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*USAID/Uganda Civil Society  
Strengthening Activity (CSSA)*



# Promoting an Enabling Environment for Civil Society in Uganda

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**A HANDBOOK FOR PARALEGALS**

# TABLE OF CONTENTS

<b>About the Handbook</b>	<b>4</b>
<b>Acknowledgements</b>	<b>5</b>
<b>The Operating Environment for Civil Society Organizations in Uganda</b>	<b>7</b>
<b>Working Terms</b>	<b>8</b>
<b>Acronyms and Abbreviations</b>	<b>9</b>
<b>Freedom of Association</b>	<b>10</b>
What is the definition of the right to the freedom of association?	10
What is the importance of the right to the freedom of association?	10
What international laws and best practices govern the right to the freedom of association?	10
National laws that impact the right to the freedom of association	14
What cases pertain to the right to the freedom of association?	19
<b>Freedom of Peaceful Assembly</b>	<b>22</b>
What is the definition of the right to the freedom of peaceful assembly?	22
What is the importance of the right to the freedom of peaceful assembly?	22
What international laws and best practices govern the right to the freedom of peaceful assembly?	23
National laws that impact the right to the freedom of peaceful assembly	25
What cases pertain to the right to the freedom of peaceful assembly?	30
<b>Freedom of Expression</b>	<b>36</b>
What is the definition of the right to the freedom of expression?	36
What is the importance of the right to the freedom of expression?	36
What international laws and best practices govern the right to the freedom of expression?	36
National laws that impact the right to [the] freedom of expression	40
What cases pertain to the right to the freedom of expression?	48
<b>The Right To Public Participation</b>	<b>54</b>
What is the definition of the right to public participation?	54
What is the importance of the right to public participation?	54
What international laws and best practices govern the right to public participation?	54
National laws and policies that govern the right to public participation	57
What cases pertain to the right to public participation?	58
<b>Promoting An Enabling Environment For Civil Society In The Digital Context</b>	<b>59</b>
International laws and best practices governing the rights to the freedom of association, peaceful assembly, expression, and public participation in the digital context	60
Challenges to the enjoyment of rights online in Uganda	61

<b>Key State Actors that Regulate or Oversee Rights Impacting Civic Space</b>	<b>63</b>
Uganda Communications Commission (UCC)	63
Uganda Media Council	63
Uganda Police Force, Media Crimes Unit/Cyber Crimes Unit	64
Uganda Peoples’ Defence Forces (UDPF)	64
Uganda Human Rights Commission (UHRC)	65
Uganda Equal Opportunities Commission (EOC)	65
Finance Intelligence Authority (FIA)	66
The Uganda Registration Services Bureau (URSB)	67
The Uganda Law Reform Commission	67
The National Bureau of NGOs	68
The 1st Parliamentary Council (PC)	68
The Human Rights Committee of Parliament	69
The Judiciary	69
<b>Mechanisms That Paralegals Can Use to Respond to Restrictions on Civil Society Organizations and an Enabling Environment</b>	<b>70</b>
International mechanisms	70
African regional mechanisms	72
National mechanisms	78
Tactics outside of using formal mechanisms to advocate against restrictive laws, policies, rules and regulations	80
<b>Key Resources</b>	<b>81</b>

# ABOUT THE HANDBOOK

This Handbook aims to strengthen the capacity of paralegals and other interested stakeholders to protect and promote an enabling environment for civil society in Uganda. To that end, the Handbook covers several aspects of the following rights: the right to the freedom of association, the right to the freedom of peaceful assembly, the right to the freedom of expression including the right to access information, and the right to public participation. For each right, the Handbook summarizes relevant international legal standards, national laws and policies regulating the right, and national case law affecting the realization of the right. The Handbook also includes guidance for paralegals to respond to restrictions on each right that may violate international best practice or ensure full realization of the right within the existing legal framework in Uganda.

The Handbook also includes a chapter that addresses the realization of these rights in the digital context, covering international standards on the protection of rights online and restrictions that Ugandan civil society faces to realizing their rights in the digital realm.

Additionally, the Handbook includes as a reference a chapter describing key state institutions that may impact the realization of fundamental rights in Uganda, and a chapter on existing mechanisms to hold the state or third parties accountable to protecting and promoting these rights. Paralegals can use these chapters as a starting point to understand which stakeholders they may need to contact or interact with and which forums they may use when advocating for the protection of the rights to freedom of association, peaceful assembly, expression, and public participation.



# ACKNOWLEDGEMENTS

The Legal Aid Service Providers Network (LASPNET) and the International Center for Not-for-Profit Law (ICNL) drafted this Handbook in partnership with James Nkuubi, and in close consultation and collaboration with the Collaboration on International ICT Policy in East and Southern Africa (CIPESA) and other representatives from Ugandan civil society.

This Handbook is a product of the USAID/Uganda's Civil Society Strengthening Activity (CSSA). USAID/Uganda's CSSA is made possible by the support of the American people through the United States Agency for International Development (USAID). It is implemented by the East West Management Institute (EWMI) in partnership with the International Center for Not-for-Profit Law (ICNL), Uganda's Development Network of Indigenous Voluntary Associations (DENIVA), and Common Ground Consulting (CGC). CSSA will support the capacity strengthening of Ugandan civil society organizations (CSOs) to influence and contribute to improved development outcomes in 1) health, with particular attention paid to achieving the country's HIV/AIDS reduction goals; 2) education, youth, and child development; 3) agriculture and food security; and 4) democracy, rights, and governance. To achieve its aim, CSSA will implement activities under three principal components:

- (1) **Component 1:** Strengthen the advocacy capacity of CSOs to influence national and local development;
- (2) **Component 2:** Improve the organizational capacity of advocacy and service delivery-oriented CSOs to sustainably fulfill their stated missions; and
- (3) **Component 3:** Promote a more supporting enabling environment that sustains a vibrant civil society.

This activity falls under Component 3.

## LEGAL AID SERVICE PROVIDERS NETWORK (LASPNET)

LASPNET is a National Member based Non-Governmental Organization established in 2004 to provide strategic linkages and a collaborative framework for the various non-state Legal Aid Service Providers (LASPs) in Uganda, as well as maintain a common front to interface with the Justice Law and Order Sector on issues of Access to Justice and Rule of Law. Currently, LASPNET has a membership of 53 LASPs spread across 80 districts in the country as well as 7 Honorary members including Judges, Founders and JLOS stakeholders. The Network targets four critical aspects of Networking and Coordination, Institutional Development, Lobbying and

Advocacy; Research and Knowledge Management. In accordance to its Strategic Plan (2021/2025), LASPNET's vision is a free and just society whereas its mission is to provide a platform for effective networking and collaboration to enhance legal aid service delivery and access to justice for the most vulnerable and marginalized people.

### **INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW (ICNL)**

ICNL is a global organization that works with partners from civil society, government, and the international community to improve the legal environment for civil society, philanthropy, and public participation. ICNL's Africa regional team works in 39 countries on the continent, including countries in the Francophone and Lusophone subregions. ICNL collaborates with civil society leaders, activists, government officials, lawyers, media workers, and academics to strengthen local partner organizations and regional networks, provide technical assistance, and contribute to the knowledge base through research and teaching. ICNL has helped develop progressive regional norms as well as national laws and policies that expand civic space throughout the region.

### **COLLABORATION ON INTERNATIONAL ICT POLICY IN EAST AND SOUTHERN AFRICA (CIPESA)**

CIPESA is a non-profit organization that works to increase the capacity of Eastern and Southern African stakeholders to participate in ICT policymaking. CIPESA is a leading center for research and analysis of information aimed to enable policymakers in the region to understand ICT policy issues and support various stakeholders to use ICT to improve livelihoods. CIPESA is a member of the Global Knowledge Partnership and the Association for Progressive Communications.

This Handbook was produced for informational purposes only and does not constitute legal advice or substitute for legal counsel. Laws may change, and interpretations of local law may vary. The authors are not liable for any differences or inaccuracies.

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# THE OPERATING ENVIRONMENT FOR CIVIL SOCIETY ORGANIZATIONS IN UGANDA

Civil society organizations (CSOs) and individuals in Uganda continue to navigate barriers to an open and enabling environment. Laws such as the Non-Governmental Organizations (NGO) Act restrict organizations' ease of registration through burdensome requirements and unclear bureaucratic processes that provide state officials with broad discretion to delay or refuse registration. Other laws such as the Anti-Money Laundering Act and associated regulations make it more difficult for organizations to freely implement their activities by granting the state broad powers to shut down organizations that may address sensitive issues.

Organizations and individuals also face significant barriers to organizing and participating in peaceful assemblies, such as through restrictions under the Public Order Management Act (POMA), which grants law enforcement authorities broad powers to prohibit or disperse public gatherings. Moreover, laws such as the Press and Journalists Act have restricted the right to freedom of expression through mandating journalists to register, which provides the state with an opportunity to prevent journalists from reporting on sensitive issues.

Meanwhile, CSOs and individuals do not have a meaningful way to exercise their right to public participation, as the state has not adopted a standard mechanism for interested parties to provide feedback on draft laws and policies, nor is it legally bound to demonstrate that it has taken into consideration such feedback during the adoption and implementation process for laws and policies.

Ugandan civil society is also facing restrictions on its rights beyond the law. For example, the state has used disproportionate force to clamp down on demonstrations such as during the Black Monday CSO protests. The state has also frozen NGO bank accounts, citing investigations on terrorist financing and money laundering without a firm basis in law.

These types of restrictions often do not meet international legal standards governing the rights to freedom of association, peaceful assembly, expression, and public participation. As a signatory to several international and regional human rights treaties, Uganda has an obligation to ensure that it protects and promotes these rights in accordance with international best practice.

In this context, the Handbook serves as a reference for paralegals and other interested stakeholders to promote a more enabling environment for civil society through bridging the gap between Ugandan law and policy and its international obligations to protect and promote the rights to the freedoms of association, peaceful assembly, expression, and public participation. The Handbook also assists paralegals to facilitate the protection of these rights within the existing legal framework affecting civil society in Uganda.

# WORKING TERMS

This Handbook frequently references the below terms with the following meanings:

**Civil society organization (CSO):** An organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity, or purpose. Such an organization may have legal personality or may lack legal personality but have some institutional form or structure. Examples of CSOs include non-governmental organizations (NGOs) as defined under the NGO Act, community-based organizations and village associations, environmental groups, women's rights groups, farmers' associations, faith-based organizations, labor unions, co-operatives, and professional associations, among others.

**Enabling environment (for CSOs):** The political, social, legislative, economic, cultural, and natural factors that facilitate the ability of CSOs to operate.



# ACRONYMS AND ABBREVIATIONS

<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>AML</b>	Anti-Money Laundering
<b>CFT</b>	Countering the Financing of Terrorism
<b>CSO</b>	Civil society organization
<b>DNMC</b>	District Non-Governmental Monitoring Committee
<b>EOC</b>	Uganda Equal Opportunities Commission
<b>FATF</b>	Financial Action Task Force
<b>FIA</b>	Financial Intelligence Authority
<b>ICCPR</b>	International Covenant on Civil and Political rights
<b>NGO Bureau</b>	National Bureau of Non-Governmental Organizations
<b>NGO</b>	Non-governmental organization
<b>OHCHR</b>	Office of the High Commissioner of Human Rights
<b>POMA</b>	Public Order Management Act
<b>UCC</b>	Uganda Communications Commission
<b>UPDF</b>	Uganda Peoples' Defense Forces
<b>URSB</b>	Uganda Registration Services Bureau

# FREEDOM OF ASSOCIATION

## WHAT IS THE DEFINITION OF THE RIGHT TO THE FREEDOM OF ASSOCIATION?

The right to freedom of association refers to an individual or group's right to establish, join, participate in, or leave a voluntary grouping of persons with a common interest, activity, or purpose.

## WHAT IS THE IMPORTANCE OF THE RIGHT TO FREEDOM OF ASSOCIATION?

Freedom of association contributes to a more democratic society by enabling individuals to act collectively to amplify their common interests and views. The right to freedom of association also supports the exercise of other fundamental rights. For example, individuals can form a CSO to advocate for free primary education, which promotes the right to education.

## WHAT INTERNATIONAL LAWS AND BEST PRACTICES GOVERN THE RIGHT TO FREEDOM OF ASSOCIATION?

International and regional legal standards can serve as persuasive resources for paralegals who are responding to rights violations at the domestic level. Paralegals can cite these resources to show how Uganda can comply with its international and regional obligations to protect the right to the freedom of association, illustrate best practices for protecting the right to the freedom of association, or demonstrate how Uganda's global and regional peers are protecting the right.

### INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS GOVERNING THE RIGHT TO FREEDOM OF ASSOCIATION

Several international and regional legal frameworks explicitly **protect the right of all individuals to exercise their right to the freedom of association**. Paralegals can state this concept citing the following resources:

- Universal Declaration of Human Rights<sup>1</sup>, Article 20(1)
- International Covenant on Civil and Political Rights<sup>2</sup>, Article 22

1. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

2. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

- Convention on the Rights of the Child<sup>3</sup>, Article 15
- United Nations General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144)<sup>4</sup>, Article 5(b)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>5</sup>, Articles 26(a) and (b), and 40(1)
- International Convention for the Protection of All Persons from Enforced Disappearance<sup>6</sup>, Article 24(7)
- Convention on the Rights of Persons with Disabilities<sup>7</sup>, Article 29(b)(i) and (ii)
- African Charter on Human and Peoples' Rights<sup>8</sup>, Article 10
- African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly in Africa<sup>9</sup>, Part I
- African Charter on the Rights and Welfare of the Child<sup>10</sup>, Article 8.

Other international and regional legal frameworks implicitly protect the right to freedom of association by stating that **all persons must enjoy fundamental rights without discrimination based on characteristics such as race, sex, or disability, among others, or that states must protect fundamental freedoms while engaging in other duties such as combating terrorism**. Paralegals can state this concept while citing the following resources:

- International Convention on the Elimination of All Forms of Racial Discrimination<sup>11</sup>, Article 5
- Convention on the Elimination of All Forms of Discrimination against Women<sup>12</sup>, Article 3
- African Commission on Human and Peoples' Rights' Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa<sup>13</sup>, Part I(I) and (M)

3. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

4. <https://undocs.org/en/A/RES/53/144>.

5. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

6. <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>.

7. <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>.

8. <https://www.achpr.org/legalinstruments/detail?id=49>

9. [https://www.achpr.org/public/Document/file/English/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf)

10. [https://au.int/sites/default/files/treaties/36804-treaty-african\\_charter\\_on\\_rights\\_welfare\\_of\\_the\\_child.pdf](https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf)

11. <https://www.ohchr.org/en/professionalinterest/pages/cedr.aspx>

12. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3>

13. <https://www.achpr.org/presspublic/publication?id=21>

## KEY PRINCIPLES THAT THE STATE MUST FOLLOW TO PROTECT FREEDOM OF ASSOCIATION

**Duty to protect the right to freedom of association:** The state must actively ensure that all individuals enjoy the right to freedom of association.<sup>14</sup> This means that the state must protect individuals and groups that participate in associations from threats, acts of intimidation or violence (including summary or arbitrary executions), enforced or involuntary disappearances, arbitrary arrest or detention, torture or cruel, inhuman, or degrading treatment or punishments, media smear campaigns, travel bans, or arbitrary dismissal.

**Duty to refrain from undue interference with the right to freedom of association:** The state must not unduly interfere with the right to freedom of association.<sup>15</sup> Laws and policies governing the right to associate must not interfere with an organization's operations, including the organization's ability to determine its statutes, structure, and activities, or to make other decisions. The state should also refrain from restricting an organization's ability to express an opinion, disseminate information, engage with the public, and advocate before local, national, regional, and international mechanisms. The state must also respect an organization's right to privacy by refraining from requiring a state representative to attend an organization's meetings, or arbitrarily requiring an organization to submit records of their meetings and decisions to the state.

**Restrictions on the freedom of association:** Any restrictions that a state imposes on the right to the freedom of association must be (1) in conformity with the law, (2) in furtherance of a legitimate interest, and (3) necessary in a democratic society.<sup>16</sup> Collectively, these conditions are known as “**the three-part test**” for permissible restrictions on the freedom of association.

- (1) **In conformity with the law:** the provision that restricts the freedom of assembly must be sufficiently precise to enable an individual to assess whether their conduct would be in breach of the law and to foresee the likely consequences of any such breach.
- (2) **In furtherance of a legitimate interest:** All restrictions must be taken in order to serve one of the following interests listed under international law: national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

14. United Nations Human Rights Council, Report of the Special Rapporteur on the freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para. 63, available at <https://undocs.org/A/HRC/20/27>.

15. *Id.*, at para. 64.

16. *Sidiropoulos v. Greece*, 4 Eur. Ct. H.R. 500 (1998); *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998); *Socialist Party and Others v. Turkey*, Application No. 21237/93 (1998), para. 50. See also *Freedom and Democracy Party v. Turkey*, Application No. 23885/94 (1999); *Refah Partisi (The Welfare Party), Erbakan, Kazan, and Tekdal v. Turkey*, Application Nos. 41340/98, 41342/98, 41343/98, and 41344/98 (2001). See also African Commission on Human and People's Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 24.

- (3) **Necessary in a democratic society:** the restriction must be the least restrictive means required to achieve a legitimate interest.

## A NOTE ON INTERNATIONAL STANDARDS GOVERNING TERRORIST FINANCING AND CSOS:

Governments sometimes disrupt legitimate CSO activities through the misapplication of laws regulating terrorist financing. For example, governments that require all CSOs to obtain government approval for foreign funding restrict legitimate CSOs' access to funding while failing to comply with international standards on countering terrorist financing that require measures to be "risk-based," or targeted at specific subsets of organizations that are most vulnerable to terrorist financing abuse.

The Financial Action Task Force (FATF) is an inter-governmental organization that promotes the enforcement of legal and regulatory measures against money laundering and terrorist financing. FATF has issued 40 recommendations to this end, including Recommendation 8 and its accompanying Interpretive Note that clarifies best practices for regulating to counter terrorist financing abuse in the non-profit sector.

### Protection of informal associations

The right to freedom of association protects both formal organizations (i.e., those with legal personality) and informal organizations (i.e., those that have no legal personality but otherwise have some institutional form or structure).<sup>17</sup>

### Right to access funding

The right to freedom of association protects CSOs' right to seek, receive and use funds freely in compliance with their not-for-profit aims. This includes funds from local, national, foreign, international, or transnational donors. CSOs also have the right to engage in economic activities that are designed to support their aims.<sup>18</sup>

17. ACHPR Guidelines on the Freedom of Association and Assembly in Africa, para. 1.

18. Id., at paras. 37-38.

## NATIONAL LAWS THAT IMPACT THE RIGHT TO FREEDOM OF ASSOCIATION

### THE CONSTITUTION OF THE REPUBLIC OF UGANDA (1995)

#### OVERVIEW:

The Constitution articulates national principles and fundamental rights and establishes key institutions and processes in Uganda.

#### KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION:

Article 29 (1)(e) protects the right of every person to form and join associations or unions, including trade unions and political and other civic organizations.

#### RESTRICTIONS ON THE FREEDOM OF ASSOCIATION UNDER THE CONSTITUTION THAT THE STATE USES MOST OFTEN:

Article 46(1) authorizes Parliament to take “reasonably justifiable” measures to deal with a state of emergency, presumably including the limitation of certain rights.

#### WHAT CAN PARALEGALS DO TO RESPOND TO RESTRICTIONS USING THIS ACT?

When analyzing a restriction on the right to freedom of association that the state claims is aimed at dealing with a state of emergency, a paralegal can assist advocates to determine whether the restriction is “reasonably justifiable” in a democratic society, such as whether there are less intrusive measures available to restrict the right.

### THE NON-GOVERNMENTAL ORGANISATIONS (NGO) ACT (2015)

#### OVERVIEW:

The stated purpose of the NGO Act is to provide for an enabling environment for NGOs<sup>19</sup>; to strengthen and promote the capacity of NGOs and their mutual partnership with Government; to make provision for the corporate status of the National Bureau for NGOs and provide for its capacity to register, regulate, coordinate and monitor NGO activities.

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19. In Uganda, NGOs are a subset of CSOs. Under the NGO Act, an “NGO” means a legally constituted organization which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes. Trusts and foundations are examples of other forms of CSOs in Uganda.

**KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION:**

The NGO Act has no express provision providing for the freedom of association. However, a few provisions facilitate freedom of association. For example, Sections 36, 37, and 38 allow NGOs to establish a self-regulatory mechanism through agreeing upon a code of conduct. Additionally, the NGO Act does not restrict NGOs' access to funding.

**RESTRICTIONS ON THE FREEDOM OF ASSOCIATION UNDER THE NGO ACT THAT THE STATE USES MOST OFTEN:**

**Sections 29, 30, 31, and 32 establish a mandatory and burdensome registration regime for NGOs.** For example, NGOs must obtain a memorandum of understanding from the relevant district-level government and approval by the District Non-Governmental Monitoring Committee (DNMC) to operate. The mandatory registration regime restricts the right to freedom of association by granting the State an opportunity to refuse to grant an NGO registration and prevent it from operating. Likewise, the State can prevent an NGO from operating by revoking its registration. Moreover, the registration procedure is cumbersome, making it difficult logistically for an NGO to obtain registration. For example, NGOs must obtain recommendations from governmental representatives such as the District Internal Security Organization (DISO) head at the district in which they seek to operate. These burdensome processes also restrict NGO coalitions, which are often informally organized and may lack the resources to comply with the registration regime.

**Section 30 (1) permits the NGO Bureau to refuse to register an organization where the organization's constitution lists objectives that contravene the laws of Uganda.** In the past the Bureau has relied on this section to reject applications from LGBT+ advocacy organizations.

**Section 41 of the Act allows an NGO Bureau officer to inspect an NGO "at any reasonable time."** Non-observance of this directive can lead to hefty monetary fines as well as imprisonment. In the past, the state has abused this inspection procedure to curtail the operations of NGOs such as Action Aid Uganda and Great Lakes Institute for Strategic Studies (GLISS), among others.

**Section 44 imposes certain limitations on NGOs' activities.** Because the terms under Section 44 are vaguely defined, the provision grants the State broad powers to restrict the issues that an NGO can work on. For example, Section 44(f) prohibits NGOs from undertaking activities that are "prejudicial to the interests of Uganda and dignity of all Ugandans," but does not further define these terms. The vagueness of the terms "prejudicial," "interests," and "dignity" leaves room for the State to

interpret them to mean that NGOs cannot work on sensitive topics such as engaging in advocacy and research about state corruption or governance issues, among others. Section 44's vagueness also contradicts Article 28(12) of the Constitution, which requires an offence to be clearly defined.

### **WHAT CAN A PARALEGAL DO TO RESPOND TO RESTRICTIONS ON THE FREEDOM OF ASSOCIATION USING THE NGO ACT?**

Paralegals can help **prevent these restrictions** by working with CSOs to understand how to comply with the NGO Act. For example, a paralegal can help host compliance workshops for CSOs that highlight key obligations and processes under the NGO Act.

**Where the NGO Bureau denies an NGO's application for registration,** a paralegal may take the following actions to assist the NGO:

- Help the NGO request the National Bureau for NGOs (NGO Bureau) to provide the reasons for the refusal, as Section 30 of the Act requires the NGO Bureau to provide this information within 30 days from the date of refusal.
- Assist the NGO to appeal the NGO Bureau's decisions before the Adjudication Committee. An NGO may file an application for appeal in the registry of the head office of the NGO Bureau, a branch registry, or any other registry designated by the chairperson of the Adjudication Committee.<sup>20</sup>
- Assist the NGO to issue press statements summarizing the refusal to register to build solidarity from the non-profit sector and broader public.

**For NGOs that have had their registration permits revoked by the NGO Bureau,** a paralegal may take the following actions to assist the NGO:

- Before the revocation is issued, assist the NGO to seek administrative negotiation to identify ways to address the grounds for revocation. This has been especially successful at the district level through negotiations with the District Non-Governmental Monitoring Committee (DNMC). For example, the NGO Bureau has been receptive to administrative negotiations with the NGOs that were suspended on the eve of the 2021 general elections to find a solution to the stalemate.
- Determine if the NGO Bureau followed the revocation process articulated in Section 33 of the Act. Key protections under Section 33 include: the

20. Further information about the appeals process may be found on the NGO Bureau's website. See <https://ngobureau.go.ug/en/services/appeals>.



requirement for the NGO Bureau to provide the affected organization 30 days to demonstrate why its permit should not be revoked, and the requirement to provide its reasons where the NGO Bureau revokes the registration.

- Assist an NGO to re-apply for a permit, as allowed under Section 33(4).
- Assist the NGO to issue press statements summarizing the permit revocation to build solidarity from the non-profit sector and broader public.
- File a formal legal review of the decision of the NGO Bureau in relevant Courts of law as a last resort. NGOs in Kenya have successfully sought court intervention in response to deregistration. In 2018, Kenya's High Court revoked the decision of the NGO Coordination Board (the equivalent of Uganda's NGO Bureau) to deregister the African Centre for Open Governance (AfriCOG) for allegedly operating illegally. The Court also barred the Directorate of Criminal Investigations from investigating and prosecuting the directors of AfriCOG and barred the Central Bank of Kenya from freezing AfriCOG's bank accounts. A paralegal in Uganda could work with attorneys to assist NGOs to seek formal legal review.

THE ANTI-MONEY LAUNDERING ACT (2013); ANTI-MONEY LAUNDERING (AMENDMENT) ACT (2017); THE ANTI-MONEY-LAUNDERING-REGULATIONS (2015)

#### OVERVIEW:

These laws make up Uganda's legal framework aimed at combating money laundering. The law defines money-laundering as the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under Section 3 of this Act.

#### RESTRICTIONS ON THE RIGHT TO THE FREEDOM OF ASSOCIATION UNDER ANTI-MONEY LAUNDERING LAWS THAT THE STATE USES MOST OFTEN:

**Section 8 of the Act requires the recording and reporting of cash and monetary transactions involving domestic and foreign currency exceeding 20,000,000 Ugandan shillings.** The Financial Intelligence Authority (FIA) has applied this requirement to NGOs, requiring them to declare their sources of funding to the FIA. This is a burdensome reporting requirement that also allows the state to target NGOs receiving foreign financial support and to impose overly burdensome financial reporting requirements.

**Section 61 of the Act allows the government to search and seize property suspected of suspicious laundering activity.** In 2017, the government used the Act to freeze Action Aid Uganda's bank accounts upon allegations of conspiracy to launder money.

### **WHAT CAN PARALEGALS DO TO RESPOND TO RESTRICTIONS IMPOSED THROUGH ANTI-MONEY LAUNDERING LAWS?**

To **minimize state opportunity to interfere with NGO operations by using Anti-Money Laundering laws**, paralegals can help NGOs comply with their obligations under these laws. Such obligations include, among others, keeping records of all domestic and international transactions, gathering sufficient information about a potential partner institution before engaging in a cross-border transaction, and developing safeguards against money laundering and terrorist financing such as internal policies and procedures, employee training programs, and maintaining an independent audit.

**Paralegals can also help NGOs comply with reporting obligations** under Regulation 45(1) of the Anti-Money Laundering Regulations (2015). These include submitting an annual compliance report to the FIA, which assesses an organization's compliance with the Anti-Money Laundering Act and associated regulations as well as the Internal Anti-Money Laundering and Combatting Terrorist Financing Policy. The FIA offers a template for this form on its website.<sup>21</sup>

Other forms that a paralegal can help NGOs fill out where relevant include the Cross Border Declarations form, International Wire Transfer Reports, and the Large Cash Transactions Reports. These are all downloadable on the FIA's website.<sup>22</sup>

### **THE ANTI-TERRORISM ACT (2002) AND THE ANTI-TERRORISM (AMENDMENT) ACT (2015)**

#### **OVERVIEW:**

The purpose of this Act is to suppress acts of terrorism and provide for punishments for persons who plan, instigate, support acts of terrorism.

#### **KEY PROTECTIONS OF THE RIGHT TO THE FREEDOM OF ASSOCIATION**

This Act does not provide any express or implicit protections of the freedom of association.

21. <https://www.fia.go.ug/annual-compliance-reports>

22. <https://www.fia.go.ug/index.php/cross-border-declarations>; <https://www.fia.go.ug/index.php/international-wire-transfer-reports>; <https://www.fia.go.ug/large-cash-transactions-reports>

## RESTRICTIONS ON THE RIGHT TO THE FREEDOM OF ASSOCIATION UNDER THE ANTI-TERRORISM ACT THAT THE STATE USES MOST OFTEN:

Under Section 17(A) of the Anti-Terrorism (Amendment) Act (2015), **the Financial Intelligence Authority (FIA) has unchecked powers to seize or freeze funds or property that it believes are intended for terrorism activities.** This grants the FIA enormous discretion to interfere with an NGO's financial transactions.

## HOW CAN A PARALEGAL RESPOND TO THE RESTRICTIONS ON THE FREEDOM OF ASSOCIATION UNDER THIS ACT?

A paralegal can **guide NGOs to comply with anti-terrorist Act-related requirements laid out** by the Financial Intelligence Authority (FIA), the regulatory government body that oversees anti-money laundering and counter-terror financing laws in Uganda. To this end, paralegals can inform NGOs that they must undertake a compliance report at least twice a year. While compliance with the Act can help an NGO avoid punishment under the Act, it is important to note that the government's approach to broadly apply measures to counter terrorist financing to all NGOs does not comply with international standards such as FATF's Recommendation 8.<sup>23</sup>

Where an NGO fails to file a compliance report on time, a paralegal can **help the NGO draft and send a written request for an extension to submit the compliance report.** Doing so can help dissuade the FIA from blacklisting or suspending the NGO for failure to submit the report.

Where the state has arrested NGO staff using anti-terrorism laws, **a paralegal can assist the arrested individual to navigate the court process**, such as assisting the person to be released on police bond (if they have not been presented in Court) or on bail (if the case has reached Court stage).

## WHAT CASES PERTAIN TO THE RIGHT TO THE FREEDOM OF ASSOCIATION?

Paralegals can use positive case law to support clients whose rights have been limited. Conversely, they can be aware of negative case precedents to understand if the situations from those cases are similar to a client's situation, and thus require a creative approach to help the client realize their right to freedom of association.

23. Recommendation 8 requires governments to apply "focused and proportionate" measures to organizations based on their assessed level of risk for terrorist financing abuse. Read more about FATF Recommendation 8 and its implications for the non-profit sector on the ICNL website: <https://www.icnl.org/our-work/counter-terrorism-security#FATF>.

These case summaries focus on the right to freedom of association, though the cases may have covered other issues.

### CASES THAT POSITIVELY AFFECT THE RIGHT TO FREEDOM OF ASSOCIATION

There do not appear to have been any major cases in Uganda positively affecting the freedom of association. Some cases cited in the Freedom of Peaceful Assembly chapter, such as the Rights Trumpet case, the Muwanga Kivumbi case, and the HURINET-Uganda case, govern state obligations to refrain from prohibiting peaceful public gatherings, and could support the protection of NGO meetings taking place in public places. Those cases are more directly related to the right to freedom of assembly, and thus are not covered in more detail in this chapter.

### CASES THAT NEGATIVELY IMPACT THE RIGHT TO FREEDOM OF ASSOCIATION

Some cases cited in the Freedom of Peaceful Assembly chapter, such as the Kiiza Besigye case, permit restrictions on public gatherings, and could support state actions to prevent an NGO meeting from taking place. Those cases are more directly related to the right to freedom of assembly, and thus are not covered in more detail in this chapter.

NABAGASERA & 3 OTHERS VS. ATTORNEY GENERAL & ANOR (MISCELLANEOUS CAUSE 33 OF 2012) [2014], UGHCCD 85 (24 JUNE 2014)<sup>24</sup>

#### **BACKGROUND:**

Nabagesera and others were part of a workshop discussing marginalization of sexual minorities, among other issues. Police stopped the workshop and dispersed the participants. Nabagesera went to Court with an application seeking an order to declare the closure of an ongoing workshop unconstitutional and an infringement of the rights to freedom of assembly, speech and expression, association and equality before the law.

#### **COURT JUDGEMENT:**

The High Court held that the workshop was illegal as it engaged in the direct and indirect promotion of same-sex practices which is prohibited by the Penal Code

24. The full text of the case is available at <https://africanlii.org/content/nabagesera-3-ors-v-attorney-general-anor-miscellaneous-cause-33-2012-2014-ughccd-85-24-june>.

and amounted to action prejudicial to the public interest. The Court also noted that the assembly and associational rights and freedoms are limited under Article 43 of the Constitution in the public interest; it found that the closure of the workshop was to protect national security, public order, and public interest, and dismissed the application.

#### **IMPLICATION OF THE DECISION:**

Marginalized communities, especially LGBTQ+ groups, may have limited ability to associate and assemble as a court has upheld limitations on their activities as legitimate in the interest of national security, public order, and public interest.

#### **HOW A PARALEGAL CAN USE THIS CASE:**

This case demonstrates the difficulty that marginalized communities may face in exercising their right to freedom of association. To address this bias in the law, paralegals can assist advocates to bring cases that challenge discriminatory provisions in Uganda's law that permit biases against LGBTQ+ and other marginalized communities. For example, a paralegal could assist efforts to challenge the Penal Code provision criminalizing sexual acts against "the order of nature" before the Equal Opportunities Commission, which is described in more detail later in this Handbook.



# FREEDOM OF PEACEFUL ASSEMBLY

## WHAT IS THE DEFINITION OF THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY?

The right to freedom of peaceful assembly refers to an individual's right to intentionally gather in private or in public for an expressive purpose and for an extended period of time.<sup>25</sup>

An assembly may occur in several ways, including through demonstrations and counterdemonstrations, processions, rallies, meetings, sit-ins, and congregating online. The right to the freedom of peaceful assembly protects both planned and spontaneous assemblies.

## EXAMPLES OF ASSEMBLIES IN UGANDA

In September 2020, dozens of young climate justice defenders organized a protest in Kampala calling for more robust government action to protect the Bugoma Forest Reserve in Western Uganda and to adopt new innovative measures to fight climate change.

Since 2017, Ugandan women have participated in the global #MeToo movement to demonstrate against widespread sexual harassment.

In 2012, a coalition of CSOs launched the “Black Monday” movement; protestors dressed in black on Mondays while identifying and campaigning against government corruption.



## WHAT IS THE IMPORTANCE OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY?

The right to freedom of peaceful assembly enables individuals to express their opinions and beliefs in a public space, and further engage in political, economic, cultural, and social activities. The right to the freedom of peaceful assembly also supports the exercise of other fundamental rights; for example, individuals can demonstrate in support of the right to enjoy the highest attainable standard of physical and mental health or the right to education, among other rights.

25. African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, available at [https://www.achpr.org/public/Document/file/English/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf), at pg. 9.

## WHAT INTERNATIONAL LAWS AND BEST PRACTICES GOVERN THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY?

International and regional legal standards can serve as persuasive resources for paralegals who are responding to rights violations at the domestic level. Paralegals can cite these resources to show how Uganda can comply with its international and regional obligations to protect the right to the freedom of peaceful assembly, illustrate best practices for protecting the right to the freedom of peaceful assembly, or demonstrate how Uganda's global and regional peers are protecting the right.

### INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS GOVERNING THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY

Several international and regional legal frameworks explicitly **protect the right of every person to exercise the freedom of peaceful assembly**. Paralegals can state this concept while citing the following sources:

- Universal Declaration of Human Rights<sup>26</sup>, Article 20(1)
- International Covenant on Civil and Political Rights<sup>27</sup>, Article 21
- International Convention on the Rights of the Child<sup>28</sup>, Article 15
- United Nations General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144)<sup>29</sup>, Article 5(a)
- United Nations Human Rights Committee's General Comment No. 37 on the right of peaceful assembly (Article 21)<sup>30</sup>
- African Charter on Human and Peoples' Rights<sup>31</sup>, Article 11
- African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly in Africa<sup>32</sup>, Part 2
- African Commission on Human and Peoples' Rights' Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa<sup>33</sup>
- African Charter on the Rights and Welfare of the Child<sup>34</sup>, Article 8.

26. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

27. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

28. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

29. <https://undocs.org/en/A/RES/53/144>.

30. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. <https://digitallibrary.un.org/record/3884725?ln=en>.

31. <https://www.achpr.org/legalinstruments/detail?id=49>.

32. [https://www.achpr.org/public/Document/file/English/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf).

33. <https://www.achpr.org/legalinstruments/detail?id=65>.

34. [https://au.int/sites/default/files/treaties/36804-treaty-african\\_charter\\_on\\_rights\\_welfare\\_of\\_the\\_child.pdf](https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf).



Other international and regional legal frameworks **implicitly protect the right to the freedom of assembly by stating that all persons must enjoy fundamental rights without discrimination based on characteristics such as race, sex, or disability, among others, or that states must protect fundamental freedoms while engaging in other duties such as combating terrorism.** Paralegals can state this concept while citing the following sources:

- International Convention on the Elimination of All Forms of Racial Discrimination<sup>35</sup>, Article 5
- Convention on the Elimination of All Forms of Discrimination against Women<sup>36</sup>, Article 3
- African Commission on Human and Peoples’ Rights’ Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa<sup>37</sup>, Part I(I) and (M)

## KEY PRINCIPLES THAT THE STATE MUST FOLLOW TO PROTECT THE FREEDOM OF PEACEFUL ASSEMBLY

**Peaceful assembly:** The right to freedom of peaceful assembly only protects a “peaceful” assembly, which is defined as an assembly whose organizers have expressed peaceful intentions and whose participants engage in generally peaceful conduct. “Peaceful” conduct includes that which annoys or gives offense, as well as conduct that temporarily hinders, impedes, or obstructs activities of third parties. The likelihood that individuals attending or observing an assembly will engage in acts of violence is not grounds to prohibit the assembly. Furthermore, isolated acts of violence by individuals attending or spectating an assembly does not render an assembly non-peaceful.

**Restrictions on the freedom of peaceful assembly:** Any restrictions that a state imposes on the right to the freedom of peaceful assembly must be (1) in conformity with the law, (2) in furtherance of a legitimate interest, and (3) necessary in a democratic society. Collectively, these conditions are known as “the three-part test” for permissible restrictions on the freedom of peaceful assembly.

- (1) **In conformity with the law:** the provision that restricts the freedom of peaceful assembly must be sufficiently precise to enable an individual to assess whether their conduct would be in breach of the law and to foresee the likely consequences of any such breach.

35. <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

36. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3>.

37. <https://www.achpr.org/presspublic/publication?id=21>.



- (2) **In furtherance of a legitimate interest:** All restrictions must be taken to serve one of the following interests listed under international law: national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.
- (3) **Necessary in a democratic society:** the restriction must be the least restrictive means required to achieve a legitimate interest.

**Duty to protect the right to the freedom of peaceful assembly:** The state must actively ensure that all individuals enjoy the right to the freedom of peaceful assembly, including through assigning law enforcement to protect assembly participants from individuals who are trying to disrupt or disperse the assembly.

**Duty to refrain from undue interference with the right to the freedom of peaceful assembly:** The state must not unduly interfere with the right to the freedom of peaceful assembly. Laws and policies governing the right to peacefully assemble must not place blanket restrictions on the time and location of assemblies. Any restrictions on the right to freedom of peaceful assembly must meet the three-part test noted above.

**EXAMPLE:** When a police officer denies an assembly from proceeding because the assembly is planned in a traffic zone, the police officer is unduly interfering with the right to the freedom of peaceful assembly. While the state has an interest in protecting public order through maintaining regular traffic patterns, prohibiting an assembly is not the least restrictive means of promoting public order. Rather, the police could grant an assembly permission to proceed through its planned route within a reasonable time period, or work with the assembly convener to agree upon other conditions that would still permit the assembly to proceed while addressing traffic disruption concerns.

## NATIONAL LAWS THAT IMPACT THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY

### THE CONSTITUTION OF THE REPUBLIC OF UGANDA (1995)

#### OVERVIEW:

The Constitution articulates national principles and fundamental rights and establishes key institutions and processes in Uganda.

#### KEY PROTECTIONS OF THE FREEDOM OF PEACEFUL ASSEMBLY:

Article 29(1)(d) protects the right of peaceful assembly.

**KEY RESTRICTIONS ON THE FREEDOM OF PEACEFUL ASSEMBLY:**

Article 46(1) authorizes Parliament to take “reasonably justifiable” measures to deal with a state of emergency, presumably including the limitation of certain rights.

**WHAT CAN PARALEGALS DO TO RESPOND TO RESTRICTIONS USING THIS ACT?**

When analyzing a restriction on the right to peacefully assemble that the state claims is aimed at dealing with a state of emergency, a paralegal can assist advocates to determine whether the restriction is “reasonably justifiable” in a democratic society, such as whether there are less intrusive measures available.

**THE PUBLIC ORDER MANAGEMENT ACT (POMA) (2013)****OVERVIEW:**

The POMA outlines the procedures for lawful public assemblies, including the duties and responsibilities of organizers, law enforcement, and participants of assemblies. In March 2020, the Constitutional Court nullified parts of the POMA, most notably Section 8, which provides the Inspector General of the Police with broad powers to prevent or stop public gatherings.

**KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY:**

The POMA does not expressly acknowledge the right to freedom of peaceful assembly. However, a few provisions protect certain aspects of the right: Section 7(1) explicitly states that the notification requirement for assemblies does not apply to spontaneous public meetings. Furthermore, Section 4 (2) excludes the following meetings from the notification requirement: a meeting of members of any registered organization, whether corporate or not, convened in accordance with the constitution of the organization; a meeting of members of a trade union; a meeting for a social, religious, cultural, charitable, educational, commercial or industrial purpose; and a meeting of the organs of a political party or organization, convened in accordance with the constitution of the party or organization, and held exclusively to discuss the affairs of the party or organization.

**RESTRICTIONS ON THE FREEDOM OF PEACEFUL ASSEMBLY UNDER THE POMA THAT THE STATE USES MOST OFTEN:**

Assemblies may not proceed if they fail to abide by the **tedious and rigid notification process** outlined in the POMA under Sections 5 and 6. The required notification form includes obtaining consent from the owner of the venue where

a public meeting must take place. State officers have intimidated owners to withdraw consent, in order to undermine the notification process. The police officer in charge of authorizing a public gathering, upon receiving notification, may also delay the gathering by slowing down the approval process. Law enforcement often cite the failure to comply with the notification procedure as grounds for dispersing or otherwise cracking down on public gatherings.<sup>38</sup> Moreover, an organizer of a public gathering who fails to abide by the notification requirements is subject to imprisonment for 2 years as dictated under Section 116 of the Penal Code.

**Law enforcement also retains some powers to prohibit and disperse public gatherings**, despite the nullification of Section 8 of POMA:

- Section 9(f) allows the police to disperse ‘defiant or unruly crowds or individuals at a public meeting in order to prevent violence, restore order and preserve the peace.’ The provision is so broadly worded that police have broad discretion to disperse the meeting by determining that an individual is ‘defiant or unruly.’
- Section 6(1) gives an authorized officer broad discretion to prevent a proposed public meeting on the basis that there is another proposed public meeting at the same date, time, and venue or that the venue is “unsuitable for purposes of crowd and traffic control or will interfere with other lawful business.” This provision could be used to prevent counter-demonstrations, which are protected under the right to the freedom of peaceful assembly. Additionally, as any demonstration could cause some crowd and traffic irregularities or interfere with other lawful business, authorities could arguably prevent any demonstration on these grounds.

Section 10(1)(b) requires **organizers of assemblies to provide “sufficient stewards proportionate to the number of participants in the public meeting.”** This shifts the responsibility to protect assembly participants from the state to the organizer and can discourage organizers from planning assemblies because of the burden of finding stewards and being held liable if the stewards are unable to keep peace during the assembly.

### **WHAT CAN A PARALEGAL DO TO NAVIGATE RESTRICTIONS TO THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY USING THE POMA?**

Where **law enforcement is deciding whether to prohibit or disperse an assembly**, a paralegal can assist the NGO to negotiate with law enforcement on any concerns raised. For example, if law enforcement cites traffic disruptions as

<sup>38</sup> It remains to be seen how the nullification of Section 8 will change law enforcement regulation of assemblies.

a ground for prohibiting an assembly, a paralegal can help NGOs propose ways to mitigate or limit traffic disruptions without prohibiting the assembly. A paralegal can also advise an NGO to ask law enforcement to provide sufficient personnel to protect participants and passersby, as required under Section 9(2)(a) of POMA.

Where **law enforcement has already prohibited or dispersed an assembly**, a paralegal can assist an NGO and its counsel to challenge the decision in court. For example, a paralegal can help gather accounts showing that an assembly was largely peaceful despite law enforcement's decision to disperse the assembly on the grounds that participants were defiant, unruly, or otherwise disturbing the peace. This can help demonstrate that law enforcement officers were abusing Section 9(f) of POMA to disperse an assembly.

Finally, **a paralegal may guide assembly organizers to comply with lawful POMA requirements**. To this end, a paralegal can help assembly organizers to:

- Notify law enforcement of a planned assembly using the form provided under Schedule 2 of the POMA (Form A- Notice of intention to hold a public meeting);
- Ensure that the planned assembly does not take place in restricted areas such as the Parliament and its precincts, the State House Entebbe, state lodges, international airports, and Courts of Judicature;
- Inform all participants of the traffic or assembly plan;
- Identify and provide sufficient stewards who must be clearly identified with name tags, as required under the POMA;
- Work with law enforcement to ensure that all participants are unarmed and peaceful;
- Help craft a clear statement of the goals and objectives of the assembly to share with the media to avoid miscommunication.

Organizations such as the African Centre for the Rehabilitation of Torture Victims and the Coalition Against Torture have successfully worked with law enforcement to hold peaceful processions following the above measures.

## THE POLICE ACT, CAP 303 (1994)

### OVERVIEW:

The Police Act provides for the structure and organization of law enforcement, including a code of conduct, among other guidance. In May 2008, the Constitutional Court nullified Section 32 of the Police Act, which authorized the Inspector General of Police to prohibit the convening of an assembly which is likely to cause a breach of peace, as it contravened the right to assemble under Article 29(1) of the Constitution.

### KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY:

The Police Act does not expressly protect the right to the freedom of peaceful assembly.

### RESTRICTIONS ON THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY UNDER THE POLICE ACT THAT THE STATE MOST COMMONLY USES:

Section 33 grants an officer **broad discretion to disperse an assembly** that has contravened an officer's order regarding conduct at the assembly. Section 34 makes it an **offense for assembly participants to refuse to abide a police officer's order to disperse** the assembly.

Section 24 permits a police officer to **preventatively arrest and detain any person** based on "reasonable cause" that the person was is to commit a crime. Law enforcement in Uganda has relied on this section to prevent citizens—especially those voicing dissent against the state—from participating in assemblies.

### WHAT CAN A PARALEGAL DO TO NAVIGATE RESTRICTIONS TO THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY USING THE POLICE ACT?

Law enforcement often relies on the Police Act to enforce the POMA. **To avoid restrictions on assemblies under the Police Act, paralegals can assist organizations to comply with lawful requirements for assemblies under POMA,** as described above.

Additionally, where **law enforcement has dispersed an assembly using the Police Act**, a paralegal can work with assembly organizers to document and report on the dispersal. The documentation can be used by NGOs to track trends in restrictions on the right to the freedom of peaceful assembly, or to support legal challenges to restrictions on the right.

## THE CRIMINAL PROCEDURE CODE ACT, CAP 116

**OVERVIEW:**

This Act provides the processes for criminal cases.

**KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY:**

The Criminal Procedure Code Act does not expressly protect the right to the freedom of peaceful assembly.

**RESTRICTIONS ON THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY UNDER THE CRIMINAL PROCEDURE CODE ACT THAT THE STATE COMMONLY USES:**

Section 26 of the Act gives a **police officer the right to arrest a person if the officer suspects that the person will commit a cognizable offense**. Law enforcement has used this law to detain persons to prevent them from attending an assembly on a sensitive topic, such as assemblies organized by political opposition groups.

**WHAT CAN PARALEGALS DO IN RESPONSE TO RESTRICTIONS ON THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY UNDER THIS ACT?**

A paralegal can help assembly participants, arrested on the grounds that they were going to commit a cognizable offense to **access bond or bail**.

**WHAT CASES PERTAIN TO THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY?**

Paralegals should be aware of the following decisions when working on cases dealing with the right to freedom of peaceful assembly. These case summaries focus on the right to freedom of peaceful assembly, though the cases may have covered other issues. Paralegals may use both the positive and negative decisions to guide their approach to their cases.

**CASES THAT POSITIVELY AFFECT THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY**

RIGHTS TRUMPET & 2 OTHERS VS. AIGP ASAN KASINGYE & 5 OTHERS AND MUCUNGUZI ABEL & 9 OTHERS VS. ATTORNEY GENERAL & 2 OTHERS (CONSOLIDATED MISCELLANEOUS CAUSE 17 OF 2017) [2020] UGHC 42 (15 MAY 2020)

**BACKGROUND:**

The applicants alleged that they had been arrested, detained and tortured while participating in a peaceful demonstration. They sought both damages and a declaration that several named officers of the Ugandan Police Force (UPF) engaged in actions that were unjust and illegal.

**JUDGEMENT:**

Among other infringements on human rights, the High Court found a violation of the right to freedom of peaceful assembly. The Court found that because there was no evidence that the demonstration was violent or disruptive of normal business or otherwise infringing on the rights of others, the state was not justified in deploying the UPF to arrest demonstrators. Rather, given the lawful nature of the demonstration, the UPF had an obligation to protect the security of the demonstrators.

**IMPLICATION OF THE DECISION:**

Law enforcement cannot arrest participants of an assembly if the participants do not appear to be violent, disruptive, or infringing on the rights of others.

**HOW A PARALEGAL CAN USE THIS CASE:**

**Where law enforcement has arrested assembly participants**, a paralegal can assist the participants and their counsel to gather evidence that the assembly was generally peaceful (i.e., participants did not engage in violence, disruptive behavior, or infringement on the rights of others). Further, a paralegal can assist the arrested persons' counsel to formulate an argument emphasizing that the UPF has an obligation to facilitate the peaceful exercise of the right to assemble, citing this case as precedent.

MUWANGA KIVUMBI VS. ATTORNEY GENERAL (1)  
(CONSTITUTIONAL PETITION 9 OF 2005) [2008] UGCC 34 (27 MAY 2008)<sup>39</sup>

**BACKGROUND:**

This petition challenged the constitutionality of Section 32 of the Police Act (Cap 303) on the grounds that it empowered the Inspector General of Police (IGP) to **prohibit** the convening of an assembly or procession on any public road, street or other public place in violation of Articles 20(1)(2) and 29(1)(d) of the Constitution.<sup>40</sup>

39. For a full text, please see <https://africanlii.org/content/muwanga-kivumbi-v-attorney-general-1-constitutional-petition-9-2005-2008-ugcc-34-27-may-2008>

40. Article 20 of the Constitution provides for the protection of fundamental rights and freedoms of the individual as inherent and not granted by the State and enjoins all organs and agencies of Government and by all persons to respect, uphold and promote them. Article 29 (1) (d) provides that every person shall have the right to freedom to assemble and



**JUDGEMENT:**

The Constitutional Court found Section 32 of the Police Act to be unconstitutional, contravening Articles 20 (1)(2) and 29 (1)(d) of the Constitution by giving the IGP excessive powers to prohibit a public assembly. The Court noted that these powers were not “regulatory” as required of laws governing fundamental rights, but “prohibitive,” subjecting the enjoyment of assembly freedoms to the wide discretion of the IGP.

**IMPLICATION OF THE DECISION:**

Law enforcement cannot prohibit assemblies on broad grounds. The state may regulate but not prohibit the exercise of the right to the freedom of peaceful assembly.

**HOW A PARALEGAL CAN USE THIS CASE:**

**Where law enforcement has prohibited an assembly on broad grounds**, a paralegal can assist the assembly organizer and the organizer’s counsel to challenge the prohibition of the assembly before a local magistrate’s court. The paralegal can point to this case as guidance against law enforcement’s prohibition on assemblies. A local expert notes that seeking a court order allowing the assembly to proceed, especially where efforts to negotiate with law enforcement have failed, is the most effective remedy for a prohibition on an assembly.

HUMAN RIGHTS NETWORK-UGANDA & 4 OTHERS VS. ATTORNEY GENERAL (CONSTITUTIONAL PETITION-2013/56) [2020] UGCC 6 (26 MARCH 2020)<sup>41</sup>

**BACKGROUND:**

The Human Rights Network Uganda (HURINET-U) and four other Ugandans challenged the constitutionality of Section 8 of the Public Order Management Act (POMA), which gave the Inspector General of Government powers and discretion to prohibit gatherings and demonstrations. HURINET-U argued that this section violated Article 92 of the Constitution, which prohibits Parliament from passing legislation whose effect is to overturn or alter a judgment of court, because Section 8 of POMA contains fundamentally similar content to Section 32(2) of the Police Act, which a court declared unconstitutional in *Muwanga Kivumbi vs Attorney General* (detailed above).

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to demonstrate together with others peacefully and unarmed and to Petition.

41. For a full text of the judgement, please visit <https://africanlii.org/content/human-rights-network-uganda-4-ors-v-attorney-general-constitutional-petition-2013/56-2020>.



**JUDGEMENT:**

The Court found that Section 8 of POMA violated Article 92 of the Constitution because it contained the same limitations on the rights to association and assembly that were overturned in the Muwanga Kivumbi case—that is, the law was “prohibitive” rather than “regulatory” of the right to freedom of peaceful assembly. The Court also noted that the police have a duty to supervise public gatherings to prevent a breach of the peace, not prohibit gatherings altogether.

**IMPLICATION OF THE DECISION:**

Law enforcement cannot prohibit assemblies on broad grounds. The state may regulate but not prohibit the exercise of the right to the freedom of peaceful assembly.

**HOW A PARALEGAL CAN USE THIS CASE:**

Similar to the Muwanga Kivumbi case, **where law enforcement has prohibited an assembly citing vague grounds**, a paralegal can assist assembly organizers or their counsel to use this case as guidance to determine if law enforcement has overstepped its power to regulate rather than prohibit the right to the freedom of peaceful assembly.

A paralegal can also help to **prevent impermissible restrictions on assemblies** by assisting NGOs and other advocates who engage law enforcement through workshops or informal discussions on legal standards governing the regulation of assemblies. The workshop facilitators can cite this case and the Muwanga Kivumbi case as guidance for the proper regulation of assemblies.

KYAGULANYI T/A BOBI WINE V KAMPALA METROPOLITAN POLICE COMMANDER & ANOR (MISCELLANEOUS CAUSE 313 OF 2017) [2019] UGHCCD 113 (10 MAY 2019)<sup>42</sup>

**BACKGROUND:**

The applicant, Bobi Wine, is a musician and former presidential candidate in the Ugandan elections who sought to enforce his assembly rights (among others) after law enforcement prohibited him from holding musical shows. Law enforcement contended that they were exercising their powers under POMA by prohibiting the shows to prevent violence. Furthermore, they argued that they were stopping Bobi Wine from making consultations with members of the public who are not his constituents.

42. For a full text, please see <https://africanlii.org/content/kyagulanyi-t/bobi-wine-v-kampala-metropolitan-police-commander-anor-miscellaneous-cause-313>.

**COURT JUDGEMENT:**

In relation to the freedom of peaceful assembly, the High Court found that music shows organized strictly for purposes of entertainment are not public meetings that require police notification under the POMA unless they are held to express views on public matters. The Court also reiterated that law enforcement should follow the guidance provided under the Muwanga Kivumbi case (i.e., regulation rather than prohibition of gatherings) for music shows and other gatherings.

Additionally, the Court held that Bobi Wine did not adequately show a violation of his right to freedom of expression, as he did not demonstrate that the cancellation of his shows denied him the opportunity to express his opinion or views.

**IMPLICATION OF THE DECISION:**

Law enforcement cannot use POMA to prevent musical gatherings that are not held to express views on public matters. The cancellation of music shows (or one avenue of expression) may not be sufficient to show that the state has violated a person's right to freedom of expression.

**HOW A PARALEGAL CAN USE THIS CASE:**

A paralegal can reference this case when advising assembly organizers that certain gatherings fall within the exception to POMA notification requirements, including musical shows. To clients concerned about restrictions on expression due to prohibition of an assembly, a paralegal can point to the case to show that a Court may not view the cancellation of an assembly as sufficient evidence of a violation of the right to expression.

## CASES THAT NEGATIVELY IMPACT THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY

KIIZA BESIGYE VS. CIVIL AVIATION AUTHORITY & ANOR (CIVIL SUIT 732 OF 2016) [2019] UGHCCD 39 (15 MARCH 2019)<sup>43</sup>

**BACKGROUND:**

Dr. Kiiza Besigye was arrested by the Ugandan Aviation Police at Entebbe Airport while on his way to meet his political supporters. He sued the Civil Aviation Authority and the Attorney General for having allegedly violated among others, his right to freedoms of assembly and association as guaranteed in Articles 29 and 50 of the Constitution of Uganda.

43. For a full text of the decision of the Court, see <https://africanlii.org/content/kiiza-besigye-v-civil-aviation-authority-anor-civil-suit-732-2016-2019-ughccd-39-15-march>.

**COURT JUDGEMENT:**

The Court found that there was no violation to Dr. Kizza Besigye's rights under Article 29 of the Constitution because Dr. Besigye had failed to comply with the notification requirements for lawful assemblies under the Public Order Management Act, 2013.

**IMPLICATION OF THE DECISION:**

The Court upheld the notification regime under POMA.

**HOW A PARALEGAL CAN USE THIS CASE:**

A paralegal can view this case as evidence that the notification regime under POMA remains relevant in Uganda. Therefore, a paralegal should assist assembly organizers to comply with the POMA notification requirements. To that end, please view the section on the POMA and the Police Act for a summary of key obligations under each act.



# FREEDOM OF EXPRESSION

## WHAT IS THE DEFINITION OF THE RIGHT TO FREEDOM OF EXPRESSION?

The right to freedom of expression refers to an individual or organization's right to seek, receive, and impart information both online and offline.

Individuals and organizations can exercise the right to the freedom of expression in many ways, including through verbal and written communication, performance and visual arts, among other modes, and through various mechanisms such as radio, newspapers, and social media.

## WHAT IS THE IMPORTANCE OF THE RIGHT TO FREEDOM OF EXPRESSION?

The right to the freedom of expression contributes to a more democratic society by allowing individuals and groups to participate in public decision-making by sharing their interests and opinions and accessing information about developments that may be in the public interest. The exercise of this right by individuals and groups enables the government to ensure that its laws, policies, and actions respond to the needs of its people; likewise, the right allows the people to hold their government accountable to its obligation to protect and promote their interests.

## WHAT INTERNATIONAL LAWS AND BEST PRACTICES GOVERN THE RIGHT TO FREEDOM OF EXPRESSION?

International and regional legal standards can serve as persuasive resources for paralegals who are responding to rights violations at the domestic level. Paralegals can cite these resources to show how Uganda can comply with its international and regional obligations to protect the right to the freedom of expression, illustrate best practices for protecting the right to freedom of expression, or demonstrate how Uganda's global and regional peers are protecting the right.

### INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS GOVERNING THE RIGHT TO FREEDOM OF EXPRESSION

Several international and regional legal frameworks explicitly **protect the right of all individuals to exercise freedom of expression**. Paralegals can state this concept while citing the following sources:

- Universal Declaration of Human Rights<sup>44</sup>, Article 19
- International Covenant on Civil and Political Rights<sup>45</sup>, Article 19
- United Nations Convention Against Corruption<sup>46</sup>, Articles 9, 10, and 13
- United Nations General Assembly Resolution 59(1) Calling on an International Conference on Freedom of Information<sup>47</sup>
- Maputo Declaration on Fostering Freedom of Expression, Access to Information, and Empowerment of People<sup>48</sup>
- Dakar Declaration on Media and Good Governance<sup>49</sup>
- African Charter on Human and Peoples' Rights<sup>50</sup>, Article 9
- African Charter on Democracy, Elections, and Governance<sup>51</sup>, Article 27(8)
- African Union Convention on Preventing and Combating Corruption<sup>52</sup>, Articles 9 and 12(4)
- African Youth Charter<sup>53</sup>, Articles 4 and 10(3)(d)

Other international and regional legal frameworks **implicitly protect the right to freedom of expression by stating that all persons must enjoy fundamental rights without discrimination based on characteristics such as race, sex, or disability, among others, or that states must protect fundamental freedoms while engaging in other duties such as combating terrorism.** Paralegals can state this concept while citing the following sources:

- East African Community Treaty<sup>54</sup>, Article 6(d)
- International Convention on the Elimination of All Forms of Racial Discrimination<sup>55</sup>, Article 5
- Convention on the Elimination of All Forms of Discrimination against Women<sup>56</sup>, Article 3

44. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

45. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

46. [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf).

47. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/PDF/NR003310.pdf?OpenElement>.

48. [https://en.unesco.org/sites/default/files/maputo\\_declaration.pdfworldpressfreedomday200900000/dakar-declaration/](https://en.unesco.org/sites/default/files/maputo_declaration.pdfworldpressfreedomday200900000/dakar-declaration/)

49. <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/>

50. <https://www.achpr.org/legalinstruments/detail?id=49>.

51. <https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf>

52. [https://au.int/sites/default/files/treaties/36382-treaty-0028\\_-\\_african\\_union\\_convention\\_on\\_preventing\\_and\\_combating\\_corruption\\_e.pdf](https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf)

53. [https://au.int/sites/default/files/treaties/7789-treaty-0033\\_-\\_african\\_youth\\_charter\\_e.pdf](https://au.int/sites/default/files/treaties/7789-treaty-0033_-_african_youth_charter_e.pdf)

54. [https://www.eacj.org/?page\\_id=33](https://www.eacj.org/?page_id=33)

55. <https://www.ohchr.org/en/professionalinterest/pages/cedr.aspx>.

56. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3>.

- African Commission on Human and Peoples' Rights' Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa<sup>57</sup>, Part 1(I) and (M)

## KEY PRINCIPLES THAT THE STATE MUST FOLLOW TO PROTECT THE FREEDOM OF EXPRESSION

**Duty to protect the right to freedom of expression:** The state has an obligation to proactively facilitate the exercise of the right to the freedom of expression, including through adopting laws that ensure its protection and providing an effective remedy to those whose right to freedom of expression has been violated.<sup>58</sup>

**Restrictions on the right to freedom of expression:** Similar to other rights discussed in this Handbook, restrictions on the right to freedom of expression must meet the following three requirements<sup>59</sup>:

- (1) **Provided by law:** the provision that restricts the freedom of peaceful assembly must be sufficiently precise to enable an individual to assess whether their conduct would be in breach of the law and to foresee the likely consequences of any such breach.
- (2) **Necessary:** the provision restricting the right to freedom of expression must be the least restrictive action available to address a legitimate purpose.
- (3) **For a legitimate purpose:** Legitimate purposes listed under the ICCPR are protecting the rights or reputations of others, or protecting national security or public order, public health, or morals.

### TIP:

The Model Law on Access to Information for Africa (2013) serves as a framework for legislative drafters and policymakers to protect the right to access to information in the African context. Paralegals can reference the Model Law when reviewing access to information laws or policies in Uganda.



57. <https://www.achpr.org/presspublic/publication?id=21>.

58. ICCPR, Article 2(2). Human Rights Committee, General Comment No. 34, paras. 7 and 8.

59. Id., at Article 19(3).

**Non-discrimination:** The right to the freedom of expression applies to every person equally without distinction based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>60</sup>

**Protection of broad range of speech:** The right to the freedom of expression protects a broad range of speech, including political discourse, commentary on one's own and public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It also protects deeply offensive speech.<sup>61</sup>

**Every person has the right to access to information.** The state should not Access to information should not limit the right to access to information to citizens.<sup>62</sup>

**Every person has the right to access information held by government bodies and relevant private bodies.** "Relevant private bodies" include those implement a duty typically assigned to the government or receive government funding.<sup>63</sup>

**All information held by public bodies is subject to disclosure, except in limited circumstances where there is a strong public interest not to disclose the information.**<sup>64</sup> Some examples of permissible grounds for exemptions to disclosure include if the release of information would endanger the life, health, or safety of an individual, or would result in the unreasonable disclosure of the personal information of a third party. Principle 33 of the ACHPR Declaration on Principles of Freedom of Expression and Access to Information in Africa contains a full list of permissible grounds for withholding information.

**Denials of a request to access information must be clearly explained<sup>65</sup> and the applicant must have an opportunity to appeal the denial.<sup>66</sup>**

60. Id., at Article 2(1).

61. Human Rights Committee, General Comment No. 34, para. 11.

62. ACHPR Declaration on Principles of Freedom of Expression and Access to Information in Africa, Principle 26(1)(a) and (b).

63. Id., at Principle 26(1)(a) and (b) and 26(2).

64. Id., at Principle 28.

65. As noted, a full list of permissible grounds for restrictions is available in the ACHPR Declaration on Principles of Freedom of Expression and Access to Information in Africa, Principle 33.

66. Id., at Principle 32.

## NATIONAL LAWS THAT IMPACT THE RIGHT TO FREEDOM OF EXPRESSION

### THE CONSTITUTION OF THE REPUBLIC OF UGANDA (1995)

#### OVERVIEW:

The Constitution articulates national principles and fundamental rights and establishes key institutions and processes in Uganda.

#### KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF EXPRESSION:

Article 29(1)(a) guarantees every person the right to freedom of speech and expression, which shall include freedom of the press and other media.

Article 41 provides every citizen the right of access information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

#### RESTRICTIONS ON THE RIGHT TO THE FREEDOM OF EXPRESSION UNDER THE CONSTITUTION THAT THE STATE USES MOST OFTEN:

Article 43 of the Constitution permits restrictions on fundamental rights including the right to freedom of expression **where the exercise of the right may prejudice the fundamental or other human rights and freedoms of others or the public interest.**

As noted, Article 41 permits restrictions on the right to access information **where the release of information would likely prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.**

#### WHAT SHOULD A PARALEGAL DO TO RESPOND TO RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER THE CONSTITUTION?

A local expert notes that the best recourse for violations of the right to the freedom of expression on constitutional grounds is through bringing a case before a court. This can mean seeking a court to overturn or revise a decision of a state authority that has restricted the right, or litigating to overturn a court decision that upheld the legality or constitutionality of a law restricting the right. A paralegal can support such efforts through helping the team bring a case before the court to research and file court documents.



## THE PRESS AND JOURNALIST ACT (1995)

### OVERVIEW:

The stated aim of the Act is to promote the right to freedom of the press. The Act does this by providing for a council responsible for the regulation of mass media and establishing an institute for journalists in Uganda, among other actions.

### KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF EXPRESSION:

Section 2 recognizes the **right to publish a newspaper** subject to other provisions within the Act.

Section 4 recognizes the **right to access official information**, though the right is subject to laws relating to national security, secrecy or confidentiality of information.

Section 28 states that **journalists cannot be compelled to disclose their sources** without the sources' consent.

### KEY RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION

The Act establishes a mandatory and onerous enrollment process:

First, a journalist must **obtain an enrollment certificate to the National Institute of Journalists of Uganda** through the process laid out in Sections 15 and 16. To obtain an enrollment certificate, a journalist must have practiced journalism for at least one year and to have either a university degree in journalism or mass communication or a general university degree with a qualification in journalism or mass communication.

Second, Section 26 requires a journalist to **obtain a practicing certificate** by a statutory body under the Minister of Information. A journalist must have procured a certificate of enrollment prior to obtaining a practicing certificate. Section 27 **criminalizes practicing journalism without a practicing certificate**.

The tedious process of enrollment and acquiring a practicing certificate restricts the right to freedom of expression by granting the state multiple opportunities to silence journalists through denying certification. Journalists should not be required to obtain certification from a state body to practice.

### WHAT SHOULD A PARALEGAL DO TO RESPOND TO THE RESTRICTIONS ON THE FREEDOM OF EXPRESSION UNDER THE PRESS AND JOURNALIST ACT?

To **push for reform in the certification process for journalists**, a paralegal who has access to talk show time can help raise awareness that a mandatory registration scheme for journalists violates international best practice. A paralegal can also support advocates to engage with the relevant representatives under the Ministry of Information, which oversees the certification process for journalists, to remove the certification requirement. Finally, a paralegal can assist advocates to challenge the certificate regime under the Act through bringing a case before a Court.

**As long as the certification regime stays in force**, a paralegal can assist journalists to navigate the certification process by helping the journalist gather all required materials for certification, noted above.

### THE COMPUTER MISUSE ACT (2011)

#### OVERVIEW:

This Act aims to provide for the safety and security of electronic transactions and information systems by preventing unlawful access, abuse, or misuse of information systems including computers and securing the conduct of electronic transactions.

#### KEY PROTECTIONS OF THE FREEDOM OF EXPRESSION:

This Act offers no protection to the freedom of expression.

#### KEY RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION:

Section 24 of the Act creates **an offence of cyber harassment** and upon conviction, applies a fine or imprisonment not exceeding three years or both. Subsection 2 defines cyber harassment as the use of a computer for making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent. Because the Act does not define these terms, it leaves the state broad discretion to determine that a person has committed an offense under Section 24. Similarly, Section 25 criminalizes communication that disturbs or attempts to disturb the peace and quiet of any person with no purpose of legitimate communication. The section similarly does not define actions that “disturb the peace,” thus leaving the state broad discretion to determine that a person has committed a violation under the provision.

The state has applied Sections 24 and 25 broadly. For example, in 2017, Dr. Stella Nyanzi, a Makerere University research fellow and activist, was charged with cyber

harassment and offensive communication when she allegedly insulted President Museveni. In the same year, artist David Mugema and music producer Jonah Muwanguzi were detained for creating and distributing a song that allegedly insulted and disturbed the peace of President Museveni. More recently, the state arrested and charged the satirical novelist Kakwenza Rukirabashaija for engaging in “offensive communication” under the Act after Rukirabashaija criticized President Museveni and his son on Twitter. A local expert notes that as of March 2022, there have been at least 10 documented cases of journalists that have charged under Section 24 and 25 largely because they criticized powerful persons in government.

### WHAT CAN A PARALEGAL DO TO RESPOND TO THE RESTRICTIONS ON THE FREEDOM OF EXPRESSION?

A paralegal can assist a person whom the state has detained under this act to **apply for bail or bond as relevant.**

## THE UGANDA PEOPLES’ DEFENCE FORCES ACT (2005)

### OVERVIEW:

This law was enacted to provide for the establishment and regulation of the Uganda Peoples’ Defense Forces (UPDF) and for other connected matters.

### KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF EXPRESSION:

The Act does not explicitly protect the right to freedom of expression.

### KEY RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION:

Section 15 (1) (i) of the Act provides for the **protection of defense stores, which are marks gazetted for the exclusive use of UPDF.** The state has used this provision to restrict protest symbols. For example, in 2019, the state issued an extraordinary gazette defining red berets as defense stores. Red berets were a symbol of the People Power Movement (PPM), a loose political group; the state then arrested supporters of the PPM who were wearing red berets. The limitation of protest symbols through naming them as defense stores restricts the freedom of expression, which protects visual expression as well as text.

### HOW CAN A PARALEGAL RESPOND TO RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER THE UPDF ACT?

A paralegal can **advise protestors or other advocates on the items that the state has determined are defense stores under the UPDF Act.** The most recent list of items deemed defense stores can be found in the Uganda Gazette, Vol. CXII No. 46

18<sup>th</sup> September 2019, which is also available online.<sup>67</sup> Notable items most recently deemed as defense stores include the red beret and tunic clothing, both of which are associated with the People Power Movement and National Unity Platform.

## THE PENAL CODE ACT (1950)

### OVERVIEW:

This law provides for criminal offences and their punishments.

### KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF EXPRESSION:

The law does not protect the right to freedom of expression.

### KEY RESTRICTIONS ON THE FREEDOM OF EXPRESSION:

Sections 53 and 179, 180 of the Act **criminalize defamation** while sections 181 and 182 **criminalize unlawful publication**; these provisions give the state and third parties the power to restrict expression by granting the state broad discretion to determine that a publication is false or unlawful and applying a criminal punishment.

Section 33-36 grants the Attorney General powers to **stop importation of publications that are deemed unfit for public consumption**. Because the law does not define what is fit or unfit for public consumption, it grants the state broad discretion to limit the information that the public can access.

Section 41 of the Penal Code Act prohibits the promotion of sectarianism, including **printing, publishing, or making any statement that is likely to raise discontent among any group or persons on account of religion, tribe, or ethnic or regional origin**. While certain limitations on hate speech are permissible under international law, international best practice protects speech that may offend (or “raise discontent”). Section 41 is an overbroad limitation on speech.

### WHAT CAN A PARALEGAL DO TO RESPOND TO RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION THROUGH THE PENAL CODE?

**Nullified sections of the Penal Code:** In 2002, the Supreme Court of Uganda unanimously nullified section 50 of the Penal Code that criminalized publication of false news; In 2010, the Constitutional Court annulled Sections 39 and 40 on sedition. Where the state seeks to apply these or similar provisions of law to restrict an individual or media house’s speech, a paralegal can help direct the individual or individual’s counsel to these decisions nullifying those provisions.

67. <https://www.scribd.com/document/428052967/Updf-Insignia-and-Uniforms-in-Uganda-Gazette>.

**Where the state charges an individual with criminal defamation**, a paralegal assist the individual to seek bond or bail. A paralegal can also attend the individual's court sessions in solidarity. Unlike civil defamation cases, an individual cannot negotiate with the state on the defamation charges.

## THE ANTI-TERRORISM ACT 2002 AND THE ANTI-TERRORISM (AMENDMENT) ACT-2015.

### OVERVIEW:

This Act was enacted in 2002 and amended in 2015. Its purpose is to suppress acts of terrorism.

### KEY PROTECTIONS OF FREEDOM OF EXPRESSION:

The Anti-Terrorism Act 2002 does not expressly protect freedom of expression.

### KEY RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION:

Section 9 (1) of the Act makes it a criminal offence **to publish and disseminate news or materials “that promote terrorism.”** However, it is not clear from the provision what types of actions would “promote” terrorism, leaving the government broad discretion to determine a person has violated the provision through a publication. A person convicted of this offence is subject to the death penalty without the option of imprisonment. The vagueness of the provision and the harsh penalty have a chilling effect on the right to freedom of expression.

The state has used this Act to target representatives of political opposition with terrorism charges. For example, the state has charged Dr. Kiiza Besigye, the former Leader of Forum for Democratic Change, with a number of terrorism offenses under this Act.

### HOW CAN A PARALEGAL RESPOND TO RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER ANTI-TERRORISM LAWS?

A paralegal can assist a person whom the state has detained under this act to **apply for bail or bond as relevant.**

## ACCESS TO INFORMATION ACT (2005)

### OVERVIEW:

The Act provides the details to realize the right to access information pursuant to Article 41 of the Constitution. It prescribes classes of information and the procedure of accessing that information.

**KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF EXPRESSION:**

Section 5 of the Act provides for every citizen the right of access to information and records in the possession of the State or any public body, except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. The law provides that this information must be as accurate and updated so far as is practicable.

**KEY RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION (INCLUDING THE RIGHT TO ACCESS INFORMATION):**

In Part III, the Act **exempts several forms of information from access** despite their clear relation to public interest. These include Cabinet and Cabinet committee minutes (Section 25) and the operation of public bodies (Section 33). Notably, Section 27 **limits access to information to that in possession by public bodies**, thus excluding access to information held by private companies and non-profit organizations. Because Uganda hires private and non-profit organizations to undertake the provision of public services, such as to build schools and health centers, the limitation under Section 27 would not cover information that is clearly in the public interest but is held by non-public bodies.

The Act also creates a **demanding procedure for appeals of the decision to deny access to information** under Sections 16 and 38. A local expert notes that the long appeals process may deter individuals from exercising the appeals option.

**WHAT CAN PARALEGALS DO TO RESPOND TO RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER THE ACCESS TO INFORMATION ACT?**

**Where the government is preventing an information seeker from accessing information, such as through imposing high fees to access the information or refusing to grant access to the information**, a paralegal can advise an information seeker to file a complaint under Sections 16(3)(c) and 37 of the Act. Under these sections, the information seeker can lodge an internal appeal of the decision or lodge a complaint before the Chief Magistrate. If the information seeker is not satisfied with the decision by the Chief Magistrate, Section 38 permits the seeker to appeal the decision before the High Court. A local expert notes that it is generally more efficient to petition the courts of law rather than pursue an internal appeal because there are no guidelines for an internal appeal process.

## OFFICIAL SECRETS ACT, 1964

**OVERVIEW:**

The Act aims to protect state secrets and security, articulating various actions considered prejudicial to the State, or to the safety or interests of the territories of Uganda.

**KEY PROTECTIONS OF THE RIGHT TO FREEDOM OF EXPRESSION:**

This Act does not explicitly protect the right to freedom of expression.

**KEY RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION (INCLUDING ACCESS TO INFORMATION):**

A local expert notes that the state does not often rely on this Act to restrict the right to freedom of expression. One section that could threaten the right is Section 2(3), which makes it an **offense to obtain information that is directly or indirectly useful to a foreign power for any purpose that is prejudicial to the safety or interests of Uganda**. The state has invoked the provision as grounds to refuse to provide information requested under the Access to Information Act. Additionally, during the general elections of 2021, the government accused CSOs and opposition politicians of fraternizing with ‘foreign agents and countries’ that wanted to ‘destabilize Uganda’ by providing them with false and alarming information about Uganda. While the government did not cite the Official Secrets Act, this incident highlights the possibility that the government may use the Official Secrets Act to inhibit CSOs from accessing information held by the state and from working with foreign partners.

**WHAT CAN PARALEGALS DO TO RESPOND TO A RESTRICTION TO THE RIGHT TO FREEDOM OF EXPRESSION UNDER THIS ACT?**

A local expert notes that the best way to address restrictions on accessing information under this Act is to seek a court order to compel the information holder to release the requested information. As of March 2022, there is a case before the Constitutional Court challenging the Official Secrets Act as an infringement on Article 41 providing for the right of access to information.



## WHAT CASES PERTAIN TO THE RIGHT TO FREEDOM OF EXPRESSION?

### CASES THAT POSITIVELY AFFECT THE RIGHT TO FREEDOM OF EXPRESSION

MEDIA COUNCIL OF TANZANIA AND OTHERS VS. THE ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA (2017), EAST AFRICAN COURT OF JUSTICE<sup>68</sup>

#### OVERVIEW:

The Media Council of Tanzania (the Media Council), the Legal and Human Rights Centre, and the Tanzania Human Rights Defenders Coalition challenged the Media Services Act before the East African Court of Justice as an unjustified restriction on the freedom of expression in violation of Articles 6(d), 7 and 8 of the Treaty for the Establishment of the East African Community. These articles articulate the governing principles for East African Community members such as good governance, which includes the recognition, promotion and protection of rights in accordance with the African Charter on Human and Peoples' Rights.

#### COURT JUDGEMENT:

The Court found the following types of provisions under the Media Services Act to violate Tanzania's obligations to protect human rights under the Treaty: those that penalized defamation, criminalized publication of false news and rumors, criminalized seditious statements, and granted the relevant minister powers to refuse publication of certain materials or sanction media information. The Court directed the government of Tanzania to "take such measures as are necessary to bring the Media Services Act into compliance with the Treaty for the Establishment of the East African Community."

#### IMPLICATION OF THE DECISION:

Criminalization of publication of false news, defamation and alleged seditious statements is an infringement on the freedom of expression.

#### HOW CAN A PARALEGAL USE THIS CASE?

As a member of the East African Community, Uganda must abide by the East African Court of Justice decisions.<sup>69</sup> A paralegal can use this case to **assist an**

68. Media Council of Tanzania and Others v the Attorney General of the United Republic of Tanzania Reference No. 2 of 2017; for details see <https://globalfreedomofexpression.columbia.edu/cases/media-council-of-tanzania-v-attorney-general/>

69. Henry Kyarimpa v Attorney General of Uganda, EACJ Appeal No. 6 of 2014.



**advocate to litigate against restrictions on the media** in Uganda because the case confirms Uganda's obligation as a member of the East African Community to refrain from overly restricting the right to the freedom of expression. Advocates in the Editors Guild Uganda Ltd. Case<sup>70</sup> referenced the Media Council of Tanzania case when arguing that accreditation requirements violated the right to the freedom of expression.

### BURUNDI JOURNALISTS UNION VS. THE ATTORNEY GENERAL OF THE REPUBLIC OF BURUNDI, EAST AFRICAN COURT OF JUSTICE<sup>71</sup>

#### OVERVIEW:

The Burundian Journalists' Union challenged the Press Law, No. 1/11, which enforced an accreditation scheme compelling journalists to obtain a press card before exercising their profession (Articles 5-7); had several content-based restrictions, including the prohibition of dissemination information on the stability of currency, offensive reports on public or private persons, information that may harm the credit of the state and its national economy, and records of diplomatic activities and scientific research (Article 19); and required journalists to identify the confidential sources of their information relating to offenses against state security, public order, and the moral and physical integrity of one or more persons (Article 20).

#### COURT JUDGEMENT:

The East African Court of Justice ruled that the provisions prohibiting journalists from disseminating certain information under Article 19 violated the Treaty by placing an impermissible restriction on journalists. It also held that Article 20 violated the Treaty because it was unreasonable to force the press to disclose confidential sources of information relating to the physical and moral integrity of individuals when other less restrictive legislation such as privacy laws could satisfy the Burundian government's concerns. Finally, the Court did not find the mandatory accreditation scheme to violate the right to free press.

#### IMPLICATION OF THE DECISION:

Certain content restrictions such as prohibitions on offensive reports on public or private persons and information that may harm the credit of the State and national economy are impermissible restrictions on the right to freedom of expression. Requiring journalists to reveal their sources is an impermissible restriction on the right to freedom of expression and media rights.

70. Applicants in this case sought judicial review by the High Court of Uganda of the Uganda Media Council's issuance of directives requiring registration and accreditation of journalists to cover the 2021 general elections. Because the Court dismissed the directives on procedural grounds rather than deciding on the question of whether the directives violated the right to the freedom of expression, this Handbook will not summarize the case in full.

71. Burundi Journalists Union v The Attorney General of the Republic of Burundi Reference NO. 7 of 2013

### HOW CAN A PARALEGAL USE THIS CASE?

As noted above, Uganda must abide by East African Court of Justice decisions as a member of the East African Community. A paralegal can use this case **to support litigation in Uganda against requirements for journalists to reveal their sources or against certain restrictions on content.**

MSETO AND ANOR V. ATTORNEY GENERAL OF TANZANIA, EAST AFRICAN COURT OF JUSTICE<sup>72</sup>

#### OVERVIEW:

Mseto, a weekly Tanzanian newspaper, was suspended for a period of three years because it published an article alleging that an Assistant Minister in President John Magufuli's government had taken bribes to raise funds for Magufuli's presidential campaign. The Minister of Information, Youth, Culture and Sports (Minister) issued the order suspending the newspaper pursuant to Section 25(I) of the Newspaper Act 1979, which allowed the Minister to direct a newspaper to cease publication if the Minister believes that it is in the public interest or in the interest of peace and good order to do so.

#### COURT JUDGEMENT:

The East African Court of Justice found the Minister's order to violate the Treaty for the Establishment of the East African Community because it impermissibly restricted the right to the freedom of expression and freedom of press. The Court explained that the Minister had acted unreasonably, unlawfully, and disproportionately when banning the newspaper from publication without explicitly providing reasons for the suspension, and not providing Mseto a reason to respond to allegations before suspending the newspaper.

#### IMPLICATION OF THE DECISION:

The state cannot ban a newspaper without providing a clear explanation that is grounded in the law and providing an opportunity for the newspaper to respond to allegations that are the basis of the suspension.

### HOW CAN PARALEGALS USE THIS CASE?

As noted above, Uganda must abide by East African Court of Justice decisions as a member of the East African Community. A paralegal can use this case **to support litigation in Uganda against arbitrary suspensions on media houses.**

72. Mseto and anor v Attorney General of Tanzania Reference No.7 of 2016.

GREENWATCH (U) LIMITED V ATTORNEY GENERAL AND UGANDA  
ELECTRICITY TRANSMISSION COMPANY LIMITED HCT-00-CV-  
MC-0139 OF 2001.

**BACKGROUND:**

Greenwatch Limited, an environmental advocacy NGO, requested a copy of an agreement executed by AES Niles Power Limited and Uganda Electricity Board establishing a commercial monopoly over the sale of electricity in Uganda (the “Power Purchase Agreement”) from the Government of Uganda. The government denied the applicant’s request for information noting that the document contained confidential information such as technical and commercial secrets. Greenwatch sought Court intervention pursuant to Article 41 of the Constitution protecting the right to access information.

**COURT JUDGEMENT:**

The Court found that Greenwatch was not entitled to exercise the right to access information under Article 41 of the Constitution because there was no evidence showing that Greenwatch’s members were Ugandan citizens, and the Constitution limits the right to access to information to “citizens.” The Court noted that the term “citizens” includes both natural and legal persons.

The Court also concluded that the Uganda Electricity Transmission Company is a government agency subject to access to information obligations under Article 41 of the Constitution. It explained that the company is an agent of the government in its function to ensure that power was available to the people of Uganda. Consequently, power agreements to which it is a party are public documents that must be accessible to the public in accordance with the procedures for accessing information.

**IMPLICATION OF THE CASE:**

The case has two very key implications. First, private companies can be subject to access to information obligations if they are acting as a government agent. Secondly, only Ugandan citizens, natural or legal, can access information under Article 41 of the Constitution.

**HOW A PARALEGAL CAN USE THIS CASE:**

**Where a state actor refuses to provide access to information on the basis that the information seeker is not a natural person,** a paralegal can point to

this case to show that the courts have affirmed that organizations comprised of Ugandan citizens may exercise the right to access information under Article 41 of the Constitution.

**Where a private party implementing a government role refuses to provide information**, a paralegal can also point to this case to show that the courts have affirmed that private actors contracted to provide public services are subject to access to information obligations under Article 41 of the Constitution.

## CASES THAT NEGATIVELY IMPACT THE RIGHT TO FREEDOM OF EXPRESSION

The *Bobi Wine* case covered in more detail in the freedom of peaceful assembly section is also relevant to the freedom of expression. To clients concerned about restrictions on expression due to prohibition of an assembly, a paralegal can point to the case to show that a Court may not view the cancellation of an assembly as sufficient evidence of a violation of the right to expression.

### CHARLES MWANGUHYA MPAGI AND IZAMA ANGELO V ATTORNEY GENERAL MISC. CAUSE 751 OF 2009.

#### BACKGROUND:

The applicants requested certified copies of agreements pertaining to oil prospecting and exploitation from the Attorney General and the Permanent Secretary of the Ministry of Energy and Mineral Resources. The information officer (i.e., person holding the requested information) informed the applicants that they needed more time to consult with other government agencies and stakeholders considering the confidentiality clauses. The applicants sought a court order under Article 41 of the Constitution and other sections under the Access to Information Act to require disclosure of the agreements on the grounds that the public interest in disclosure of the agreements outweighed third party harms.

#### COURT JUDGEMENT:

The Court held that the applicants failed to show that the public benefit of disclosure of the requested information outweighed the harm to third parties. The Court also explained that the applicants did not demonstrate that access to information was in the public interest because the applicants did not state how they would use the requested information to make the government more transparent, accountable, and efficient in the management of the resources. Finally, the Court stated that the government must hold certain information secret to ensure the proper functioning of public services.

**IMPLICATION OF THE CASE:**

While the case is not binding because it was issued by a lower court, it establishes a persuasive standard for a higher bar to successfully access information. When seeking access to information held by the government or government actors, an information seeker may need to explicitly state how the information sought would enhance transparency, accountability, and efficiency of the government.

**HOW A PARALEGAL CAN USE THIS CASE:**

A local expert notes that organizations seeking information from state actors on oil and gas resource management have had little success in accessing their requested documents. A paralegal can advise those seeking information on government management of resources that they may need to seek a court order to access the information, and that a court may look for the information seeker to have explicitly stated how the information sought would enhance transparency, accountability, and efficiency of the government.



# THE RIGHT TO PUBLIC PARTICIPATION

## WHAT IS THE DEFINITION OF THE RIGHT TO PUBLIC PARTICIPATION?

The right to public participation refers to the ability of all persons to take part in “public affairs,” which includes all aspects of public administration and policy formulation and implementation.

## WHAT IS THE IMPORTANCE OF THE RIGHT TO PUBLIC PARTICIPATION?

The right to public participation supports the promotion of democracy, rule of law, social inclusion, and economic development. It empowers individuals and groups to input on law and policymaking processes, making decisions more informed and sustainable, and rendering public institutions more effective, accountable, and transparent.

## WHAT INTERNATIONAL LAWS AND BEST PRACTICES GOVERN THE RIGHT TO PUBLIC PARTICIPATION?

International and regional legal standards can serve as persuasive resources for paralegals who are responding to rights violations at the domestic level. Paralegals can cite these resources to show how Uganda can comply with its international and regional obligations to protect the right to public participation, illustrate best practices for protecting the right to public participation, or demonstrate how Uganda’s global and regional peers are protecting the right.

### INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS GOVERNING THE RIGHT TO PUBLIC PARTICIPATION

Several international and regional legal frameworks explicitly **protect the right of all individuals to participate in public affairs**. Paralegals can state this concept citing the following resources:

- Universal Declaration of Human Rights<sup>73</sup>, Article 21
- International Covenant on Civil and Political Rights<sup>74</sup>, Article 25
- Convention on the Elimination of all forms of Discrimination Against Women<sup>75</sup>, Articles 3 and 7

73. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

74. [https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_04.pdf](https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf)

75. <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

- International Convention on the Elimination of all forms of Racial Discrimination<sup>76</sup>, Article 5(c)
- Convention on the Rights of Persons with Disabilities<sup>77</sup>, Article 29
- United Nations Declaration on the Right to Development<sup>78</sup>, Articles 1(I), 2(3), and 8(2)
- United Nations Declaration on Human Rights Defenders<sup>79</sup>, Article 8(I)
- United Nations Declaration on the Rights of Indigenous Peoples<sup>80</sup>, Articles 5, 18, 19, 27, and 41.
- United Nations Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service<sup>81</sup>
- United Nations Human Rights Committee, Guidelines for States on the effective implementation of the right to participate in public affairs<sup>82</sup>
- African Charter on Human and Peoples' Rights<sup>83</sup>, Article 13(I)

Other international and regional legal frameworks implicitly protect the right to public participation by stating that **all persons must enjoy fundamental rights without discrimination based on characteristics such as race, sex, or disability, among others, or that states must protect fundamental freedoms while engaging in other duties such as combating terrorism.** Paralegals can state this concept while citing the following resources:

- International Convention on the Elimination of All Forms of Racial Discrimination<sup>84</sup>, Article 5
- Convention on the Elimination of All Forms of Discrimination against Women<sup>85</sup>, Article 3
- African Commission on Human and Peoples' Rights' Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa<sup>86</sup>, Part I(I) and (M)

76. [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-2&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=en)

77. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

78. <https://www.un.org/en/events/righttodevelopment/declaration.shtml>

79. <https://srdefenders.org/who-is-an-hrd/the-declaration-on-human-rights-defenders/>

80. [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

81. <https://www.osce.org/files/f/documents/4/a/19154.pdf>

82. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/230/45/PDF/G1823045.pdf?OpenElement>

83. <https://www.achpr.org/legalinstruments/detail?id=49#:~:text=Every%20citizen%20shall%20have%20the.public%20service%20of%20the%20country>

84. <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

85. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3>

86. <https://www.achpr.org/presspublic/publication?id=21>

## KEY PRINCIPLES THAT THE STATE MUST FOLLOW TO PROTECT THE RIGHT TO PUBLIC PARTICIPATION<sup>87</sup>

**Enabling legal and policy environment:** States should adopt a constitutional and legal framework to give effect to the right to participate in public affairs. This includes providing effective remedies for violations of rights. States must also create and maintain an environment where all human rights, particularly the rights to equality and non-discrimination, freedom of opinion and expression, and freedom of peaceful assembly and of association, are fully respected and enjoyed by all individuals.

**Permanent consultative structures:** States should develop permanent institutions to facilitate participation in decision-making of public authorities. Such institutions should be designed through a participatory process, be accessible to all stakeholders, and have access to financial and administrative support. Examples of such institutions include coordinating bodies for participation in the government, participation coordinators or facilitators in ministries, joint councils with public institutions and civil society, committees or working groups, and framework agreements between public authorities and civil society actors to support participation.

**Participation at all stages of decision-making:** States should facilitate public participation opportunities before, during, and after decision-making processes:

- Before the decision-making, the state should give the public opportunity to shape the agenda of the decision-making processes, notify stakeholders who may be affected by the decisions, and proactively disseminate information about the decision-making.
- During the decision-making, states must give the public the opportunity to participate from an early stage of the process, provide updated documents relating to the decision and meaningful time to contribute, grant the public opportunity to submit any relevant information to decision-makers, educate public officials on proper conduct of the participatory process, and share the range of options to be discussed and decided.
- After the decision-making, states must disseminate the outcomes of the process, provide explanations for how it considered public contributions in its decision, including why it included or excluded certain input, offer review mechanisms and access to redress for complaints about the participation process, publicize information about the implementation, and work with civil society to implement the decision.

87. These principles are adopted from the European Center of Not-for-Profit Law's *Summary of Guidelines for States on the effective implementation of the Right to Participate in Public Affairs*, available at <https://www.icnl.org/post/tools/ecnl-briefer-on-the-un-guidelines-on-the-right-to-participate-in-public-affairs>.



## NATIONAL LAWS AND POLICIES THAT GOVERN THE RIGHT TO PUBLIC PARTICIPATION

Uganda does not have a law that directly governs the right to public participation.

### THE CONSTITUTION OF THE REPUBLIC OF UGANDA (1995)

#### OVERVIEW:

The Constitution articulates national principles and fundamental rights and establishes key institutions and processes in Uganda.

#### KEY PROTECTIONS OF THE RIGHT TO PUBLIC PARTICIPATION:

Article 38 provides the right of every Ugandan citizen to participate in the affairs of the government, individually or through representatives. Every Ugandan also has the right to participate in peaceful activities to influence the policies of the government through civic organizations.

Article 17 also provides the duties of a citizen, which includes combatting corruption and misuse or waste of public property. This provision could be interpreted to imply that it is the right of the citizen to participate in public affairs to address these issues. Similarly, National Objective XXIX under the Constitution states that it is the duty of a citizen to contribute to national development and the well-being of the community, and to promote democracy and the rule of law. These duties could also be interpreted to imply that citizens have the right and duty to participate in public affairs for these aims.

#### RESTRICTIONS ON THE RIGHT TO PUBLIC PARTICIPATION UNDER THE CONSTITUTION THAT THE STATE USES MOST OFTEN:

There are no explicit limitations on the right to public participation under the Constitution.

#### WHAT CAN PARALEGALS DO TO RESPOND TO RESTRICTIONS USING THIS ACT?

Since the state does not generally use laws to limit public participation, a paralegal can assist advocates to push the state to integrate positive public participation opportunities into its decision-making processes. A paralegal can point to the international and regional principles noted above as guidance to facilitate a meaningful public participation regime in Uganda.

## WHAT CASES PERTAIN TO THE RIGHT TO PUBLIC PARTICIPATION?

According to a local expert, there have been no prominent cases on the right to public participation in Uganda. However, because the rights to freedom of association, peaceful assembly, and expression help build an enabling environment for public participation, cases on these rights are relevant to public participation. Please reference the cases cited in the respective chapters on association, peaceful assembly, and expression.



# PROMOTING AN ENABLING ENVIRONMENT FOR CIVIL SOCIETY IN THE DIGITAL CONTEXT

In recent years, Ugandans have begun integrating digital technology and the internet into their daily lives. As of January 2022, there were 13.92 million internet users out of the 47.77 million population, while the internet penetration rate was 29.1 percent of the total population. Internet users in Uganda have increased by an estimated 15.1% between 2021 and 2022. Additionally, the number of social media users was equivalent to 5.9 percent of the total population. There were also 27.67 million cellular mobile connections in Uganda. Use of digital technology and the internet have steadily increased since the mid-2000s.<sup>88</sup>

Despite the growth in digital technology and internet usage, Ugandans face a difficult environment for fully exercising their rights online. Uganda's relatively low internet penetration rate combined with the high cost of mobile data have made the internet less accessible and affordable for the average Ugandan. Beyond issues stemming from limited infrastructure, the state has also implemented laws and policies that interfere with Ugandans' access and use of digital technologies and the internet. The government's imposition of a 12% tax on data in 2021, which replaced a previous tax on "over the top" (OTT) services from 2018, exacerbates internet affordability issues. The state has also ordered internet blockages or shutdowns during electoral periods which disrupted Ugandans' ability to share information and mobilize during elections. The state has also blocked some communication platforms and Virtual Private Networks (VPNs), citing enforcement of the OTT tax. Further, the state uses laws like the Computer Misuse Act, which criminalize the act of "cyber harassment" to penalize individuals who voice dissent online; a local expert notes that individuals are more likely to self-censor to minimize the risk of state retaliation for voicing dissent online.

These barriers to use of digital technologies and the internet interfere with Ugandan civil society's ability to freely and fully exercise their rights. This chapter aims to help paralegals protect and promote the full enjoyment of fundamental freedoms in the digital context by covering best practices on protecting and promoting rights in the digital context, which paralegals can cite when advocating for better laws and policies in the Ugandan context, and explaining challenges to the enjoyment of rights in the digital context in Uganda, which will help paralegals identify opportunities for advocacy.

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88. All statistics in this paragraph were found on Datareportal's "Digital in Uganda: Digital 2022: Uganda" page, available at <https://datareportal.com/reports/digital-2022-uganda>.

## INTERNATIONAL LAWS AND BEST PRACTICES GOVERNING THE RIGHTS TO FREEDOM OF ASSOCIATION, PEACEFUL ASSEMBLY, EXPRESSION, AND PUBLIC PARTICIPATION IN THE DIGITAL CONTEXT

A paralegal can cite to international and regional resources to advocate for Uganda to uphold its international obligations to protect and promote fundamental rights when regulating digital technology and the internet. As noted throughout this Handbook, international and regional resources may serve as binding or persuasive guidance for Uganda's laws and policies, as well as actions by the state. A paralegal can assist CSOs and other advocates to use these resources to frame their engagement with state actors and other stakeholders on civic space issues.

UNITED NATIONS HUMAN RIGHTS COUNCIL'S RESOLUTION ON THE PROMOTION, PROTECTION, AND ENJOYMENT OF HUMAN RIGHTS ON THE INTERNET, A/HRC/32/L/20 (JUNE 2016).

This Resolution affirms that the same rights that people have offline must also be protected online. The Resolution specifically highlights the importance of protecting the right to the freedom of expression online, which is increasing in importance due to the development of information and communication technologies, and the right to privacy, which can enable the free exercise of other rights online. Notably, the Resolution condemns measures that intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all States to cease such measures.

UNITED NATIONS HUMAN RIGHTS COUNCIL'S RESOLUTION ON THE PROMOTION, PROTECTION, AND ENJOYMENT OF HUMAN RIGHTS ON THE INTERNET, A/HRC/RES/38/37 (JULY 2018).

The Resolution reaffirms the position from its 2016 Resolution (above) that the same rights that people have offline must also be protected online. Notably, it also calls on states to address security concerns to ensure the full exercise of the rights to freedom of expression and association online and to maintain a safe and enabling environment for journalists. It also condemns measures that prevent or disrupt the right to freedom of expression, including the right to seek, receive, or impart information online.

### UNITED NATIONAL GENERAL ASSEMBLY'S RESOLUTION ON INFORMATION AND COMMUNICATION TECHNOLOGIES FOR SUSTAINABLE DEVELOPMENT, A/RES/73/218 (DECEMBER 2018)

This Resolution affirms the role that information and communication technologies have in providing solutions to development challenges. It also highlights key areas of concern, including the divide in access to information and communication technologies.

### AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS' RESOLUTION ON THE RIGHT TO FREEDOM OF INFORMATION AND EXPRESSION ON THE INTERNET IN AFRICA, ACHPR/RES.362(LIX) 2016 (NOVEMBER 2016)

Among other points, the Commission calls on States Parties to respect and take legislative and other measures to guarantee, respect and protect the right to freedom of information and expression through access to internet services.

## CHALLENGES TO THE ENJOYMENT OF RIGHTS ONLINE IN UGANDA

Ugandans face several barriers to the free and full realization of their rights online.

### **INTERNET SHUTDOWNS AND SOCIAL MEDIA BLOCKAGES**

The state has used internet shutdowns and social media blockages during periods of high social tension, citing the need to take these measures to further national security. Most recently, the state imposed an internet shutdown and restricted access to social media platforms during the 2021 general elections. These measures restricted civil society's ability to monitor and share information about the elections, and also inhibited civil society's ability to mobilize to respond to the measures.

### **LACK OF TRANSPARENCY AND PUBLIC PARTICIPATION IN DECISION-MAKING PROCESSES ON DIGITAL TECHNOLOGIES AND THE INTERNET**

As discussed in the chapter on the right to public participation, Uganda does not have institutions in place to ensure meaningful public participation in law and policymaking processes. The lack of public participation mechanisms makes it more difficult for civil society to share concerns about laws that may restrict their rights online. For example, the lack of opportunities for civil society organizations and the media to participate in the crafting and implementation of the Uganda Communications Commission policy directive on compulsory registration and authorization of news websites and online broadcasters lead to a directive that severely restricts the right to the freedoms of expression and press.

### TAXES ON INTERNET SERVICES

The state has levied taxes on internet usage which have impacted internet affordability. These taxes effectively prevent many people from using the internet to seek, receive, and impart information, thus restricting their right to freedom of expression. For example, in 2018, the Parliament passed the Excise Duty Act, which introduced an excise tax for “over the top” (OTT) services such as WhatsApp, Facebook, and Twitter. Three months after the introduction of the tax, the number of internet users declined by 5 million, cutting the internet penetration rate from 47% to 35% of the total population.<sup>89</sup> In 2021, the state introduced a 12% tax on internet data to replace the OTT tax. Uganda’s data costs are higher than the African average, with 1 GB of data costing approximately 8.07% of an ‘average Ugandan’s monthly income compared to Sub-Saharan Africa’s average of 3.1%.<sup>90</sup> A 2018 nation-wide survey by the National Information Technology Authority of Uganda revealed that 76.6% of respondents cited high costs as the central reason for their limited use of the internet.

### RESTRICTIONS ON THE FREEDOM OF EXPRESSION THROUGH USE OF ONLINE SECURITY LAWS

As noted above, the state has used provisions under security laws such as the Computer Misuse Act to restrict the exercise of the right to the freedom of expression of civil society. For example, Dr. Stella Nyanzi, a Makerere University research fellow and activist, was charged with cyber harassment and offensive communication under the Computer Misuse Act when she allegedly insulted President Museveni.

### THE UGANDA COMMUNICATIONS COMMISSION'S BROAD POWERS TO REGULATE ONLINE CONTENT

The Uganda Communications Commission (UCC) has broad powers to issue regulations, directives, and other guidance that to restrict speech online. For example, a 2018 UCC Directive required all online data communication service providers including online publishers and news platforms to apply for authorization from the UCC within one month or risk having their websites or streams be blocked by internet service providers. The UCC issued a similar directive in 2020 requiring online publishers and broadcasters to apply for licenses before operating. In 2019, the UCC ordered television stations and radio stations to suspend 399 producers, heads of programming, and heads of news on the basis that programs produced allegedly did not meet broadcasting standards. The UCC’s sweeping powers to suspend online content and online content creators has stifled expression online.

89. CIPESA, *Digital Rights in Africa: Challenges and Policy Options* (March 2019), available at [https://cipesa.org/?wpfb\\_dl=287](https://cipesa.org/?wpfb_dl=287).

90. CIPESA, “Uganda Abandons Social Media Tax but Slaps New Levy on Internet Data” (July 1, 2021), available at <https://cipesa.org/2021/07/uganda-abandons-social-media-tax-but-slaps-new-levy-on-internet-data/>.

# KEY STATE ACTORS THAT REGULATE OR OVERSEE RIGHTS IMPACTING CIVIC SPACE

This chapter describes institutions that affect the enjoyment of the rights to the freedoms of association, peaceful assembly, expression and participation in Uganda. A paralegal can use this chapter to understand which state actors one must engage to advocate for the full realization of these rights.

## UGANDA COMMUNICATIONS COMMISSION

### OVERVIEW:

The Uganda Communications Commission, a statutory body, was established under the provisions of the UCC Act with a core mandate of regulation of the communications sector, which includes telecommunications, broadcasting, radio communication, postal communications, data communication and communications infrastructure. The UCC works closely with the police, Ministry of Justice and Constitutional Affairs, broadcasters, journalists, among other actors, to achieve its mandate. The UCC's work affects the freedom of expression on all communication mediums, particularly as it is responsible for licensing and setting standards of broadcasting.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

A local expert notes that the UCC deals largely with media houses, so it is unlikely that a paralegal or other advocates would have many opportunities to engage with the institution. Processes are under way to establish the Uganda Communications Tribunal to adjudicate disputes relating to telecommunications; if and when established, CSOs and paralegals may engage with the tribunal to advocate for UCC decisions that better protect an enabling environment for civil society.

## UGANDA MEDIA COUNCIL

### OVERVIEW:

The Media Council, a statutory body, was established under Section 8(1) of the Press and Journalist Act. The Media Council is mandated to regulate the media, including through arbitrating disputes between the state and media, exercising disciplinary control over journalists, editors, and publishers, promoting the flow of information, and censoring media, among other functions. The Media Council works closely with the police, Ministry of Justice and Constitutional Affairs, broadcasters, journalists, and other actors to achieve its mandate.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

In addition to supporting journalists and media houses to navigate disputes and disciplinary action before the Media Council, a paralegal can assist a journalist or editor to apply for accreditation with the Media Council as required by Section 5 (for editors) and Section 26 (for journalists) of the Press and Journalists Act. The relevant forms are accessible on the Media Council's website.

#### UGANDA POLICE FORCE, MEDIA CRIMES UNIT/CYBER CRIMES UNIT

##### OVERVIEW:

The Media Crimes Unit is mandated to investigate all cyber-related crime in Uganda, including those that may restrict the right to the freedom of expression, as discussed earlier. The unit works engages often with broadcasters and individual journalists to achieve its mandate.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

A local expert notes that it is unlikely that a paralegal would directly engage with the Media Crimes Unit. A paralegal can help a journalist who has been charged with a cybercrime by the Media Crimes Unit to gather the requisite paperwork to be released from jail on bond.

#### UGANDA PEOPLES' DEFENCE FORCES (UPDF)

##### OVERVIEW:

The UPDF, a constitutional entity, was established in accordance with Articles 208 and 209 of the 1995 Constitution of Uganda with a core mandate of defending and protecting the sovereignty and territorial integrity of Uganda, ensuring non-violability of peoples and individual rights, the rule of law and good governance, and cooperating with civilian authorities in emergence situations and in cases of natural disasters. The UPDF works closely with the Uganda Human Rights Commission, the Police, and the CSOs.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

CSOs and paralegals who undertake monitoring, documentation, and reporting on restrictions on the right to freedom of peaceful assembly may track the UPDF's role in overseeing assemblies alongside the police. Note also that the Military Court Martial has in the past tried persons engaged in assemblies based on violations of the UPDF Act.



A paralegal can advise a CSO or person who has experienced a possible human rights violation by the UPDF to contact the UPDF's Human Rights Directorate, which is mandated to oversee human rights issues involving the UPDF and civilians. Individuals may bring complaints in-person at the Directorate's offices at the Mbuya Military barracks. Alternatively, a paralegal could guide a CSO or person to bring grievances through an appointment with the Director of Legal Services of the UPDF, who is mandated to handle legal issues arising from UPDF interactions with civilians.

## UGANDA HUMAN RIGHTS COMMISSION (UHRC)

### OVERVIEW:

The Uganda Human Rights Commission, a constitutional body, was established under Article 51 the 1995 Constitution of the Republic of Uganda. The Uganda Human Rights Acts (1997) lays out the specific operational details of the institution. The UHRC is mandated to promote and protect human rights in the country, recognizing Uganda's history of arbitrary arrests, detention without trial, torture and brutal repression with impunity on the part of security organs during the pre- and post-independence era.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

A paralegal may support a CSO or other individual who experiences a human rights violation to bring a complaint before the UHRC. The next chapter on international and national mechanisms provides a detailed description of how an individual may submit a complaint to the UHRC. Upon receiving a complaint, the UHRC may further investigate the issue.

## UGANDA EQUAL OPPORTUNITIES COMMISSION (EOC)

### OVERVIEW:

The Equal Opportunities Commission is a statutory body established by the Equal Opportunities Commission Act to implement Article 32(3) and Article 32 (4) of the Constitution of Uganda calling for the establishment of such a body. The Equal Opportunities Commission has two main mandates: (1) to eliminate discrimination and inequalities against any individual or group of persons based on characteristics such as sex, age, race, color, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, or political opinion or disability, and (2) to take affirmative action in favor of groups marginalized on the basis of such characteristics to redress imbalances. The EOC works closely with the Parliament,

the Ministry of Justice and Constitutional Affairs, the Justice, Law and Order Sector (JLOS) Secretariat, the UHRC, and civil society to achieve its mandate. Within six months of receiving a complaint, the EOC may investigate the matter and dismiss the matter if it does not find evidence to support the complaint. Alternatively, the EOC may order a conciliation (i.e., an informal process for the complainant and respondent to try to arrive at a resolution), or other legal remedies as it deems appropriate. Any party or authority may appeal the settlement, recommendation or order under the EOC to the High Court within thirty days of the decision or when the EOC communicates the decision to the party.

### **HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?**

In the context of civic space restrictions, where a CSO or individual experiences discrimination in the realization of the rights to freedom of association, peaceful assembly, expression, and the right to participation, a paralegal can guide the party to lodge a complaint before the EOC, as provided for under Section 23 of the Equal Opportunities Commission Act. The EOC's website provides a detailed overview of the complaints process, including the requisite complaints form.<sup>91</sup> A paralegal can help a complainant gather or articulate the following information to complete the form: (1) explanation of specific complaint relating to discrimination, marginalization or any act which undermines or impairs equal opportunities; (2) list of possible witnesses whom the EOC may contact for additional information to support or clarify the complaint; (3) any relevant documents to the complaint; (4) remedies sought from the EOC.

## **FINANCE INTELLIGENCE AUTHORITY (FIA)**

### **OVERVIEW:**

The FIA is a government agency established by the Parliament of Uganda under the Anti-Money Laundering Act-2013. Its core mandate is to monitor, investigate, and prevent money laundering in the country. It is also responsible for the enforcement of Uganda's anti-money laundering laws and the monitoring of all financial transactions inside the country's borders. The FIA works with several government institutions to implement its mandate, including the NGO Bureau, Uganda Police Force, Parliament of Uganda, Ministry of Finance, Uganda Revenue Authority, and Bank of Uganda.

<sup>91</sup> Available at <https://eoc.go.ug/complaints/the-complaints-process/>.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

As noted in the chapter on the freedom of association, anti-money laundering and counter-terrorist financing laws may affect CSOs and their access to funding because the state may suspend CSO operations or freeze their bank accounts on the grounds of non-compliance with these laws. A paralegal can help CSOs comply with reporting requirements to the FIA by creating and sharing a checklist of relevant reporting requirements under the Anti-Terrorism Act and Anti-Money Laundering Act, both of which obligate CSOs to report certain information about their financial health and practices to the FIA.

#### THE UGANDA REGISTRATION SERVICES BUREAU (URSB)

##### OVERVIEW:

The URSB is an autonomous, statutory body established by the Uganda Registration Services Bureau Act (1998). The URSB is mandated to provide registration services required under several laws and collect and account for revenue associated with those laws, and to advise the government on registration services matters.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

Paralegals can assist CSOs (specifically, foundations) that seek to register as companies limited by guarantee to submit a registration application with the URSB. The URSB's website links to relevant forms, such as the registration form for a company<sup>92</sup>; the URSB also provides certain e-services, including business or company registration.<sup>93</sup>

#### THE UGANDA LAW REFORM COMMISSION

##### OVERVIEW:

The Uganda Law Reform Commission is established by Article 248 of the Constitution. The specific Uganda Law Reform Commission Act provides the specific operational details of the Commission. The Commission's core mandate is to study and review the Uganda's laws to make recommendations for their systematic improvement, development, modernization, and reform. The Commission works closely with the Attorney General, the Department of First Parliamentary Counsel in the Ministry of Justice and Constitutional Affairs, and the Justice Law and Order Sector (JLOS) Secretariat to achieve its mandate. The Commission may receive and consider proposals for legal reforms.

92. <https://ursb.go.ug/forms>.

93. <https://ursb.go.ug/business-registration>.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

Paralegals can support CSOs and other advocates to submit a letter to the Chairperson of the ULR ([ulrc@ulrc.go.ug](mailto:ulrc@ulrc.go.ug)) identifying the need and proposals for reform to a specific law.

A paralegal may also support CSOs and other advocates to join the Commission's public consultations on laws requiring reform or submit a position paper in response to the Commission's call for public input on legal reform. A paralegal can monitor the Commission's website and Facebook page for opportunities to respond to calls for public input.

## THE NATIONAL BUREAU OF NGOS

### OVERVIEW:

The current NGO Bureau was created under the NGO Act (2016). The Bureau is mandated to provide oversight of the NGO sector in Uganda. It further registers, regulates, monitors, inspects, coordinates and oversees all NGO operations in the country.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

A paralegal may assist an NGO to comply with annual reporting requirements to the NGO Bureau by creating and sharing a checklist with key reporting obligations. These include submitting on an annual basis: (1) a copy of audited books of accounts, (2) a copy of the annual report, (3) minutes of a general assembly or governing body of the organization, (4) proof of payment of prescribed fees.

## THE 1<sup>ST</sup> PARLIAMENTARY COUNCIL (PC)

### OVERVIEW:

The PC is the principal body responsible for translating government policies, ideas, and aspirations into law. The PC works closely with the Executive arm of Government, Parliament, political parties, CSOs, and other state entities such as the Ministry of Justice and Constitutional Affairs to achieve its mandate.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

A paralegal can support CSOs and other advocates to prepare a dossier to articulate their concerns about any law undergoing PC scrutiny. Individuals and coalitions may physically deliver such a dossier to the PC offices within the Parliament building. Historically, where the PC requires more details on the information in the dossier,

it will contact the submitter of the dossier. The PC generally prefers input endorsed by organizations working as a network or coalition; thus, a paralegal can advise advocates preparing a dossier to build sector support for input provided to the PC.

## THE HUMAN RIGHTS COMMITTEE OF PARLIAMENT

### OVERVIEW:

This is a standing committee of the Parliament whose members change every two and half years. The committee is comprised of about 30 members selected by party whips. The human rights committee is mandated to provide specific oversight on human rights promotion and protection in the country.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

A paralegal may advise CSOs or other advocates to submit a letter to the Chairperson of the committee to request the committee's attention to a specific human rights situation. The letter should provide key facts, including location, victims, and specific alleged human rights violations. The letter should also include contact information of the submitter. A local expert notes that the best way to contact the committee is to physically deliver the letter to the committee clerk at the parliament offices.

## THE JUDICIARY

### OVERVIEW:

Article 126 (1) of the Constitution of the Republic of Uganda mandates the Judiciary to exercise judicial power in conformity with the law and with the values, norms and aspirations of the people.

### HOW CAN A PARALEGAL RELATE WITH AND USE THIS INSTITUTION?

As noted throughout this Handbook, the Courts play a key role to define the realization of fundamental rights. While a paralegal cannot bring a case before a Court, a paralegal can advise CSOs and advocates on when litigation may be an option to seek redress for a restriction on a right. This Handbook notes these opportunities throughout each chapter, and also shares relevant cases for each right which a paralegal may share with clients and advocacy partners.

# MECHANISMS THAT PARALEGALS CAN USE TO RESPOND TO RESTRICTIONS ON CIVIL SOCIETY ORGANIZATIONS AND AN ENABLING ENVIRONMENT

This chapter provides an overview of the international and national mechanisms available to CSOs and other advocates to respond to restrictions on their rights.

## INTERNATIONAL MECHANISMS

### UNITED NATIONS HUMAN RIGHTS COMMITTEE

#### **INSTITUTIONAL PURPOSE:**

The Committee is a body of independent experts tasked with monitoring implementation of the International Covenant on Civil and Political Rights (ICCPR) by state parties to the treaty. The Committee examines state party reports on implementation of the treaty, considers inter-state complaints, examines individual complaints on violations to the treaty, and publishes interpretations (“general comments”) on human rights provisions of the treaty.

#### **HOW A PARALEGAL CAN USE THIS MECHANISM:**

Because Uganda is a party to the ICCPR and the Optional Protocol granting the Committee power to hear individual complaints, a paralegal can advise a CSO or individual to bring an individual complaint before the Human Rights Committee. It is important to note that the Committee typically requires complainants to have already exhausted domestic remedies before bringing a claim before it. The United Nations Office of the High Commissioner of Human Rights (OHCHR) has created a detailed guide to bringing complaints before international human rights treaties titled “Fact Sheet No. 7/Rev. 1, Complaints Procedures,” available in hardcopy by request and online.<sup>94</sup>

### UNITED NATIONS HUMAN RIGHTS COUNCIL

#### **INSTITUTIONAL PURPOSE:**

The Human Rights Council is an inter-governmental body made up of 47 States responsible for the promotion and protection of human rights globally. The Council discusses thematic human rights issues and addresses human rights situations that require its attention throughout the year.

94. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet7Rev.1en.pdf>

**HOW A PARALEGAL CAN USE THIS MECHANISM:**

A paralegal can advise CSOs and other advocates to submit a complaint about a state's violation of human rights and fundamental freedoms to the Council. The complainant must exhaust all domestic remedies before bringing a complaint before the Council. The OHCHR provides an overview of the requirements for the complaint procedure on its website.<sup>95</sup>

The Human Rights Council also oversees the “Universal Period Review (UPR),” a period review of the human rights records of all United Nations Member States. A paralegal can advise CSOs and other advocates to participate in the UPR process for Uganda. Civil society, national human rights institutions, and regional mechanisms may submit written information for the report that summarizes information submitted by other stakeholders. Paralegals can advise CSOs and other advocates in Uganda to monitor Uganda's UPR cycle for opportunities to input on the review.<sup>96</sup>

### UNITED NATIONS SPECIAL RAPPORTEUR ON FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

**INSTITUTIONAL PURPOSE:**

The Special Rapporteur is mandated to protect and promote freedom of peaceful assembly and of association, offline and online, in light of international human rights law and standards. The Special Rapporteur issues annual thematic reports, engages in country visits, issues communications on issues relevant to the freedoms of peaceful assembly and association, and shares comments on legislation and policy.

**HOW A PARALEGAL CAN USE THIS MECHANISM:**

A paralegal can advise CSOs and advocates to look out for calls from the Special Rapporteur or partner CSOs for input and engagement on annual thematic reports or Uganda country visits.

### UNITED NATIONS SPECIAL RAPPORTEUR FOR FREEDOM OF OPINION AND EXPRESSION

**INSTITUTIONAL PURPOSE:**

The Special Rapporteur is mandated to protect and promote freedom of opinion and expression, offline and online, in light of international human rights law and standards. The Special Rapporteur issues annual thematic reports, engages in country visits, issues communications on issues relevant to the freedom of opinion and expression, and shares comments on legislation and policy.

95. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet7Rev.1en.pdf>

96. <https://www.ohchr.org/en/hr-bodies/upr/ug-index>.



**HOW A PARALEGAL CAN USE THIS MECHANISM:**

A paralegal can advise CSOs and advocates to look out for calls from the Special Rapporteur or partner CSOs for input and engagement on annual thematic reports or Uganda country visits.

**AFRICAN REGIONAL MECHANISMS****THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS****INSTITUTIONAL PURPOSE:**

Located in Arusha, Tanzania, the Court was established to reinforce the functions of the African Commission on Human and Peoples' Rights. The Court has jurisdiction to hear cases and disputes regarding the interpretation and application of the African Charter on Human and Peoples' Rights, the related Protocol, and any other relevant human rights instrument ratified by the States involved in a matter. The Court may also provide an opinion on any legal matter under the Charter or other relevant human rights instruments, provided that the subject matter of the opinion is not being examined by the Commission. The Court's jurisdiction applies only to states that have ratified the Court's Protocol, which includes Uganda.

**HOW A PARALEGAL CAN USE THIS MECHANISM:**

The Court will only receive cases filed by the African Commission on Human and Peoples' Rights, state parties to the Protocol or African intergovernmental organizations, and CSOs<sup>97</sup> with observer status before the African Commission and individuals so long as the state against which the application is brought has deposited a declaration recognizing the jurisdiction of the Court to accept cases from CSOs and individuals.

In that vein, a paralegal may advise a CSO to apply for observer status with the African Commission on Human and Peoples' Rights, which would allow the CSO to directly access the African Court on Human and Peoples' Rights, as long as Uganda recognizes the Court's jurisdiction over cases brought by CSOs and individuals. Uganda has not submitted a declaration recognizing the right of CSOs with observer status to submit cases before the Court.<sup>98</sup> Kindly see the next sub-section for a more detailed summary of the process to obtain observer status before the Commission.

97. The Court refers to "NGOs" but uses the term NGO to mean civil society organizations broadly, which is a wider scope than the definition of an NGO in Uganda.

98. The Court keeps a list of such declarations on its website, available at <https://www.african-court.org/wpafc/declarations/>.



## THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR)

### **INSTITUTIONAL PURPOSE:**

Located in The Gambia, the Commission protects and promotes human and peoples' rights and interprets the African Charter on Human and Peoples' Rights. The Commission does this through its communication procedure, the friendly settlement of disputes, review and consideration of state reports, urgent appeals, activities under its special rapporteurs, working groups, and missions, and adoption of resolutions on Charter provisions.

### **HOW A PARALEGAL CAN USE THIS MECHANISM:**

A paralegal may guide an organization to apply for observer status so that it may submit communications to the Commission or submit cases directly with the African Court on Human and Peoples' Rights, as noted above. As mentioned above, Uganda has not submitted a declaration recognizing the right of organizations to submit cases directly with the Court. However, if it does so in the future, this section outlines the procedure for an organization to obtain observer status.

To qualify for observer status, an organization must (1) ensure that its objectives and activities align with the fundamental principles and objectives of the African Union Constitutive Act, the preamble to the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa and (2) be an organization working in the human rights field in Africa.

When applying for observer status, an organization must submit an application to the Secretariat of the Commission that contains the following documentation: (1) a letter of application addressed to the Secretariat requesting Observer Status with the Commission; (2) a list of the Board of Members, and other members of the CSO; (3) the signed and authenticated Constitutive Statute of the CSO; (4) the Certificate of Legal Status of the CSO issued by the relevant Government authority in the country in which the CSO is based; (5) the sources of funding of the CSO; (6) the latest independently audited financial statement of the CSO; (7) the latest Annual Activity Report of the CSO; and (8) a current comprehensive Plan of Action or Strategic Plan for the CSO, signed or approved by the relevant members of the CSO, which covers a minimum of two years, and which contains the objectives of the CSO during the specified period, the list of activities to be carried out, the timeline for their realization, the places of implementation, the strategies to implement them and the target groups."

A paralegal can also advise a CSO or other advocate to lodge a “communication” alleging that Uganda has committed a human rights violation. A complainant can only do so after exhausting available domestic remedies for the violation.

In guidance about communications, the Commission recommends that a communication contain the following information: (1) complainant indicating whether the complainant wishes to remain anonymous; (2) the government accused of the violation<sup>99</sup>; (3) facts constituting the alleged violation e.g., specifying place, time, and dates of the violation; (4) the urgency of the case e.g., whether the case would result in loss of life or serious bodily harm if not immediately addressed; (5) provisions of the Charter that the state has allegedly violated; (6) names and titles of government authorities or institutions who committed the violation; (7) witness to the violation, including addresses and if possible, telephone numbers; (8) documentary proof of the violation such as letters, legal documents, photos, autopsies, tape recordings; (9) domestic legal remedies pursued, including for example courts that the complainant has been heard copies of court judgments, writs of habeas corpus, or other relevant documentation; (10) other international mechanisms used, if applicable, including whether the case has been decided or is being heard by another international human rights body and the stage that the case has reached.

The Commission also notes that the communication must (1) not be written in insulting language directed against the state; (2) not be based exclusively on news from the media—meaning that there must be other sources of evidence. (3) be submitted within a reasonable time from the date of exhaustion of domestic remedies.

In addition to formal communications, a paralegal can advise a CSO or other advocate to submit an urgent appeal to one or more of the relevant special mechanisms where a violation of the rights protected in the African Charter is alleged.

The application for observer status and submission of a communication or an urgent appeal can be sent to the Secretariat of the Commission by e-mail ([au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)) or delivery to the physical headquarters of the Commission in the (31 Bijilo Annex Layout, Kombo North District, Western Region P.O. Box 673 Banjul, The Gambia).

<sup>99</sup> Note that the Commission will only consider complaints against states that are party to the African Charter, which includes Uganda at the time of publishing this Handbook.

## ACHPR SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

### **INSTITUTIONAL PURPOSE:**

The Special Rapporteur is responsible for analyzing national media legislation, policies and practice within Member States; monitoring Member State compliance with freedom of expression standards and advising Member States accordingly; undertaking investigative missions to Member States where reports of massive violations of the right to freedom of expression are made and making appropriate recommendations to the African Commission; making public interventions and keeping proper record of violations of the right of freedom of expression; and submitting reports to the African Commission on the status of the enjoyment of the right to freedom of expression in Africa.

### **HOW A PARALEGAL CAN USE THIS MECHANISM:**

For complaints related to restrictions on the freedom of expression and access to information, paralegals can advise CSOs and other advocates to **send appeals** addressed to the Special Rapporteur. Stakeholders may send these to the same email address ([au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)) or physical address (31 Bijilo Annex Layout, Kombo North District, Western Region P.O. Box 673 Banjul, The Gambia) as general communications to the Commission.

## ACHPR SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS AND FOCAL POINT ON REPRISALS IN AFRICA

### **INSTITUTIONAL PURPOSE:**

The Special Rapporteur is responsible for seeking, receiving, examining and acting upon information on the situation of human rights defenders in Africa; cooperating and engaging in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms on protection of human rights defenders and other stakeholders; developing and recommending effective strategies to better protect human rights defenders and following up on these recommendations; and raising awareness and promoting the implementation of the United Nations Declaration on Human Rights Defenders in Africa.

**HOW A PARALEGAL CAN USE THIS MECHANISM:**

Paralegals can advise CSOs and other advocates to **send appeals** addressed to the Special Rapporteur. Stakeholders may send these appeals to the same email address ([au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)) or physical address (31 Bijilo Annex Layout, Kombo North District, Western Region P.O. Box 673 Banjul, The Gambia) as general communications to the Commission.

ACHPR SUPPORT GROUP OF THE SPECIAL RAPPORTEUR  
ON HUMAN RIGHTS DEFENDERS AND FOCAL POINT ON  
REPRISALS IN AFRICA FOR THE PROMOTION AND EFFECTIVE  
IMPLEMENTATION OF THE GUIDELINES ON FREEDOM OF  
ASSOCIATION AND ASSEMBLY IN AFRICA

**INSTITUTIONAL PURPOSE:**

The Support Group is mandated to monitor implementation by member states of the Guidelines on Freedom of Association and Assembly in Africa, the United Nations Human Rights Committee's General Comment No. 37 on the Right of Peaceful Assembly, and the Joint Declaration of the Special Rapporteurs on the Right to Freedom of Peaceful Assembly and Democratic Governance. It is also mandated to conduct research and document the situation of freedom of association and assembly in Africa, and to monitor and evaluate the impact of COVID-19 measures adopted by member states on the enjoyment of these rights. The ACHPR renewed the Support Group for a 2-year period in December 2020.

**HOW A PARALEGAL CAN USE THIS MECHANISM:**

Paralegals can advise CSOs and other advocates to **send information** addressed to the Support Group. Stakeholders may send these communications to the same email address ([au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)) or physical address (31 Bijilo Annex Layout, Kombo North District, Western Region P.O. Box 673 Banjul, The Gambia) as general communications to the Commission. Paralegals can also advise CSOs to reach out directly to members of the support group, who are listed within the ACHPR's resolution renewing the Support Group's mandate.<sup>100</sup> The International Center for Not-for-Profit Law is a member of the Support Group.

100. See <https://www.achpr.org/sessions/resolutions?id=503>.

## THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

### **INSTITUTIONAL PURPOSE:**

The Committee is mandated to promote and protect rights enshrined in the African Charter on the Rights and Welfare of the Child, monitor the implementation of rights enshrined in the Charter, and interpret provisions of the African charter on the Rights of the Child.

### **HOW A PARALEGAL CAN USE THIS MECHANISM:**

A paralegal can advise CSOs and other advocates to submit a communication to the Committee alleging the violation of a right contained in the African Charter on the Rights and Welfare of the Child. The Committee considers communications from any person, group, or NGO recognized by the Organization of African Unity, by a Member State, or the United Nations. All communications must be (1) compatible with provisions of the Constitutive Act of the African Union or with the Committee; (2) not exclusively based on information circulated by the media. The complainant must (1) show that the same issue has not been considered according to another investigation, procedure, or international regulation; (2) exhaust all available appeal channels at the national level or be unsatisfied with the provided solutions; and (3) submit a communication within a reasonable period of exhaustion of national level appeal channels.

A paralegal can also advise CSOs to apply for observer status. Among other benefits, organizations with observer status may submit complementary reports to state member reports on the status of children and the implementation of the Charter on the Rights and Welfare of the Child in the country.

To qualify for observer status, an organization must (1) be registered in the state party for at least three years before applying for application to undertake activities as African CSOs or of the diaspora working on defending, protecting, and promoting the rights of children, (2) provide proof of official recognition and their activities during that period; (3) have recognized headquarters and an executive organ; (4) have a democratically adopted statute and deposit the statute with the Chairperson of the Committee of Experts, (4) have a representative structure and appropriate mechanism to enabling reporting to members who exercise control over policies in a democratic and transparent process; and (5) have an administration comprised of a majority of African citizens or Africans from the diaspora.

To apply for observer status, an organization must submit: (1) a written application addressed to the Committee stating its intention at least three months before the session of the Committee; (2) documents including its statute or charter, an updated list of its members, all the details concerning sources of financing including voluntary contributions from external sources with the amount and names of donors accurately indicated; and (3) a memorandum of past and present activities. The submission must be in English and French.

## NATIONAL MECHANISMS

### UGANDA HUMAN RIGHTS COMMISSION

#### **INSTITUTIONAL PURPOSE:**

The Uganda Human Rights Commission, a constitutional body, was established under Article 51 the 1995 Constitution of the Republic of Uganda. The Uganda Human Rights Acts (1997) lays out the specific operational details of the institution. The UHRC is mandated to promote and protect human rights in the country, recognizing Uganda's history of arbitrary arrests, detention without trial, torture and brutal repression with impunity on the part of security organs during the pre- and post-independence era.

#### **HOW A PARALEGAL CAN USE THIS MECHANISM:**

A paralegal can assist a CSO or other advocate to submit a complaint to the Commission. The complaint can be submitted in writing or in person before the Commission, using complaint form number six provided under The Constitution (Uganda Human Rights Commission) (Procedure) Rules.<sup>101</sup> and must contain the following components: (1) identify the complainants, including names, place and date of birth, nationality, profession, and address; if an organization is bringing a complaint on behalf of the victim, there must be written authority from the victim to lodge the complaint (2) identify a respondent, including the name and institution against which the complaint is being made; (3) identify a right to relief in respect to a violation of any human right; (4) provide a detailed description of the alleged violation(s).

101. <https://www.uhrc.ug/download/uganda-human-rights-commission-rules/?wpdmdl=1074&refresh=620a1a4e3d6821644829262>

## UGANDA EQUAL OPPORTUNITIES COMMISSION (EOC)

### INSTITUTIONAL PURPOSE:

As noted above, the Equal Opportunities Commission has two main mandates: (1) to eliminate discrimination and inequalities against any individual or group of persons based on characteristics such as sex, age, race, color, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, or political opinion or disability, and (2) to take affirmative action in favor of groups marginalized on the basis of such characteristics to redress imbalances.

### HOW A PARALEGAL CAN USE THIS MECHANISM:

Where a CSO or individual experiences discrimination in the realization of the rights to freedom of association, peaceful assembly, expression, and the right to participation, a paralegal can guide the party to lodge a complaint before the EOC, as provided for under Section 23 of the Equal Opportunities Commission Act. The EOC's website provides a detailed overview of the complaints process, including the requisite complaints form.<sup>102</sup> A paralegal can help a complainant gather or articulate the following information to complete the form: (1) explanation of specific complaint relating to discrimination, marginalization or any act which undermines or impairs equal opportunities; (2) list of possible witnesses whom the EOC may contact for additional information to support or clarify the complaint; (3) any relevant documents to the complaint; and (4) remedies sought from the EOC.

## A NOTE ON THE HUMAN RIGHTS ENFORCEMENT ACT (2019)

### OVERVIEW:

This Act was enacted to give effect to Article 50 (4) of the Constitution by providing for the procedure of enforcing human rights. Only the High Court or a magistrate court may apply this law; the Uganda Human Rights Commission and the Equal Opportunities Commission are not mandated to use the Act to enforce human rights. This Act is not a "mechanism" but is referenced in this chapter because it is a means to enforce all the rights discussed in this Handbook through Uganda's court system.

102. Available at <https://eoc.go.ug/complaints/the-complaints-process/>.



### **KEY PROTECTIONS OF THE RIGHTS TO FREEDOMS OF ASSOCIATION, PEACEFUL ASSEMBLY, EXPRESSION, AND THE RIGHT TO PUBLIC PARTICIPATION:**

Section 3 (1) of the Act provides an opportunity to any person or organization alleging a violation to their fundamental rights to apply for redress.

Section 9 of the Act provides for a range of possible remedies for restrictions on human rights, including restitution; rehabilitation including the provision of medical and psychological care; restoration of the dignity, reputation and rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; criminal and other judicial and administrative sanctions against persons liable for the violations; and guarantees of non-repetition.

Section 9 of the Act also provides for personal liability for the infringement of rights and freedoms. A paralegal can advise a CSO or individual to use this provision to hold accountable a public officer who, individually or in association with others, violates or participates in the violation of a person's rights or freedoms.

#### **HOW A PARALEGAL CAN USE THIS LAW:**

A paralegal can assist a CSO and its counsel to build a case using the Human Rights Enforcement Act to respond to restrictions on the rights outlined in this Handbook. This may entail helping to identify the infringed right, gather evidence of the infringed right, and complete and file necessary paperwork for the application before a court.

### **TACTICS OUTSIDE OF USING FORMAL MECHANISMS TO ADVOCATE AGAINST RESTRICTIVE LAWS, POLICIES, RULES AND REGULATIONS**

A paralegal can advise a CSO or other advocate to engage in informal tactics to respond to civic space restrictions. These could include visual and print campaigns, such as the African Institute for Investigate Journalism's documentary on violations of freedom of peaceful assembly and association during the 2020/2021 general elections<sup>103</sup>; online campaigns such as the #KeepItOn campaign against internet shutdowns, #NoToSocialMediaTax campaign to oppose the OTT taxes; and research, monitoring, documentation, and reporting on rights violations, such as the Collaboration on International ICT Policy in East and Southern Africa (CIPESA)'s monitoring initiatives on digital rights in Uganda.

103. Available at <https://www.youtube.com/watch?v=UmjovLaSvVc>



# RESOURCES

This section lists key resources protecting and promoting an enabling environment for civil society with corresponding web addresses.

[African Charter on Human and Peoples' Rights](#)

[ACHPR's Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#)

[ACHPR's Declaration on Principles of Freedom of Expression and Access to Information in Africa](#)

[ACHPR's Guidelines on Freedom of Association and Assembly in Africa](#)

[ACHPR's Model Law on Access to Information in Africa](#)

[CIPESA's Digital Rights in Africa: Challenges and Policy Options](#)

[The Coalition for Independence of African Commission's video explaining The African Commission on Human and Peoples' Rights](#)

[Dakar Declaration on Media and Good Governance](#)

[European Center of Not-for-Profit Law's Summary of Guidelines for States on the effective implementation of the Right to Participate in Public Affairs](#)

[ICNL's ACHPR Checklists for Law Reform Advocates: Resources to Support Freedom of Association and Assembly in Africa](#)

[ICNL's Counterterrorism & Security webpage's section on the Financial Action Task Force](#)

[Maputo Declaration on Fostering Freedom of Expression, Access to Information, and Empowerment of People](#)

[Treaty for the Establishment of the East African Community](#)

[United Nations' Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service](#)

[United Nations Human Rights Committee, Guidelines for States on the effective implementation of the right to participate in public affairs](#)

**United Nations Human Rights Committee's General Comment No. 34 on Article 19: Freedoms of Opinion and Expression**

**United Nations Human Rights Committee's General Comment No. 37 on the right of peaceful assembly (Article 21)**

**United Nations Human Rights Council, Report of the Special Rapporteur on the freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27**

**United Nations' International Covenant on Civil and Political Rights**

**United Nations Special Rapporteur on Freedom of Assembly and Association, the Interamerican Commission for Human Rights and its Special Rapporteur on Freedom of Expression, Special Rapporteur on Human Rights Defenders and focal point for reprisals in Africa of the African Commission on Human and Peoples' Rights, and the OSCE Office for Democratic Institutions and Human Rights' Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance**

**United Nations' Universal Declaration of Human Rights**



**USAID**  
FROM THE AMERICAN PEOPLE

**ICNL**  
INTERNATIONAL CENTER  
FOR NOT-FOR-PROFIT LAW



**LASPNET**  
LEGAL AID SERVICE PROVIDERS' NETWORK

EAST • WEST  
MANAGEMENT  
INSTITUTE  
*USAID/Uganda Civil Society  
Strengthening Activity (CSSA)*

