affect the freedom of association of CSOs, including philanthropy organizations, who the key players are, and different factors philanthropy organisations should consider when deciding whether to engage or how best to support a thriving civil society in the country. It also maps out issue priorities, offers a timeline for possible responses and potential change makers or allies to partner with.

The report assesses the legal implications of Uganda's legal environment and its impact on civil society, including philanthropic organisations across five overarching issues:

1. Legal registration
2. Fundraising
3. Taxation
4. Oversight
5. Policy engagement

The legal framework does not negatively affect all CSOs. Processes such as setting up the Uganda NGO Bureau to regulate the sector and even prioritise validation of CSOs were welcomed by most CSOs in order to have a credible register and minimise fraud. However, the legal framework in place has created a number of challenges because of over regulation and limitations on civic organising and association. This is not implemented uniformly and does not affect all parts of civil society organisations in the same way. While public authorities generally perceive organisations that focus on service delivery as pro-government, civil society organisations that engage in lobby and advocacy efforts are perceived as 'hostile' and suffer a more strained relationship. To curtail their influence, governments employ a range of different tactics.

In practice, organisations working on or supporting civic engagement, political participation and sensitive inclusion issues such as land rights, press freedom, human rights defenders, and especially LGBTI rights activists are disproportionately disadvantaged by the legal framework and are among the most targeted groups, facing censorship and backlash.

¹ Uganda National NGO Forum, State of Civil Society Report, 2018

² Freedom House, Freedoms Under Threat: The Spread of Anti NGO Measures in Africa, 2019

As most civil society organisations in Uganda are highly dependent on international donors- depending on them for as much as 80-90% of funding for their annual budgets, organisations with strained relationships with government, are even more vulnerable to accusations of being illegitimate foreign agents. Domestic philanthropy, while vibrant is still too limited in its capacity to fill the gap. Local communities are also largely defined as beneficiaries limiting their interest in ownership and even supporting efforts of civil society organisations with the assumption that foreign funding is adequate.

Methodology

This report explores the legal environment for CSOs, including philanthropy organizations, in Uganda and focuses on the freedom of association and more specifically the framework within which civil society operates in Uganda. The report was developed using a legal assessment tool developed by the International Centre for Non-Profit Law (ICNL) and Worldwide Initiatives for Grant-makers Support (WINGS) to measure the legal environment for Civil Society, and analyse options for how to engage.

An extensive review was conducted of legal and policy documents regulating CSOs in Uganda as well as other reports and literature by and on the sector.

20 informant interviews were also conducted with critical actors in government, civil society and philanthropy organisations.

OVERVIEW OF THE WORKING ENVIRONMENT FOR CIVIL SOCIETY, INCLUDING PHILANTHROPY ORGANISATIONS, IN UGANDA

A good working environment is critical for the effectiveness of CSOs, including philanthropy organizations; this environment is framed by the legal protections offered by the State to deliberately ensure citizens can participate in peaceful activities to influence policies of government through civic organizations.

CSOs in Uganda comprise a diverse group with different objectives differing in membership, geographical focus, objectives, and methods of work, funding, and capacity. The bulk of CSOs are involved in service delivery primarily in the areas of education, health, and poverty alleviation while a small segment focuses on governance, human rights, and accountability.

Local giving and community philanthropy are vibrant in Uganda, mostly in informal ways like donations in churches, and extended families raising funds to educate children, clear medical bills, or support social transitions and challenges. This is most visible in rural communities where members come together to form associations/groups to collectively address common socio-economic challenges in their communities.

Institutional local philanthropy for CSOs is not as common but is slowly emerging in Uganda. There is a rise in faith-based, corporate, family, and public foundations. Most local foundations are involved in direct service delivery as opposed to grant making³.

Over 90% of funding received by Ugandan CSOs is from foreign philanthropy organisations⁴. This scale of dependency on foreign funding⁵ renders the organisations susceptible to accusations by the government of being foreign agents, hence attracting restrictive regulation which shrinks civic space.

There is no separate legal regime which specifically regulates philanthropy organisations in Uganda. The regulation of philanthropy falls under the same legal regime that governs NGOs. Philanthropy organisations then have to operate within the already restrictive legal environment that CSOs and CBOs face.

³ Mwendwa, C., East African Association of Grantmakers, A Report of the Uganda National Philanthropy Forum, Achieving More; Harnessing the Power of Philanthropy in Uganda, 2015

⁴ UNNGOF, State of Civil Society Report 2018

⁵ INTRAC Analysing the relationship between domestic resource mobilisation and civic space: Results of a scoping study, 2019

THE IMPACT OF UGANDA'S LEGAL FRAMEWORK ON THE FREEDOM OF ASSOCIATION OF CSOs AND PHILANTHROPY ORGANISATIONS

The right to freedom of association is protected under Article 22 (1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 (1) of the African Charter on Human and People's Rights (ACHPR), both of which Uganda has ratified. Under Uganda's 1995 Constitution, Article 29(1)(e) protects the freedom of association, which includes the freedom to form and join associations or unions, including trade unions and political and other civic organizations. Article 38 also specifically empowers Ugandans to participate in peaceful activities to influence the policies of government through civic organisations.

This right to freedom of association is not absolute. It has limitations imposed to it as provided for under the ICCPR (Article 22 (2), in the interest of "national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others." Article 43(1) of the Constitution of Uganda prescribes limitations on the exercise of human rights as long as the said exercise of rights does not prejudice the fundamental or other human rights and freedoms of others or the public interest.

The right to freedom of association and a vibrant civic space are vital for collective citizen actions to influence government decisions and actions. Ugandan civic space has been described as "repressed"⁶. This is attributed to legislations such as the Anti-Money Laundering Act, NGO Act 2016 and the Financial Institutions Act which have been fashioned into repressive tools that provide legal backing to governmental actions which unfairly target CSOs. Uganda joins several countries including Ethiopia, Brazil, Sierra Leone and Nigeria⁷ in the trend of heightened crack down on civil society.

The government of Uganda's relationship with different CSOs depends on their area of work. Government considers human rights and public accountability focused CSOs hostile which it will often label as serving foreign interests. NGOs that provide public services like water, sanitation and health services are considered pro-government. The nature of the government's perception of and relationship with a CSO in turn determines the level of scrutiny in regulation by the government. In analysing Uganda's legal environment, we chose to focus on five overarching areas listed below.

⁶ Giving for Change Alliance, Multi-Annual Plan 2021-2025 Community-led Development through Community and Domestic Philanthropy, 2021

⁷ See 1 above

REGISTRATION

In order to operate, CSOs have to go through two-step registration, first under the Uganda Registration Services Bureau Act, as a company limited by guarantee, and then under the NGO Act, with the Uganda NGO Bureau, for a mandatory operating permit. The application for the permit is made by submitting, among others; a certificate of incorporation, copy of the organisation's constitution, evidence of payment of fees. The process can take up to 45 days. CSOs then receive a one-year registration certificate, which is renewable, first for three years, then five years, assuming that the NGO fulfils the renewal requirements.⁸ No lifelong permit is issued and so CSOs face an additional challenge of the mandatory periodic renewal applications.

Foreign organizations, in addition to registering with the NGO Bureau, are also required to have letters from the embassy of their home country, the Ministry of foreign affairs as well as 'recommendations' from their line ministries in Uganda.

The registration of foundations in Uganda is governed by two separate statutes, the Incorporation of Trustees Act and the Companies Act. The choice to register under either law depends on the type of foundation or the nature of proprietary interests they seek to protect. Under Section 1(a) of the Incorporation of Trustees Act, trustees may be appointed by any form of association of persons for any purpose, including charitable purposes. A trust is a legal relationship where legal ownership of property is managed by trustees for beneficiaries.

A foundation can also be registered as a company limited by guarantee under Section 4 of the Companies Act. A foundation registered under the Companies Act by default acquires characteristics of largely profit-making entities that the Act was intended to regulate. Two separate laws on the registration of foundations create uncertainties for new foundations that seek to register or, in terms of their regulation. For instance, companies are not tax exempt, whereas foundations are not profit-making entities.

The absence of a specific law on philanthropy is problematic in the sense that it renders the regulation of the sector to the registration of foundations to the application of laws made for other purposes. Repurposing a law for trusts or companies to accommodate philanthropies may have limitations or result in giving foundations legal characteristics that belong to the two aforementioned corporate forms of associations.

CSOs are additionally required to have memorandums of understanding for every district they operate in, with District NGO Monitoring Committees (DNMCs), which were set up under the NGO Act to monitor and provide information to the NGO Bureau on activities of organizations in the district and have the power to reject applications.

Additionally, in practice, several CSOs interviewed also stated that they needed additional clearance from the Resident District Commissioners (RDC) or intelligence officers in certain districts, in order to implement activities in the district. CSOs working in districts with highly politicized or sensitive issues faced this more frequently in areas such as Arua that are close to refugee settlements, districts in the oil region and areas

⁸ Uganda Non-Government Organisations Act, 2016

with large infrastructure projects impacting critical land rights. There are no clear guidelines for this within the law.

The environment governing the ability of a CSO to operate have several implications on civil society:

- The multiple layers of registration as well as the frequency of registration is administratively burdensome for CSOs, especially small organisations without resources to set up proper accounting infrastructure. The needs for approval for projects in districts create several filters with real powers to limit the operation of CSOs. A number of CSOs interviewed changed their mode of operation or limited the districts to focus on for fear of the potential backlash against their projects.
- In some districts, particularly newly established districts, NGO monitoring committees do not exist or are not fully constituted which has created ambiguity for organizations working in those districts.
- Philanthropic organizations' strategic approaches are disrupted because of the need to tread carefully and not put partners at risk
- Organizations working towards the inclusion of sexual and gender minorities cannot freely register and operate in Uganda which limits their ability to access much-needed funding.

FUNDRAISING

There are no express restrictions on domestic or foreign fundraising by CSOs in Uganda, but the Uganda National NGO Policy (2010) lists foreign funding as one of the key issues of concern for government because the CSO sector is "donor dependent and susceptible to foreign influence in Uganda governance processes." There has been an increase in the reporting required when receiving funds from foreign sources in compliance with the Uganda Financial Intelligence Authority (FIA) regulations.

On April 19, 2018, the FIA announced that CSOs would be required to declare their sources of funding to the FIA to ensure transparency and avoid money laundering in the sector. The FIA works in the background of banking institutions and uses the 'know your client' requirements to impose additional requirements in order for CSOs to access international money transfers such as funding contracts and project proposals.

The second schedule of the Anti-Money Laundering Act lists charitable organisations as "accountable persons". The Act does not define an accountable person, but its meaning can be implied from the usage in the statute as entities to which the Act primarily imposes reporting duties on. Under Section 8 of the Anti-Money Laundering

Act, accountable persons are required to report transactions ranging from UGX 20,000,000 (USD 5,500) and above, and maintain records of these for a period of ten years from the date of the transaction. Under Section 11 of the Act, accountable persons are required to avail their financial records for use by government authorities including in criminal or civil proceedings and investigations, or share the same with governmental authorities in other countries.

While the provision stipulates confidentiality of the information acquired by the government from accountable persons, it does not state how this will be observed or enforced and if exceptions can be made. Foundations and parties to their financial transfers are therefore left vulnerable in terms of financial data protection and this has the potential to discourage donations. Individuals or corporations that prefer to keep their information private may be discouraged from donating for fear of coming under scrutiny.

The Principles of Statutory Regulation and Self-Regulation of Fundraising⁹ provide a global overview of regulation of fundraising. One of the key principles is data protection and privacy¹⁰. Among others, this principle enjoins states to protect the right to privacy of CSOs, their donors and beneficiaries, ensure reporting and state oversight do not violate the right to privacy of CSOs, their donors and beneficiaries and the scope of personal data collected and the time it is stored is limited and proportionate to the specific fundraising purpose. The Uganda Anti-Money Laundering Act offends the principles on data privacy, and the duration for record keeping. While the principles are considered soft law at international and therefore not legally binding on states, they provide international standards to guide legislative regulation.

It is dangerous to place the government above accountability for data breaches in an age of mass surveillance by governments, and in a country where such data can potentially be used to target unfavourable organisations. Some CSOs reported being branded as foreign agents by government when challenging gaps or shortcomings in government interventions, which undermines their credibility in the communities they operate in. Government officials have peddled a narrative that foreign donor relations with civil society are something other than a shared interest. CSOs working for the inclusion of LGBTI rights are especially targeted as foreign agents given the conservative environment they operate in.

Three major ways effects the legal environment has had on fundraising are:

⁹ Developed by the European Centre for Not-for-Profit Law (ECNL), the International Centre for Not-for-Profit Law (ICNL).

¹⁰ See 1 above

- Some CSOs decline funding from a major foreign philanthropy organisations because of the fear of backlash they anticipated if they are associated with them.
- Organisations identified as working on LGBTI rights, have had instances where their funding was withheld by their banker.
- CSOs working on politically sensitive issues have reported heightened challenges in accessing funding for their work, and even had their bank accounts frozen and the organizations investigated under money laundering allegations.

The COVID-19 pandemic showed the potential for domestic philanthropic efforts to support communities worst affected, given the reduction in international funding to some critical sectors as the world shut down; it exposed the country's reliance on western donors. In order for more domestic philanthropy to grow and thrive, an environment of trust must be built by both government and CSOs and part of this can only be achieved with government supporting a more enabling environment for all organisations.

TAXATION

The Income Tax Act prescribes exemptions on not-for-profit entities. Under Section 2(b)(i) of Income Tax Act, a philanthropic or charitable organisation is one of categories of organisations which are tax exempt. However, Section 2(bb)(ii) requires a written ruling by the commissioner stating that an organisation is exempt. This implies that the tax-exempt status is not automatic and must be applied for. For philanthropic organisations, the application for a tax exemption could be daunting since it would involve another layer of bureaucracy.

In practice, acquiring a tax-exempt status involves applying in writing to a commissioner and the waiting period can take a minimum of one year and financial costs to expedite the process. Some organisations decide to forego the exemption. This means that they fail to enjoy benefits which a tax-exempt status attracts. While larger philanthropic organisations could withstand the hurdles to acquire tax exemption or endure the disadvantages of failing to acquire the exempt status, for the smaller philanthropic organisations the impact could be bigger and more severe.

Trusts in Uganda pay taxes as provided for by the Income Tax Act. In Section 70 thereof, the income of a trust is taxed to the trustees or beneficiaries of the trust. This means that foundations registered as trusts are liable to pay income tax.

Similarly, there is very little tax incentive for individuals and corporations to donate. Section 34 of the Income Tax Act also allows for a 5% deduction on donations. This applies to both individuals and corporations. This is minimal compared to jurisdictions such as the US which allows tax deductions of up to 25% on donations¹¹.

Uganda has in recent years adopted repressive tax laws that impact the way civil society operates and even reaches communities. The social media tax was introduced in 2018, to curb dissent online. The internet is a vital tool for philanthropic organisations and civil society broadly to mobilise people to support causes, to show the impact of their work, and to drive citizens' conversations around important national issues. The tax of 200 shillings a day to access to social media was an assault on freedom of expression online whose impact was to reverse the advances made in access to internet by losing over 2.5 million subscriptions¹². Beyond the numbers, one of the gravest impacts of the social media tax was the exclusion of Ugandans from online conversations that would allow them to participate in and shape government policies.

Ugandan Minister of Finance Mathias Kasaija recently introduced 12 new tax bills before Parliament¹³. These taxes include additional taxes on income from rental property, and annual licensing fees on vehicle ownership among others. While the direct impact on the philanthropy sector of the proposed taxes once passed is not clear yet, there will likely be an increase in the operational costs of philanthropic organisations or their acquisition of property should the tax bills pass.

Nexus, McDermott Will & Emery, and Charities Aid Foundation included Uganda in a two-year study of 193 UN members regarding how tax laws affect the culture of philanthropy. The study titled "Rules to Give By: A Global Philanthropy Legal Environment Index" was based on seven questions, including whether a country provided tax exemptions for non-profits, whether there were reporting requirements for non-profits, and whether the taxes encouraged philanthropy, among others. Most of the best performing countries in the study were those in the Global North and had a score of 11 points, while Uganda scored 8 points and the least points scored was 0.

Uganda Government's level of commitment to providing a more favourable tax regime for philanthropy to thrive is reflected by statements made by the president H.E Yoweri Museveni before manufacturers in 2009 that they should concentrate on paying taxes and leave issues of CSR to the government¹⁴.

¹¹ Internal Revenue Service, Charitable Contribution Deductions, <https://www.irs.gov/charities-non-profits/charitable-organizations/charitable-contribution-deductions>

¹² The Guardian, Millions of Ugandans quit internet services as social media tax takes effect, 2019, <https://www.theguardian.com/global-development/2019/feb/27/millions-of-ugandans-quit-internet-after-introduction-of-social-media-tax-free-speech>

¹³ The Independent, BUDGET: Finance Minister tables 12 new tax proposals, 2021 <https://www.independent.co.ug/finance-minister-tables-11-new-tax-proposals/>

¹⁴ D. Katamba, C.M. Nkiko, The Landscape of Corporate Social Responsibility in Uganda: Its Past, Present and Future, *Corporate Social Responsibility in Sub-Saharan Africa, CSR, Sustainability, Ethics & Governance*, Springer International Publishing Switzerland, 2016

POLICY ENGAGEMENT

Article 29(1)(e) of the Constitution of Uganda protects the right to freedom of association and Article 38(2) provides for the right of Ugandans to civic participation with a view to influence government policy through civic organisations. Article 38 provides for civic rights and 38(2) specifically empower Ugandans to participate in peaceful activities to influence the policies of government through civic organizations.

Local philanthropy is vital in driving civic engagement by providing a platform for citizens to express support for causes they care about through donations. Philanthropic organisations reach out to citizens through various ways, both physically and online. Philanthropic organisations face the same legal restrictions on freedom of expression, freedom of assembly and media freedom on issues that are considered by the government as politically sensitive. For instance, a donation drive for a social cause like health through a marathon or car wash will face little if any resistance from the police based on purported crowd control reasons unlike if a similar event were organised to raise funds for civic or political issues or convened to share public sentiments against a particular government directive or policy.

Uganda's social media tax has increased the cost of access to the internet and has unduly limited freedom of expression online for many citizens¹⁵. There are also restrictions on assembly. Freedom of assembly is important for philanthropic organisations to mobilise or meet with communities. The Public Order Management Act which was in force for close to a decade was cited by the police and other government authorities to justify the halting of public assemblies. The statute largely targeted opposition politicians and critical civil society organisations engaged in civic advocacy and was a response to Arab Spring-like protests. Other forms of activism such as student protests and assemblies held by civil society are still heavily restricted as well. Despite the nullification of this law by the Constitutional Court in 2020¹⁶, Uganda Police still use the Penal Code Act provisions on illegal assembly¹⁷ to halt public assemblies. This demonstrates just how determined the government is to unjustifiably limit freedom of assembly and this has a chilling effect on philanthropic organisations which seek to hold public assemblies.

These restrictions in policy engagement are also transferred to community based circumstances. There have been instances when NGOs working with local communities on especially sensitive issues like land rights are sabotaged. One group working to help local communities receive fair compensation for land used in a large-scale electricity project was said to be "bordering on sabotage of government programs" by the government agency involved in the project. The government from then on required any organization to seek written permission from the permanent secretary of the Ministry

¹⁵See 2 above

¹⁶ Amnesty International, Uganda: Constitutional Court nullifies law used to prohibit protests, 2020 <https://www.amnesty.org/en/latest/news/2020/03/uganda-constitutional-court-nullifies-law-used-to-prohibit-protests/>

¹⁷ Section 65, Penal Code Act CAP 120

of Energy and Mineral Development each time they seek to visit the oil region, even though no law or publicly available policy requires them to seek such permission for the visits. These policies and practices obstruct access to affected communities and inhibit research and advocacy on oil accountability and transparency.

The impact of restrictions on freedom of assembly is that public assemblies eventually became de facto illegal. CSOs and philanthropic organisations will therefore self-sensor and avoid any politically related public assembly. This has manifested in several ways:

- CSOs and media houses have come under attack by government including arrests, and office raids
- The increased intimidation of CSO has made organisations and philanthropies change strategies so as to protect staff
- Increased percentages of budgets are allocated to defensive strategies for organisations rather than programming like security training, installing security equipment, and legal fees that affect the small budgets of CSOs and threatens their ability to operate
- There is always a big concern over elections and many CSO choose not to engage during these heightened periods. Donors either withdraw funding or over fund election periods, which affects strategic planning of organisation.

OVERSIGHT, TRANSPARENCY, AND ACCOUNTABILITY

The current legal framework gives government broad and sweeping oversight powers over the operations of CSOs that has allowed state officials to interfere in their day-to-day operations, imposing unnecessary hardships and restricting communities engaging activities in pursuance of control and patronage which violates the freedom of association.

The NGO Bureau and its national infrastructure is large and duplicates procedures at several levels. This “thick bureaucracy”, with monitoring committees operating at the national, district, and sub-county level has created a tedious work environment for CSOs, with many reporting obligations, and avenues of subjective guidelines to warn, monitor, sanction, or deregister CSOs. These administrative encumbrances have an especially frustrating effect in terms of ordinances at local levels.

CSOs operating at District level are required to sign memoranda of understanding with district authorities. This has not been fully enforced in practice due to capacity gaps. According to the National NGO Forum, about 20% of district NGO monitoring committees are adequately constituted while the majority of districts, especially newly created ones, do not have these structures in place. A majority of those that exist, are not fully constituted, or do not understand their role rendering the CSOs vulnerable to the interference of District officials including the Resident District Commissioners, District Internal Security officers and District Police commanders. CSOs also reported that they are also subjected to rigorous extension procedures that require them to obtain recommendations from as many Districts as they wish to operate in.

CSOs and philanthropic organisations in Uganda are also regulated under laws such as the Anti-Money Laundering Act and the Financial Institutions Act which have separate reporting requirements.

Section 8 of the Anti-Money Laundering Act requires accountable persons to keep records of financial transactions for up to ten years. Under Section 8, accountable persons are required to report financial transactions ranging from UGX 20,000,000 million and above, as well as keep records of such transactions for not less than ten years. Section 11 requires accountable persons to avail their records to be used in government investigations, criminal civil proceedings, or to be shared with governments of other countries.

The above oversight functions are necessary to keep a sound financial system safe from money laundering and terrorist financing but could also be excessive and burdensome for philanthropic organisations in terms of record keeping, reporting, and deeply concerning in terms of philanthropic organisations' financial data protection.

The NGO Act also places the regulation of CSOs under the mandate of the Ministry of Internal Affairs, which in practice means that security interests often override positive regulation of the sector. Oversight is tense during heightened political times like elections and over organisations working on highly political issues such as land rights, oil and climate change, government accountability and political inclusion of opposition and minority groups.

Organizations are required to seek the authorization of police prior to holding public assemblies. Public spaces are advocacy platforms to demonstrate peacefully against some unfair government policies. Police has used the Public Order Management Act to prevent, obstruct or break up private and public meetings, protests and marches, particularly if hosted by CSOs on issues deemed sensitive to the President such as the recent activities around the amendment of the Presidential age limit. As far back as 2011, police violently dispersed and arrested activists- charging them with inciting violence, in collaboration with political activists over the Walk to Work campaigns.

RECOMMENDATIONS

Enact a statute to regulate all matters such as registration to philanthropic organisations in Uganda. Provide legal clarity and institutional clarity on the governmental body for regulation of philanthropic bodies.

Move all regulation of the not-for-profit sector to one body with one registration process and one entity to report to periodically to make it easy for organisations to operate freely.

An amendment of the Income Tax Act to expressly make tax exemptions for philanthropic organisations automatic upon registration as non-profit making entities. Enact more tax incentives on donations for both individuals and corporations.

Amend the Anti-Money Laundering Act to increase financial data protection, reduce the period for data storage and provide for consent before philanthropic organisations can release financial data to the government.

Amend the laws to remove excessive oversight requirements for the civil society sector in general as the excessive oversight is restrictive.

Petition the constitutional court to interpret governmental actions which disrupt the enjoyment of political freedoms.

Philanthropies and CSOs should hold continuous advocacy or dialogue with the government to free the civic space for CSOs and philanthropic organisations to freely engage in and influence policy.

Part II: BREAKDOWN OF OVERARCHING AREAS

Issue brief 1: Registration

Describe the issue	There is no exclusive law which specifically regulates philanthropic organisations. Philanthropic organisations are registered under the Companies Act and Incorporation of Trustees Act. CSOs are also required to apply for multiple layers of registration to different authorities frequently. This causes the registration of foundations to be regulated using laws that were intended for different kinds of legal entities.
Is the root cause of this issue in the text of the law or the way the law is implemented?	There is no specific law governing philanthropic entities. Sections 29-31 of the NGO Act govern the mandatory registration of NGOs through the issuance of periodic operating licenses. International NGOs are required to additionally obtain "recommendations" from the relevant line or sectoral ministry in Uganda
Describe the impact, including the severity of the impact, of this issue	The legal vacuum creates uncertainty as to the registration and regulation of philanthropic organisations and risks giving them legal attributes of trusts and companies.
How does this issue affect philanthropy organisations?	Philanthropy organisations' strategic approaches to development have to be careful about the kind of work they support in Uganda. Philanthropy organisations are also just as affected by the burdensome reporting as other CSOs in the country to the Uganda NGO Bureau.

<p>Have there been previous efforts to address this? If so, what happened? Has anything changed?</p>	<p>NGOs participated in the review of the NGO Policy and NGO Act and a number of their recommendations were adopted, but government response on registration is still a challenge. Continuous efforts of engagement between civil society with NGO bureau to address some of the problematic clauses of the NGO Act continue.</p>
<p>Who might be interested or invested in addressing this issue?</p>	<p>All types of CSOs, including philanthropic organisations, government line ministries that partner with CSOs and populations that benefit from services provided by CSOs, Uganda NGO Bureau,</p>
<p>What legal and policy solutions would address the issue?</p>	<p>Enact a statute to regulate all matters such as registration to philanthropic organisations in Uganda. Provide legal clarity and institutional clarity on the governmental body for regulation of philanthropic bodies. Move all regulation of the sector to one body with one registration process and one entity to report to periodically to make it easy for organisations to operate freely.</p>

Issue brief 2: Taxation:

Describe the issue	Philanthropic organisations in Uganda are tax exempt. However, tax exemption must be applied for and maintaining tax-exempt status is a cumbersome process for civil society in general. Restrictive taxes have also affected the space for CSOs to operate.
Is the root cause of this issue in the text of the law or the way the law is implemented?	The root cause of this issue is in the text of the law and how the law is implemented. Section 2 (bb) of Income Tax Act makes NGOs eligible for tax exemption. In order to qualify for tax exemption status however, NGOs must apply to the commissioner general of Uganda Revenue Authority who uses their discretion to grant the status. The law is silent on the criteria used to select NGOs for tax exempt status.
Describe the impact, including the severity of the impact, of this issue	Philanthropic organisations may choose to forego the benefits that accrue to a tax-exempt status and this discourages the growth of new foundations.
How does this issue affect philanthropy organisations?	The bureaucracy of applying for a tax-exempt status may affect the operations of smaller foundations as it takes time, finances, and human resource. A narrow range of tax incentives and general lack of awareness about the same has a negative impact on local philanthropy and leaves CSOs largely dependent on foreign funding and foreign interest in terms of what to prioritise when implementing projects in the country.
Have there been previous efforts to address this? If so,	There has not been any legal or engagement effort to get the government to reconsider its procedure for considering or appreciating the value of tax exemptions for NGOs.

what happened? Has anything changed?	
What legal and policy solutions would address the issue?	<p>An amendment of the Income Tax Act to expressly make tax exemptions for philanthropic organisations automatic upon registration as non-profit making entities.</p> <p>Enact more tax incentives on donations for both individuals and corporations.</p>

Issue brief 3: Fundraising

Describe the issue	<p>There are excessive reporting and record keeping requirements on philanthropic organisations.</p> <p>Philanthropic organisations or CSOs which receive funding from foreign sources are labelled as foreign agents, especially if they work on advocacy and inclusion campaigning.</p>
Is the root cause of this issue in the text of the law or the way the law is implemented?	<p>The root cause of this issue is in the text of the law. Sections 7, 8 and 11 of the Anti-Money Laundering Act require entities such as philanthropic organisations to report to the Financial Intelligence Authority and maintain for ten years records of funds they receive, as well avail the records for government investigations, court proceedings or for referral to the governments of other countries.</p>
Describe the impact, including the severity of the impact, of this issue	<p>Record keeping requirements raise serious data privacy concerns which may discourage individuals from donating.</p>

	Reporting and recordkeeping requirements make the operations of philanthropic organisations more burdensome and costly.
How does this issue affect philanthropy organisations?	Some multilateral donors may be reluctant to donate to Ugandan philanthropic organisations engaged in politically sensitive work.
Have there been previous efforts to address this? If so, what happened? Has anything changed?	CSOs such as CIPESA and Unwanted Witness held stakeholder meetings with MPs and the National Information and Technology Authority, conducted training and research on data protection to influence the drafting of the then Data Protection and Privacy Bill. They submitted reviews and comments to improve the draft bill. The bill passed.
What legal and policy solutions would address the issue?	Amend the Anti-Money Laundering Act to increase financial data protection, reduce the period for data storage and provide for consent before philanthropic organisations can release financial data to the government.

Issue 4: oversight, transparency, and accountability

<p>Describe the issue</p>	<p>Philanthropic organisations face daunting government oversight and reporting requirements under several laws such as the Anti-Money Laundering Act, and repressive laws such as the Penal Code Act on public assembly, and Computer Misuse Act.</p>
<p>Is the root cause of this issue in the text of the law or the way the law is implemented?</p>	<p>The root cause of the issue is both in the text of the law and the way the law is implemented.</p>
<p>Describe the impact, including the severity of the impact, of this issue</p>	<p>Philanthropy organisations spend time, financial and human resources to report to the FIA and keep records. This increases the costs of their operations.</p> <p>Philanthropy organisations self censor by avoiding public assemblies or engaging in politically sensitive debates.</p>
<p>How does this issue affect philanthropy organisations?</p>	<p>The growth of philanthropy as a sector is hampered by the excessive oversight requirements.</p>
<p>Have there been previous efforts to address this? If so, what happened? Has anything changed?</p>	<p>Continuous efforts of engagement between civil society with NGO bureau to address some of the problematic oversight laws have continued. CSOs also successfully challenged the legality of the Public Order Management Act in court.</p>
<p>What legal and policy solutions would address the issue?</p>	<p>Amend the laws to remove excessive oversight requirements.</p> <p>Petition the constitutional court to interpret governmental actions which disrupt the enjoyment of political freedoms.</p>

Issue 5: Policy issues

<p>Describe the issue</p>	<p>There is no law which directly prohibits Ugandan philanthropy organisations from engaging or influencing policies debates. However, there are laws such as the Computer Misuse Act, the social media tax, Penal Code Act provisions on illegal assembly, which generally restrict political activism or debates around politically sensitive issues.</p>
<p>Is the root cause of this issue in the text of the law or the way the law is implemented?</p>	<p>The root cause of this issue is in both the text of the law and the way the law is implemented. Section 65 of the Penal Code Act on illegal assembly is a colonial law which was inherently repressive in nature. The nature and purpose of the provision still stands, to discourage political organising.</p> <p>The way the law on illegal assembly is enforced by the police or in some cases the army is disproportionately as against unarmed citizens violent, reckless, and wanton, often results in injuries and deaths.</p> <p>Section 25 of the Computer Misuse Act outlaws offensive communication. The text of this law does not define what amounts to offensive communication, and the discretion to determine what is offensive has deliberately targeted legitimate political dissent. Under international human rights laws, freedom of expression includes protection of speech which is offensive¹⁸.</p>

¹⁸ Lingens v Austria, Application No. 9815/82, ECHR

<p>Describe the impact, including the severity of the impact, of this issue</p>	<p>Most organisations, including philanthropic organisations, in the exercise of the rights to freedom of assembly and freedom of self censor or engage around politically safe issues such as health care.</p>
<p>How does this issue affect philanthropy organisations?</p>	<p>Philanthropic organisations may forego politically sensitive engagements and therefore lose the opportunity to influence or contribute discourse.</p>
<p>Have there been previous efforts to address this? If so, what happened? Has anything changed?</p>	<p>Civil society organisations challenged the Public Order Management Act in court and the law was nullified. CSOs participated in public assemblies against the social media tax and collected data on the negative impact of the tax. A case has been commenced in the constitutional court challenging the legality of the social media tax.</p>
<p>What legal and policy solutions would address the issue?</p>	<p>Continuous advocacy or dialogue with the government to free the civic space CSOs and philanthropic organisations can freely engage in and influence policy.</p>

PART III: MAPPING ISSUE PRIORITIES AND TIMELINE FOR POSSIBLE RESPONSES

ISSUE 1: REGISTRATION

	SHORT TERM	MEDIUM TERM	LONG TERM
HIGH PRIORITY		Lobby Parliament and other key stakeholders to start work on a law governing philanthropy	Enact a law to regulate the philanthropy sector Constitute a governmental body to oversee the regulation of philanthropy.
MEDIUM PRIORITY	Provide legal support regarding registration of philanthropic organisations	Engage with URSB to rally support for a law on registration of philanthropy organisations	Constitute a governmental body to regulate philanthropy.

LOW PRIORITY			
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ISSUE 2: TAXATION

	SHORT TERM	MEDIUM TERM	LONG TERM
HIGH PRIORITY	Engage with URA to harmonise legal interpretation of the Income Tax provision on tax exemption by non-profits.		Amend the Income Tax to remove the requirement for application for exemption.
MEDIUM PRIORITY	Dialogue with URA to ease the process of applying for tax exemptions.	Lobby Parliament to remove taxes such the as social media tax	Amend the law to increase tax deductions on donations. Legislate more tax incentives to encourage local donations.

LOW PRIORITY			
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ISSUE 3: FUNDRAISING

	SHORT TERM	MEDIUM TERM	LONG TERM
HIGH PRIORITY	Guide philanthropic organisations to navigate excessive financial reporting requirements.		Amend the law to remove excessive financial reporting requirements. Amend the law to improve financial data safeguards. Enact law to govern donations to or by churches, religious institutions and high net worth individuals or their foundations.

MEDIUM PRIORITY	Train judges on the offense off money laundering as it relates to non-profits		Legislate regulation of election campaign financing
LOW PRIORITY		Engage with religious and cultural institutions to rally support for a law on philanthropy	

ISSUE 4: OVERSIGHT, TRANSPARENCY AND ACCOUNTABILITY

	SHORT TERM	MEDIUM TERM	LONG TERM
HIGH PRIORITY	Dialogue with the Ministry of Internal Affairs to reform the manner of enforcement of citizens' enjoyment of freedom of assembly. Challenge in court government actions/ laws such as section 25 of the Computer Misuse act and section 65 of the Penal code on		Amend laws such Computer Misuse Act and Penal Code Act which shrink the civic space.

MEDIUM PRIORITY			
LOW PRIORITY			

ISSUE 5: POLICY ENGAGEMENT

	SHORT TERM	MEDIUM TERM	LONG TERM
HIGH PRIORITY	Challenge in court government actions/ laws such as section 25 of the Computer Misuse act on offensive communication and section 65 of the Penal code on illegal assembly which deny citizens' enjoyment	Train police officers on international human rights standards to apply in law enforcement relating to civil and political rights.	Amend laws such Computer Misuse Act and Penal Code Act which shrink the civic space.

	of freedoms guaranteed under the Constitution	Educate police officers on the extent individual legal liability arising from human rights violations by then	
MEDIUM PRIORITY			
LOW PRIORITY			

POTENTIAL CHANGE MAKERS AND ALLIES

1. There is no separate law which exclusively regulates the registration of philanthropic organisations

Potential Change maker or Ally	Power to influence	Degree of Interest	Extent of Knowledge	Possible Actions to increase interest or knowledge	Resources Available for advocacy	Resources needed for advocacy	Strength of opportunity
National legislators	High	Medium	Basic general knowledge on philanthropy in Uganda	<p>Provide information on the registration challenges philanthropies face and the negative impact of lack of an exclusive statute to regulate their registration</p> <p>Provide information on the advantages of a law to regulate philanthropy in Uganda.</p>	Data on philanthropic organisations in Uganda and the impact of the work they do.	Develop networks and relationships with MPs.	7

Uganda Registration Services Bureau	High	High	Detailed knowledge of registration laws and procedures	Advocacy to increase interest in or support for a separate registration law for philanthropic organisations.	Lived experiences of the registration process by different philanthropic organisations	Provide alternative proposals on mainstreaming the incorporation of philanthropic organisations.	8
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2. Philanthropic organisations in Uganda are tax exempt. However, tax exemption must be applied for and this process can be both long and costly. Tax incentives for individual or corporate donations are insufficient.

Potential Change maker or Ally	Power to influence	Degree of Interest	Extent of Knowledge	Possible Actions to increase interest or knowledge	Resources Available for advocacy	Resources needed for advocacy	Strength of opportunity

Uganda Revenue Authority	High	Low	Detailed knowledge of Ugandan tax laws and enforcement procedure.	Advocacy to increase knowledge on advantages of tax exemptions for CSOs and philanthropic organisations	Information on experiences of non-profits seeking tax exemption. The Income Tax Act provisions on tax exemption.	Data on advantages of tax exemptions for philanthropic organisations. Legal analysis of the import and practical legal implication of the provision on tax exemption for non-profits.	5
National legislators	High	Medium	Basic general knowledge on taxation legal regime for philanthropic organisations	Advocacy to amend the Income Tax Act to provide clarity on exemption tax by removing the requirement for application for exemption yet the law	Information on experiences of nonprofits seeking tax exemption. The Income Tax Act provisions on tax exemption.	Data on advantages of tax exemptions for philanthropic organisations. Legal analysis of the import and practical legal	7

				lists exempt organisations.		implication of the provision on tax exemption for non-profits. Non-profit tax law experts	
NGOs	Medium	High	Detailed knowledge of Ugandan taxation legal regime and experience applying for tax exemption and the impact of denial of the application for the exemption.	Increase collaboration and solidarity in working towards tax law reform for non-profits in Uganda.	Good working relationship between Ugandan NGOs and philanthropic organisations	Non-profit tax law experts Learnings from favourable taxation legal regimes in other jurisdictions	7

High networth individuals and corporations	High	High	Detailed knowledge of Uganda's tax filing procedures for businesses.	Provide knowledge and data on the advantages of increased tax deductions on donations.	Relationships with corporations and high net worth individuals.	Data on tax deductions for high net worth individuals in other jurisdictions.	8
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3. There are excessive reporting requirements, financial data privacy concerns relating to the transactions of philanthropic organisations. Dealings with foreign donors are labelled by the government as subversive.

Potential Change maker or Ally	Power to influence	Degree of Interest	Extent of Knowledge	Possible Actions to increase interest or knowledge	Resources Available for advocacy	Resources needed for advocacy	Strength of opportunity
NGOs	Medium	High	Detailed knowledge and experience of financial reporting requirements	Share knowledge and experiences on the legal for fundraising	Data on fundraising in Uganda	More research	6

Bilateral donors	High	Medium	Detailed knowledge of procedures regarding Ugandan financial transactions	Share knowledge on how a more enabling legal and regulatory environment for fundraising would improve efficiency in use of funds.	Data and experience on reporting challenges relating to fundraising in Uganda Existing partnerships.	Policy briefs	7
Financial Intelligence Authority	High	Low	Detailed knowledge of laws and regulatory procedures of Ugandan financial system	Provide evidence on the advantages of easing financial reporting while maintaining sound safeguards against money laundering and terrorist financing.	Data and experience on reporting challenges relating to fundraising in Uganda	Strengthen existing relationship and create image of CSOs and philanthropies as allies in the fight against money laundering and terrorism financing.	6

Banks	Medium	High	Detailed knowledge of Ugandan financial procedures	Provide information on the negative impact of the current laws on privacy of financial data and reporting, as well as benefits for the banking sector if reforms come into force.	Data on challenges of excessive reporting and record keeping requirements.	Data on the negative impact of the excessive financial reporting requirements and lax data protection on both philanthropy and banking sectors.	7
Judiciary	High	Medium	Detailed knowledge of financial criminal laws and their enforcement.	Provide data on the negative impact of politically motivated, frivolous money laundering charges against CSOs and philanthropies but also the impact on the judiciary in terms of its public image and case backlogs.	Data on financial transactions of philanthropic organisations.	Networks and goodwill on the part of heads of the judiciary. Trainings	8

National legislators	High	Low	Basic general knowledge of Ugandan financial transactions	Provide evidence on the existing need for a law to institutionalise philanthropy, its various aspects of regulations and the benefits that would accrue from such a law.	Data	Trainings Legislative drafting support	8
Political parties	Low	High	Basic general knowledge of Ugandan financial transactions.	Provide information on the advantages arising from a favourable legal environment for local giving.	Data	Evidence on the benefits of an enabling legal environment on local fundraising for political parties.	7
Religious institutions	High	High	Basic general knowledge of Ugandan financial transactions	Provide information on the advantages arising from a favourable legal environment for local giving	Data Networks	Evidence on the benefits of an enabling legal environment on local fundraising for religious institutions	9

Cultural institutions	High	Medium	Basic general knowledge of Ugandan financial transactions	Provide information on the advantages arising from a favourable legal environment for local giving	Data Networks	Evidence on the benefits of an enabling legal environment on local fundraising for cultural institutions	8
High networth individuals and corporations	High	High	Basic general knowledge of Ugandan financial transactions	Provide information on the advantages of donations to business brands	Data	Evidence of the social impact streamlined local fundraising can create.	9

4. Philanthropic organisations face daunting reporting and record keeping requirements under the Anti-Money Laundering Act and compliance with several repressive laws on public assembly and freedom of speech online.

Potential Change maker or Ally	Power to influence	Degree of Interest	Extent of Knowledge	Possible Actions to increase interest or knowledge	Resources Available for advocacy	Resources needed for advocacy	Strength of opportunity
Ministry of Internal Affairs	High	Low	Detailed knowledge of laws and supervision over enforcement regarding public assemblies and free speech	Continuous dialogue to strictly conform enforcement to constitutional standards and international human rights law.	Existing relationship between CSOs and Ministry of Internal Affairs International, regional human rights instruments Uganda is party to and expert/ judicial	Handbooks on the enforcement of enjoyment of freedoms by citizens.	7

					interpretations of these.		
Uganda Police	High	Low	Detailed knowledge of laws and control over enforcement regarding public assemblies and free speech	Continuous dialogue on respect for existing human rights standards on civil and political freedoms. Educate the police on individual liability for human rights violations.	Existing laws such as the Human Rights Enforcement Act and the Global Magnitsky Human Rights Accountability Act.	Handbooks on the enforcement of enjoyment of freedoms by citizens. Dialogues	6
NGOs	Medium	High	Detailed knowledge of Ugandan human rights, experience of their illegal enforcement and the impact on the national civic space.	Share knowledge and experiences on shrinking civic space	Strong relationship between philanthropic organisations and NGOs.	Guidelines on jointly navigating excessive government requirements.	8

5. There are laws such as the Computer Misuse Act, the social media tax, Penal Code Act provisions on illegal assembly, which generally restrict political activism or debates around politically sensitive issues.

Potential Change maker or Ally	Power to influence	Degree of Interest	Extent of Knowledge	Possible Actions to increase interest or knowledge	Resources Available for advocacy	Resources needed for advocacy	Strength of opportunity
Media	Medium	High	Detailed knowledge of laws and nature of national enforcement on freedom of expression, freedom of assembly and media freedom	Make the case for increased solidarity between media and philanthropic organisations in advocacy for improved civic space.	Data and experiences relating to the limited space for enjoyment of freedom of assembly, freedom of speech online and media freedom.		8

CSOs	Medium	High	Detailed knowledge of laws and nature of national enforcement on freedom of expression, freedom of assembly and media freedom.	More frequent joint engagement on how to navigate the shrinking civic space	Strong relationship between civil society organisations and philanthropic organisations		7
Uganda Police	High	Low	Detailed knowledge of laws and nature of national enforcement on freedom of expression, freedom of assembly and media freedom	Continuous dialogue on respect for existing human rights standards on civil and political freedoms. Educate the police on individual liability for human rights violations both under national and international laws.	Existing laws such as the Human Rights Enforcement Act and the Global Magnitsky Human Rights Accountability Act.	Dialogues Handbooks on the enforcement of enjoyment of freedoms by citizens.	7

Public	High	Low	Basic general knowledge, but rich experience of enforcement of Ugandan laws on freedom of assembly and freedom of speech.	Provide basic legal literacy on civil and political freedoms and reporting mechanisms relating to human rights violations by the state. Educate the public on the impact of an enabling environment full civic participation.	Reports on police brutality Laws	Media campaigns Community outreaches	8
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