

*Civil Society in Africa*

**POLITICS, POWER, AND ACCOUNTABILITY:  
ADDRESSING THE ELEPHANT IN THE ROOM  
IN THE QUEST FOR CIVIL SOCIETY ORGANIZATIONS'  
RIGHT TO FREEDOM OF ASSOCIATION**

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**1. Introduction**

The right to freedom of association is increasingly being illuminated in the international human rights arena, as demonstrated by the adoption of the Human Rights Defenders Declaration by the General Assembly in 1998 and the establishment of the mandate of Special Rapporteur on the same issue in 2010.<sup>1</sup> Simultaneously, there is an alarming global trend of clamping down on independent civil society spaces under the guise of combating terrorism, defending government's sovereignty, and safeguarding the public from bad governance of civil society organizations (CSOs).<sup>2</sup>

In the East African region, since September 11, 2001, there is an apprehension that CSOs can facilitate terrorism. Further, following the Arab and North Africa springs of 2012, East African governments have become intolerant to social protests.<sup>3</sup> Government perceives CSOs as partners, appendages of government, foreign stooges, economic saboteurs, inciters of violence, or watchdogs, depending on the nature of their activities. Ugandan President Yoweri Museveni has publicly castigated CSOs with alternative views as "internal saboteurs and acting on behalf of foreign interests."<sup>4</sup> Given that participation in associational life promotes political consciousness and encourages more involvement in politics, through voting, campaigning, and willingness to stand for elective office, it is one of the most restricted rights because it threatens those in power.<sup>5</sup> As articulated by the former Chief Justice of Australia, Justice Gleeson, because government claim to represent the will of the people, it does not like to be checked and balanced which it deems as a threat or challenge to its power.<sup>6</sup>

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<sup>1</sup> ICNL & WMD, *Defending Civil Society Report*, 2d ed. (June 2012) at 3, 9.

<sup>2</sup> ICNL & WMD, *International Principles Protecting Civil Society*, <http://www.defendingcivilsociety.org/en/index.php/principles>

<sup>3</sup> The EAC Deputy Secretary General in charge of Political Federation, <http://www.eac.int/about-eac/eacnews/981-2nd-political-dialogue.html>

<sup>4</sup> Halima Abdalla, *Under Siege, Museveni Seeks Support on Oil Law, Aid Cuts*, EAST AFRICAN (15-21 December 2012) at 5.

<sup>5</sup> M. EDWARDS, CIVIL SOCIETY 102 (2004).

<sup>6</sup> Justice Nkabinde, keynote address, Judicial Symposium Chobe, 30 September 2014.

This article argues that in a democratic society, the state and a vibrant civil society are “two sides of the same coin and are complementary in improving society.”<sup>7</sup> Civil society and the state are interdependent, with states expected to provide the legal and regulatory framework for civil society to independently function in order to play an oversight role over government’s accountability to its citizens.<sup>8</sup>

The article begins with the conceptual framework for the right to freedom of association in part 2. In part 3 it examines the legal and regulatory framework in Uganda to assess whether it supports the rights to freedom of association of CSOs. It proceeds with an analysis of the root cause of tension between CSOs and government as the struggle of power, resources, and influence in part 4. In part 5 it recommends the strengthening of CSOs’ political consciousness. Part 6 concludes.

## **2. *The Conceptual Framework***

Civil society has a right to autonomous existence as guaranteed under international human rights and the Uganda Constitution.<sup>9</sup> This article is premised on the intersection of human rights and democracy discourses as mutually reinforcing, because democracy cannot exist without full respect for human rights. Conceptualized as a normative principle to constrain the abuse of power, human rights form the cornerstone of democratic governance in order to expand space for strengthening the rights and obligations of the citizens to participate in decisions that affect their lives and to hold the leadership accountable. The formation of associations provides an important beginning to organize and advocate for rights as well as engage governments in pursuit of common interests.<sup>10</sup> In fact, only organized people can effectively struggle against oppression and repression by governments.<sup>11</sup>

The article applies the three concepts of civil society identified by Edwards: civil society as associational life, as good society and public sphere, and as mutually reinforcing.<sup>12</sup> The first and dominant view of civil society is that of voluntary associations or organizations situated between the family and the state, which, though autonomous from the state, interact with it to advance their interests.<sup>13</sup> The second school of thought conceptualizes civil society as “good society”: a desirable social order in which all institutions operate in ways that nurture positive

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<sup>7</sup> C.E. WELCH, PROTECTING HUMAN RIGHTS IN AFRICA: ROLES AND STRATEGIES OF NON-GOVERNMENTAL ORGANIZATIONS 44 (1995).

<sup>8</sup> EDWARDS, *supra* note 5, at 24.

<sup>9</sup> ICCPR (1966), Art. 22; African Charter, Art.10; Constitution of Uganda (1995), Art. 29.

<sup>10</sup> AFRICAN COMMISSION, REPORT OF THE AFRICAN COMMISSION’S WORKING GROUPS OF EXPERTS ON INDIGENOUS POPULATIONS/COMMUNITIES 57 (2005).

<sup>11</sup> C.M. PETER, HUMAN RIGHTS IN TANZANIA: SELECTED CASES AND MATERIALS 650 (2007).

<sup>12</sup> EDWARDS, *supra* note 5.

<sup>13</sup> *Id.*; P. UVIN, HUMAN RIGHTS AND DEVELOPMENT (2004); NYANGABYAKI, CONTEMPORARY CIVIL SOCIETY AND DEMOCRATISATION PROCESS IN UGANDA: A PRELIMINARY EXPLORATION (2000); J. OLOKA-ONYANGO, CIVIL SOCIETY, DEMOCRATISATION AND FOREIGN DONORS IN CONTEMPORARY UGANDA: A CONCEPTUAL AND LITERATURE REVIEW 23 (2000); J. J. BARYA, THE STATE OF CIVIL SOCIETY IN UGANDA: AN ANALYSIS OF THE LEGAL AND POLITICO-ECONOMIC ASPECTS (2000); M. SWILLING & B. RUSSELL, THE SIZE AND SCOPE OF THE NON-PROFIT SECTOR IN SOUTH AFRICA (2002); M.G. Ngunyi, *Building Democracy in a Polarised Civil Society: The Transition to Multi-Party Democracy in Kenya*, in LAW AND THE STRUGGLE FOR DEMOCRACY IN EAST AFRICA (J. Oloka-Onyango, K. Kibwana, & C.M. Peter eds.) (1996).

social norms, such as tolerance, nondiscrimination, nonviolence, trust, cooperation, and rights.<sup>14</sup> In its social role, civil society is seen as the reservoir of social capital and positive social norms that foster community-building, bonds of trust, cooperation, and reciprocity, and enriches the human condition.<sup>15</sup> The third school of thought perceives civil society as part of the public sphere: an arena for argument and deliberation as well as for associational and institutional collaboration.<sup>16</sup> The public sphere is an arena where societal differences, social problems, public policy, government action, and cultural and common identities are debated and developed. In this political role, civil society serves as a crucial counterweight to state and corporate power and as an essential pillar in promoting good governance.<sup>17</sup> Civil society also provides channels through which people can have their voices heard in government decision-making and sharpens skills for political leadership.<sup>18</sup> Thus, civil society has influenced, altered, and shaped the political discourse and the human rights terrain. Ostensibly, an integrated approach of the concept of civil society is useful in attacking all forms of inequities and promoting democratic spaces.<sup>19</sup>

The expectation that civil society serves as a countervailing force against government's abuse of power is a source of disharmony in the state-CSO relationship. The Oxford Dictionary defines *power* as the authority to do something, influence people or events, and strength. According to Lips, power is not a commodity but a process underpinning human relationships.<sup>20</sup> Power is related to human rights, such that whenever human rights violations occur, negative power relations are often prevalent. While activism is about challenging existing power structures and imbalances, unfortunately within the human rights corpus, power is largely ignored<sup>21</sup> or treated as negative or corrupting. Inadvertently, the ambivalence about overtly challenging the abuse of power is constraining CSOs' capacity to collectively challenge government's intrusion into their independent organizing.

Building on this conceptual framework, the next section asks whether or not government should interfere in the internal functioning of CSOs by regulating their internal governance.

### **3. *The Legal Framework for the Operations of CSOs***

In Uganda, the Constitution provides for freedom of association<sup>22</sup> and the right to freely participate in peaceful activities and to influence the policies of government through civic action.<sup>23</sup> Further, the National Objectives and Directive Principles of State Policy provide for the autonomy of civic organizations and their participation in public affairs,<sup>24</sup> and commit the state

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<sup>14</sup> EDWARDS, *supra* note 5, at 39.

<sup>15</sup> *Id.* at 14; L. M. SALAMON ET AL., GLOBAL CIVIL SOCIETY: DIMENSIONS OF THE NON-PROFIT SECTOR 23 (2004).

<sup>16</sup> EDWARDS, *supra* note 5, at 55.

<sup>17</sup> *Id.* at 14-15.

<sup>18</sup> *Id.* at 15.

<sup>19</sup> *Id.* at 96.

<sup>20</sup> H.M. LIPS, WOMEN, MEN AND POWER 3-4 (1991).

<sup>21</sup> M. MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE 13 (2002).

<sup>22</sup> *Id.*, Art. 29(e).

<sup>23</sup> *Id.*, Art. 38(2).

<sup>24</sup> *Id.*, Principle II (vi).

to respect the independence of institutions and NGOs working on protecting and promoting human rights.<sup>25</sup>

Before 1989, CSOs registered either as Companies limited by guarantee under the Companies Act or as Trusts under the Trustees Incorporation Act.<sup>26</sup> Today, a majority of organizations are registered under the NGO Act. The NGO Act acknowledges the right of any organization to choose alternative registration and stresses that the Act only applies to NGOs registered under it.<sup>27</sup> However, given that organizations registered under the Companies Act or the Trustees Act are not subjected to the same stringent regulations as those under the NGO Act, this section focuses on the NGO Act to highlight the assault to freedom of association.

The first NGO law was enacted in 1989<sup>28</sup> to provide for the registration of NGOs and establish the NGO Board. The NGO law was amended in 2006 to strengthen government's monitoring role.<sup>29</sup> The 2006 law introduced some progressive provisions. The amendment incorporated gender representation by providing that a third of the NGO Board must be women.<sup>30</sup> An NGO automatically acquires legal personality on registration instead of having to undergo double registration under the Companies Act, as was originally the case.<sup>31</sup> Lastly, it exempts Community Based Organizations (CBOs) from registering with the NGO Board and instead provides for registration with the District authorities, which takes the service closer to the people.<sup>32</sup>

On the negative side, the law expands the function of the Board beyond registration to include the monitoring of NGOs.<sup>33</sup> Further, it retains provisions from the 1989 law, such as the representation of security organs on the NGO Board; the criminalization of non-registration<sup>34</sup>; and the discretionary powers of the NGO Board to revoke a license in the public interest.<sup>35</sup> Although the law purports to include NGOs on the National NGO Board, there is no guarantee that the three public representatives will be NGO representatives,<sup>36</sup> because they are nominated by the government. Worse still, the law introduces a permit,<sup>37</sup> whose duration and conditions are to be prescribed by the Minister,<sup>38</sup> making the existence of NGOs precarious.

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<sup>25</sup> *Id.*, Principle V (ii).

<sup>26</sup> Companies Act Cap 85, Trusteeship Act Cap 147, Partnership and Associations Act Cap 87.

<sup>27</sup> NGO Amendment Act (2006) § 2(1)a.

<sup>28</sup> Uganda NGO Act, Cap 113, formerly Statute 5 of 1989.

<sup>29</sup> NGO Amendment Act No. 25/2006.

<sup>30</sup> NGO Amendment Act (2006) § 4 (2).

<sup>31</sup> NGO Amendment Act (2006) § 2 (3).

<sup>32</sup> NGO Amendment Act (2006) §7(2).

<sup>33</sup> NGO Amendment Act (2006) § 7.

<sup>34</sup> NGO Amendment Act (2006) §§ 2(5), 2(6).

<sup>35</sup> NGO Amendment Act (2006) §10 (c).

<sup>36</sup> NGO Amendment Act (2006) § 4 (1).

<sup>37</sup> NGO Amendment Act (2006) § 2.

<sup>38</sup> NGO Amendment Act (2006) § 13.

The 2009 NGO Registration Regulations made the registration process more cumbersome. In addition to the constitution as a common registration requirement, a prospective NGO is supposed to specify the geographical area, field of operation, organizational structure, work plan, and a one-year budget, and provide written recommendations from the two sureties, two sub-county chiefs or Resident District Commissioners (RDCs).<sup>39</sup> While originally the government had proposed to have the NGO permit annually renewable, the NGO Regulations maintained the original position of having the permit renewable initially for twelve months and subsequently for thirty-six months and thereafter sixty months.<sup>40</sup> Further, the regulations retain the provision that recognizes that an NGO can engage in gainful activities for the economic interest of the organization.<sup>41</sup> An NGO is supposed to give a seven days' notice to the Local Council and Resident District Commissioner before contacting the local communities.<sup>42</sup>

The NGO Policy of 2010 was enacted after the Act, yet it is policy that guides the legal framework. Nonetheless, it has some positive attributes. Its vision of a "vibrant and accountable NGO sector enabling citizens' advancement and self-transformation"<sup>43</sup> is human-rights oriented. It commits government to respecting the autonomy of NGOs and is guided by the principles of respect for human rights, freedom of association, voluntarism, diversity, NGO autonomy, self-governance, self-regulation, dignity, mutual respect, trust, gender equity, and equality.<sup>44</sup> It clarifies that the District leadership does not have power to deregister an NGO but rather should refer the case to the NGO Board.<sup>45</sup> Adversely, the NGO Policy narrowly defines NGOs by placing emphasis on augmenting government's work,<sup>46</sup> with NGOs deemed as appendages of government. Further, it creates an NGO monitoring infrastructure at the District and Sub-County levels and subjects the self-regulation mechanism to the approval of the Board. The local governments are mandated to coordinate, monitor, and supervise the activities of NGOs,<sup>47</sup> which exposes NGOs to government arbitrariness. Furthermore, it does not provide for tax incentives to stimulate the development of local philanthropy.

Besides the specific NGO law, other laws and policies curtail the right to freedom of association. In 2007, the Ministry of Internal Affairs enacted the Police Declaration of Gazetted Areas Instrument, which among others compels 25 or more people to assemble in only specifically gazetted areas and to secure a permit for holding an assembly, demonstration, or procession, from the Inspector General of Police (IGP).<sup>48</sup>

Further, the Public Order and Management Act of 2013 purports to bestow the same powers on the IGP which powers were challenged in the Constitutional Court in *Muwanga*

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<sup>39</sup> NGO Registration Regulations (2009) 156-157.

<sup>40</sup> Uganda NGO Registration Regulations (2009) r.7.

<sup>41</sup> Uganda NGO Registration Regulations (2009) r. 15.

<sup>42</sup> Uganda NGO Registration Regulations (2009) r.13.

<sup>43</sup> NGO Policy (2010), at 19.

<sup>44</sup> *Id.*

<sup>45</sup> NGO Policy (2010), at 43-45.

<sup>46</sup> NGO Policy (2010), at 12.

<sup>47</sup> Local Government Act (2006) §§ 18(b), 27, 50(f).

<sup>48</sup> Police (Declaration of Gazetted Areas) Statutory Instrument No. 53 of 2007, r. 2, 3, 4 & 5.

*Kivumbi*.<sup>49</sup> Specifically, the police have powers to regulate the conduct of the public meetings in accordance with the law.<sup>50</sup> Moreover, a public meeting is broadly defined as any “gathering, assembly, procession or demonstration in a public space or premises held for purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest.”<sup>51</sup> The organizers are required to provide notice of between three and fifteen days to the Police, outlining the consent of the owner of the venue, the site of the meeting, the estimated number of persons expected; further, the meeting must be held between 7 a.m. and 7 p.m.<sup>52</sup> If the organizers fail to comply with the notice requirement or if they hold the meeting at different time, date, or route than is specified in the notice,<sup>53</sup> they are criminally liable for the offense of disobedience to statutory duty.<sup>54</sup>

The government is also relying on criminal law to frustrate the use of civil disobedience as an accountability mechanism, through such laws as unlawful society, where three or more people associate for purposes of subverting of government, committing or inciting violence, or interfering with the administration of law;<sup>55</sup> unlawful assembly, where three or more people assemble to cause fear or breach of peace;<sup>56</sup> and inciting violence.<sup>57</sup>

Progressively, to mitigate the erosion of the rights to freedom of expression and association, in 2011 the UHRC issued guidelines on public demonstrations,<sup>58</sup> underlining the Police’s duty to intervene only in cases of criminal behavior, breach of peace, anticipated imminent violent situations, or sight of dangerous weapons; to make arrests only where deemed appropriate; to disperse demonstrations in an orderly manner; and at all times to guarantee free and unrestricted media coverage.<sup>59</sup> The organizers are required to give written notification to the police, designate an officer to coordinate the activity, not violate the rights of others, and not disrupt the right of passage.<sup>60</sup>

As observed by the National Development Plan, the current law constrains productive engagement between NGOs and the government.<sup>61</sup> Thus the flourishing of NGOs in Uganda has not been due to a favorable legal environment. As propounded by Fisher, NGOs flourish when demand for services is not met, irrespective of whether the government is democratic or not,

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<sup>49</sup> *Muwanga Kivumbi v. AG*, Constitutional Petition No. 9/2005.

<sup>50</sup> Public Order and Management Act (2013) § 3.

<sup>51</sup> *Id.* § 4 (1).

<sup>52</sup> *Id.* § 5.

<sup>53</sup> *Id.* § 5(5).

<sup>54</sup> *Id.* § 5(8).

<sup>55</sup> Uganda Penal Code Act, § 56.

<sup>56</sup> Uganda Penal Code Act, § 65.

<sup>57</sup> Uganda Penal Code Act, § 83.

<sup>58</sup> UHRC GUIDELINES ON PUBLIC DEMONSTRATIONS AND PROCESSIONS IN UGANDA 76-77 (2011).

<sup>59</sup> UHRC Annual Report (2011) 76-77.

<sup>60</sup> UHRC GUIDELINES, *supra* note 58, at 76-77.

<sup>61</sup> National Development Plan (2010) at 28.

particularly in light of government incapacity to enforce repressive registration.<sup>62</sup> Luckily, the NGO Board hardly has the capacity to enforce the law.

To mitigate the negative repercussions of the law, the NGO Forum and DENIVA have worked with the National NGO Board to develop the NGO regulations and Policy as well as strengthen the capacity of the NGO Board to understand its roles and responsibilities.<sup>63</sup>

Having analyzed the law and highlighted the fact that it is aimed at controlling CSOs, the following discussion analyzes the underlying reasons for controlling CSOs' spaces.

#### **4. *The Struggle for Power, Resources, and Influence***

Any organization or actor with influence and power must be subjected to pressure for accountability.<sup>64</sup> The increasing power and influence of CSOs has triggered public scrutiny of their own accountability for organizational resources. Unfortunately at the time of drafting the NGO Act in 2006, there was ambivalence about growing public cynicism over the CSO sector, particularly in the aftermath of the misappropriation of Global Alliance for Vaccine and Immunisation (GAVI) Fund, where Government NGOs (GONGOs) tainted the image of the sector. During the advocacy call-in radio programs organized by the sector, most callers attacked CSOs as thieves and commended government for streamlining the sector.

The scramble for scarce resources is a source of tension between CSOs and government. For example, the fact that in 2009 NGOs spent about US \$200 million, which is comparable to the World Bank Poverty Support Credit (PRSP) budget, has ignited antagonism.<sup>65</sup> Consequently, the Ministry of Finance Survey on the NGOs' revenue<sup>66</sup> recommended coordinating donor aid flows by the Ministry of Finance; monitoring by the Local Governments; revoking an NGO's license for failure to disclose the financial information; and making the registration and renewal of the NGO license stricter.<sup>67</sup>

Worse still, the suspension of direct budgetary support to government for 2013, while maintaining support to projects, agencies, and civil society,<sup>68</sup> has aggravated state-civil society relations.<sup>69</sup> For example, the President during the Oil Bill debate questioned how ACODE could expend more Parliamentary allowances than government could provide and instructed the IGG to

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<sup>62</sup> J. FISHER, *NGOS AND THE POLITICAL DEVELOPMENT OF THE THIRD WORLD 2* (1998) at 68.

<sup>63</sup> R. Sewakiryanga, Statement by Civil Society Representative at the Launch of the National NGO Policy, 27 July 2012 at the Golf Course Hotel, Kampala, Uganda.

<sup>64</sup> EDWARDS, *supra* note 5, at 17; M. Robinson, *What Rights Can Add to Good Development Practice*, in *HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT* (P. Alston & M. Robinson eds.) (2005) at 36.

<sup>65</sup> UGANDA GOVERNMENT, MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT (MOFPED) AND BELGIAN TECHNICAL COOPERATION (BTC) DATA COLLECTION ON DONOR SUPPORT IN LOCAL GOVERNMENT AND THE DEVELOPMENT OF A TOOL FOR TRACKING DONOR SUPPORT AT THE MICRO LEVEL 33, 37 (2009).

<sup>66</sup> Uganda NGO Board Records (2005) ADM/79/158/02, 11 April 2007.

<sup>67</sup> *Id.* at 9,13-14.

<sup>68</sup> Mark Lowcock, *Ugandan Citizens and Donors Must Not Tolerate Stealing of Public Funds*, *DAILY MONITOR*, 7 Dec. 2012, at 2; Samuel Sanya & Anne Mugisa, *Government to Cut Budget to Fund Critical Sectors*, *NEW VISION*, 5 Dec 2012, at 1.

<sup>69</sup> Abdalla, *supra* note 4, at 5.

investigate the asset base of NGO officials.<sup>70</sup> Moreover, the government's accusation that NGOs are promoting foreign interests is absurd given that both government and NGOs receive resources from the same donors.

Consequently, the future of independent organizations lies not only with government respect of rights, but also with civil society's coherence in defending its rights.<sup>71</sup> In strengthening CSOs' voice, it is imperative that they strengthen their internal governance through self-regulation. However, while the NGO Forum and DENIVA have introduced the Quality Assurance Management (QuAM) as a peer-review mechanism to enhance good governance, it is voluntary and casually enforced. Consequently, on failure to self-regulate, the CSO sector is prone to being besieged by government with the legitimate excuse that it is filling the void created by the inability of the sector to self-regulate.

NGO operations are shaped and regulated within the frameworks that are determined by the state's political interests.<sup>72</sup> Currently, the National Development Plan (NDP) predominantly perceives CSOs as "appendages of government whose programmes and financing should be integrated in the government plans."<sup>73</sup> Yet, successful partnership should be premised on the independence and autonomy of the parties. Thus the desire to align CSOs' work with government's priorities contradicts the very essence of advocacy work because it is the controversy which warrants alternative voices.

Given the vulnerability of CSOs when power fights back, there is preference for non-confrontational and non-contentious strategies that keep organizations apolitical, such as engaging issues that the state does not contest. This explains the weak coherent voice in constructively engaging government to safeguard their autonomy. In spite of the major coalitions such as the Human Rights Network (HURINET), Uganda Women's Network (UWONET), and NGO Forum and Development Network of Indigenous Associations (DENIVA) advocating against the 2006 law, only eight organizations<sup>74</sup> petitioned the President not to sign it. Expectedly, the President did not acknowledge the petition but instead summoned the NGOs working in Northern Uganda to his private home in Rwakitura, and warned against meddling in the internal security and political affairs.<sup>75</sup> By comparison, to underscore the importance of a collective voice, the charismatic churches through the National Fellowship of Born Again Pentecostal Churches (NFBAPC) held high-powered meetings with government and attended in

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<sup>70</sup> Monitor Team, *Museveni Hits Back at MPs in the Oil Bill Row*, DAILY MONITOR, 14 Dec 2012, at 1; Henry Mulindwa & Dalton Kaweesa, *Bribery Claims Dog Debates, Ministers Go into Hiding*, RED PEPPER, 9 Dec. 2012, at 5; Vision Reporter, *NGOs React to President's Accusation*, NEW VISION, 15 Dec. 2012, at 5.

<sup>71</sup> C.M. Peter, *The State and Independent Civil Society Organisations: The Case of Tanzania Women Council (BAWATA)*, in CIVIL SOCIETY AND DEMOCRATIC DEVELOPMENT IN TANZANIA (A.S. Kiondo & J.E. Nyang'oro eds. 2006b) at 117.

<sup>72</sup> M.K. Juma, *The Compromised Brokers: NGOs and Displaced Populations in East Africa*, in HUMAN RIGHTS, THE RULE OF LAW, AND DEVELOPMENT IN AFRICA (Zezeza & McConaughay eds.) (2004) at 236.

<sup>73</sup> NDP 2010, at 28.

<sup>74</sup> NGO Forum, DENIVA, HURINET, Advocates Coalition for Development and Environment (ACODE), Uganda Child Rights Network, the African Network for Prevention and Protection Against Child Abuse and Neglect (ANPPCAN), Environmental Alert and Anti-Corruption Coalition of Uganda.

<sup>75</sup> HURINET notes from meeting with President Museveni's meeting with NGO working in Northern Uganda, 13 April 2006, 4:20-9:00 p.m.

large numbers of over a hundred.<sup>76</sup> Consequently, faith-based organizations were excluded from the ambit of the NGO Policy except those engaged in NGO-type activities.<sup>77</sup>

Women's organizations are most notorious for implementing the NRM agenda without challenging the regime. At the 50th Anniversary dinner hosted by the Uganda Women's Network (UWONET) and the Uganda Women's Parliamentary Association (UWOPA), the President paternalistically cited the Biblical fourth commandment of "honor and obey your parents," equating the NRM under his leadership to the parent of the women's movement.<sup>78</sup>

A comparative study of Ghana, Uganda, and South Africa established that close proximity to government can facilitate access to opportunities and information while simultaneously compromising a CSO's independent influence on legal and policy frameworks in situations of competing interests.<sup>79</sup> For example, the fact that the Ministry of Defense<sup>80</sup> presented the same NGO Amendment Bill of 2001 and 2004 in 2006 created the illusion of a long participatory process. However, the Act was passed in 2006, in less than three hours and without the NGOs' knowledge.<sup>81</sup> Likewise, during the Petroleum Exploration and Development Bill of 2012 (Oil Bill) debates, two Coalitions, Oil Watch Coalition and the Civil Society Budget Advocacy Groups worked with Parliamentarians to contest the Minister's unilateral powers to negotiate, grant, and revoke licenses, but it was passed on account of the NRM's numerical strength.<sup>82</sup> Similarly, while the collaboration between UWOPA and the women's movement resulted in the enactment of the Domestic Violence Act, the Anti-Female Cutting Act, and the Anti-Human Trafficking Act, the Marriage and Divorce Bill was withdrawn on the initiation of the NRM itself.

It is noteworthy that the NDP acknowledges that its relationship with CSOs is characterized by mutual suspicion and hostility.<sup>83</sup> CSOs perceived to be acting against government agendas or seeking accountability of government are stigmatized as partisan. This situation is exacerbated by the President's dominance of all aspects of government, policy, and political appointments, as well as ability to dictate the Parliamentarians' resolutions. Inadvertently, there is shrinking space for critical alternative organizing, owing to public political apathy and self-censorship of CSOs' watchdog role. For example, the Walk to Work (W2W)<sup>84</sup> against the high cost of living and the Black Monday campaigns against corruption have been

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<sup>76</sup> National NGO Board, ADM/79/158/02, 11 April 2007, Min.01.04.07.

<sup>77</sup> NGO Policy (2010) 11.

<sup>78</sup> Interview with Rita Aciro, Executive Director, UWONET, 19 Nov. 2012.

<sup>79</sup> B. Nyangabyaki, S. Friedman & M. Robinson, CIVIL SOCIETY, DEMOCRACY ASSISTANCE AND PUBLIC POLICY IN AFRICA (unpublished), Sussex: Institute of Development Studies, 24 (2001).

<sup>80</sup> Although NGOs are under the Ministry of Internal Affairs, the NGO Bill was presented by the Ministry of Defence under the guise that some NGOs are a security threat.

<sup>81</sup> Uganda Hansards, 4 April 2006, 10:34 a.m to 12:13 p.m.

<sup>82</sup> Mulindwa & Kaweesa, *supra* note 70, at 5; Mercy Nalugo, *MPs Support Kadaga in Bid to Reject Bill*, DAILY MONITOR, 5 Dec. 2012, at 7; Henry Sekanjako, *Civil Society Present Petition to Kadaga*, NEW VISION, 6 Dec. 2012, at 6; Sheila Naturinda, *Government Insists on Oil Law Powers*, DAILY MONITOR, 7 Dec. 2012, at 1.

<sup>83</sup> GOU, THE NATIONAL DEVELOPMENT PLAN 28 (2010).

<sup>84</sup> This was a protest against the high cost of living spearheaded by the *For God and My Country* pressure group led by the opposition.

criminalized as inciting violence. In 2013, when a military man was appointed to head the Ministry of Internal Affairs, his inaugural address to Parliament unsurprisingly listed among his top priorities “restraining NGOs from engaging in activities different from what they registered for and enforcing stricter media regulations.”<sup>85</sup> Such obsessive surveillance is likely to stifle the CSO’s watchdog role.

Threats of deregistration have been targeted at NGOs that engage in issues considered political or contrary to the government’s positions. In 2011, a Uganda Land Alliance publication, *Impact of Land-Grabbing on Food Security and Wellbeing*, was perceived to be defaming the President and inciting economic sabotage.<sup>86</sup> In 2012, the Ministry of Ethics threatened to deregister NGOs contesting the Anti-homosexuality Bill.<sup>87</sup> Similarly, some District leaderships have misinterpreted their monitoring role of CSOs to include powers to shut down organizations in cases of disagreement, particularly those accused of interfering in local politics and criticizing government.<sup>88</sup> For their advocacy on the Oil Bill, ACODE, NAPE, and African Institute for Energy Governance were castigated as political, subversive, or engaged in economic sabotage.

A few NGOs have served as a “critical allies” of the state, capable of holding government accountable to its human rights obligations. The Black Monday Campaign stands out as an overt, well-organized campaign involving major Coalitions and Networks, NGO Forum, DENIVA, HURINET, and UWONET to challenge government over its political impunity for corruption. In the wake of the Office of the Prime Minister (OPM) scandal where over USD 160 million was stolen, 11 November 2011 was declared Black Monday with the closure of the NGO offices and wearing of black. However, although the Black Monday campaign was held within the law, and the Inspector General of Police, the Minister of Internal Affairs, and the President were duly notified, the police blocked the organizers from accessing the premises. The Police believe that the duty to “prevent and detect crime”<sup>89</sup> entitles them to disperse gatherings suspected of disrupting law and order,<sup>90</sup> particularly those seen as antithetical to government. Moreover, Black Monday activists continue to be apprehended by Police and their materials confiscated, though without any charges filed against them.<sup>91</sup>

In sum, CSOs have not consistently and effectively held government accountable to its human rights obligations, but rather work mainly as its pliant servant in an apolitical manner. Conceptualizing governance as a social contract warrants more dynamism of CSO political consciousness, which is the subject of the next section.

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<sup>85</sup> <http://www.monitor.co.ug/News/National/Aronda-vows-to-deal-with-activists--NGOs/-/688334/1925558/-/oe0otq/-/index.html>.

<sup>86</sup> Interview with Obaikol, Executive Director, Uganda Land Alliance, 10 Nov. 2012.

<sup>87</sup> Interview with Ambassador Kangwagye, Chairperson NGO Board, 29 Nov. 2012.

<sup>88</sup> Mudangha Kolyangha, *NGOs in Budaka Face Expulsion*, SUNDAY MONITOR, 6 Jan. 2013, at 7.

<sup>89</sup> UGANDA CONST., Art 212 (c).

<sup>90</sup> Andrew Kawesi, Assistant Inspector General of Police, *Makerere University Public Dialogue*, HUMAN RIGHTS SITUATIONS IN THE COUNTRY, IN THE CONTEXT OF THE RULE OF LAW AND KEEPING LAW AND ORDER BY SECURITY AGENCIES, 16 Nov. 2012.

<sup>91</sup> Solomon Arinaitwe, Richard Wanambwa, & Ismail Musal Ladu, *Activists Held Over Graft Flyers*, DAILY MONITOR, 8 Jan. 2013, at 7; NTV Tonight News Bulletin, Aired the arrests of Arthur Larok, Country Director of Action Aid, Leonard Okello, Executive Chairman of Uhuru Institute, and Rtd. Bishop of Kampala, Zac Niringiye.

## 5. *Strengthening CSO's Political Consciousness*

In order for CSOs to effectively engage the state, they must appreciate that human rights struggles are political struggles. The linkages between civil and political society are “natural, useful and should be encouraged,” without necessarily being partisan.<sup>92</sup> Yet while it is important that CSOs are not partisan, they need not be ideologically neutral. Promoting human rights entails addressing the power relations in the political and social struggle for societal transformation.<sup>93</sup> The UDHR acknowledgment that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,” makes human rights integral to the political realm.<sup>94</sup> Because democracy means a government of the people, by the people, and for the people, democracy is about people, and it is only good governance that can deliver development.<sup>95</sup>

*This article argues that any successful struggle for social justice is first and foremost a political struggle “to redefine the subjects and their entitlements.”<sup>96</sup> Even human rights education is political education because it enables citizens to participate from an informed point of view.<sup>97</sup> Boulie argues that being apolitical is a façade:<sup>98</sup>*

As educationists, CSOs provide training ground for democratic citizenship; develop political skills and new leaders; stimulate political participation and educate the broader citizenry on a wide range of public interest issues. As watch dogs, they act as a check on the State's inclination towards centralising power and evading civic accountability. As service deliverers, they supplement government programmes by providing goods and services directly to the people who need them. Often, overlooked are their political role-supplementing political parties as varied and flexible mechanisms through which citizens define and articulate a broad range of interests and exert their demands on government.

CSOs deepen democracy through such actions as championing the cause of the marginalized, operating as interest groups, influencing policies, educating and mobilizing citizens to hold power accountable, and contributing to political and human rights consciousness.

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<sup>92</sup> Edwards, *supra* note 5, at 26.

<sup>93</sup> S. GUTTO, HUMAN AND PEOPLE'S RIGHTS FOR THE OPPRESSED: CRITICAL ESSAYS THEORY AND PRACTICE FROM THE SOCIOLOGY OF LAW PERSPECTIVES 134 (1993); S. DICKLITCH, THE ELUSIVE PROMISE OF NGOS 18, 24 (1988).

<sup>94</sup> M.K. Bromley, *The International Human Rights Law Group: Human Rights and Access to Justice in Post-Conflict Environments*, in NGOS AND HUMAN RIGHTS: PROMISE AND PERFORMANCE (Welch Jr. ed.) (2001) at 149.

<sup>95</sup> Julius Ihonvbere, Good Governance and Economic Bliss, <http://julius.ihonvbere.com/2009/10/good-governance-and-economic-bliss/2/>.

<sup>96</sup> Mamdani (2002), 59, [www.africaaction.org/rtable/rtb2.pdf](http://www.africaaction.org/rtable/rtb2.pdf).

<sup>97</sup> S. Koenig, *Human Rights Education, Human Rights, Culture and the Community of Non-Governmental Organisations: The Birth of a Political Ideology for the 21<sup>st</sup> Century*, in HUMAN RIGHTS EDUCATION: ACHIEVEMENTS AND CHALLENGES, INSTITUTE FOR HUMAN RIGHTS 125 (Akermark et al. eds.) (1998) [Abo Akademi University in collaboration with the Finnish National Commission for UNESCO and UNESCO].

<sup>98</sup> J. Boulie, *Putting the Voluntary Sector Back on Map in the Development Agenda and the Voluntary Sector*, 1 QUARTERLY JOURNAL OF THE SOUTH AFRICAN NGO COALITION AND INTERFUND 22 (1997).

Yet human rights organizations claim to be neutral and nonpolitical in order to appease donors and governments.<sup>99</sup>

Evidently, the line drawn between political and nonpolitical is just a nuance, for obviously the struggle for political participation must be fought in the political arena.<sup>100</sup> Politics means who gets what, when, and how, or the distribution of power in terms of resources and influence for the common good.<sup>101</sup> In effect, being apolitical amounts to being political in the face of rampant corruption, violations of rights, and exclusion of the majority of the populace from decision-making. Inadvertently, by accepting the myth of being nonpolitical or apolitical, CSOs side with the status quo. However, in Uganda, an honest discussion that interrogates CSOs' stand in negotiating the political discourse is yet to evolve.<sup>102</sup>

## **6. Conclusion**

The UDHR underlines the idea that respect of human rights counters rebellion<sup>103</sup> by reassuring the public that government will ensure the enjoyment of rights, be a neutral arbiter in disputes, and serve as a mechanism to access public resources. Government is expected to provide the legal and regulatory framework for civil society to accomplish its watchdog role. In reality, government is paternalistic in engaging CSOs. Consequently, the law is geared more towards controlling CSO actions to restrain them from participating in politics than towards facilitating CSOs' democratic organizing and independent space. Government is antagonistic towards CSOs' oversight role, particularly in contested strategies and priorities. Further, the competition over donor resources has conflicted the government and CSOs' relationship, with the President publicly accusing CSOs of being economic saboteurs and foreign pawns.

Cognizant that human rights and struggle are two sides of the same coin, because human rights is not a favor but an entitlement that must be claimed even when the law denies those rights,<sup>104</sup> it is incumbent on CSOs to organize and struggle for their rights to freedom of association. The right to participate in the governance of one's country is not reserved for politicians but it is a right equally applicable to all citizens.<sup>105</sup> The right to freedom of association is the inherent cornerstone of all African social relationships, with each person having a right and duty to contribute, argue, disagree, and agree for their mutual benefit. CSOs do not render the state irrelevant, but complement government by expanding pluralism and diversity of opinions and holding it accountable to its human rights obligations. Hence, the need for CSOs' collective

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<sup>99</sup> C.A. Odinkalu, *Why More Africans Don't Speak the Human Rights Language*, *Carnegie Council on Ethics and International Affairs Human Rights Dialogue: Human Rights in Times of Conflict—Humanitarian Interventions*, Series 2, Number 5, 3 (2001).

<sup>100</sup> K. Kibwana, *The Right to Civil Disobedience*, in *SEARCH FOR FREEDOM AND PROSPERITY CONSTITUTIONAL REFORM IN EAST AFRICA* 194 (K. Kibwana, C.M. Peter & J. Oloka-Onyango eds.) (1996).

<sup>101</sup> K. Umar and J.O. Kuye, *Rationalism and the Problematique in Policy Making and Analysis: The Case of Public Policy Targeting in Africa*, 41 *JOURNAL OF PUBLIC ADMINISTRATION* 807, 817 (2006).

<sup>102</sup> W. Mutua, *Introduction: Human rights NGOs in East Africa: Defining the Challenges*, in *HUMAN RIGHTS NGOs IN EAST AFRICA: POLITICAL AND NORMATIVE TENSIONS* 9 (M. Mutua ed.) (2009).

<sup>103</sup> UDHR (1948), Preamble.

<sup>104</sup> C. Heyns, *Struggle Approach to Human Rights*, in *HUMAN RIGHTS, PEACE AND JUSTICE IN AFRICA: A READER* 15-16 (C. Heyns & K. Stefiszyn eds.) (2006).

<sup>105</sup> *Christopher Mtikila v. AG*, High Court of Dodoma, Civil Case No. 5 of 1993, discussing the constitutionality of § 40 of the Police Force ordinance 1953, in Peter, *supra* note 11, at 694.

voice and identity coupled with the imperative to self-regulate in order to circumvent government's undue interference in the internal functions of CSOs.

The work of civil society is essentially political, albeit not necessarily partisan, because social justice entails challenging the status quo of unequal power relations. CSOs strengthen political pluralism, enhance citizens' political consciousness for informed engagement, and serve as watchdogs of government. Being apolitical is complicit in fostering inequity and abuse of power. It is incumbent on CSOs to ensure that they act coherently in order to protect their autonomy and legitimacy so that they can advance a human rights culture. Conversely, CSOs are vulnerable to being dominated as mere inputs into the government's agenda.