



International Center for Not-for-Profit Law

1126 16th Street, NW, Suite 400

Washington, DC 20036

(202) 452-8600

(202) 452-8555 (fax)

E-mail: sklingel@icnl.org, david@icnl.org.hu

www.icnl.org

Comments on the “Public Order Management Bill, 2009”

January 2011

The International Center for Not-for-Profit Law (ICNL) is an international organization that provides technical assistance, research, and education to support the development of appropriate laws and regulatory systems for nongovernmental organizations (NGOs) in countries around the world. ICNL has worked on NGO law reform projects in over 100 countries, including nations in Asia, the Middle East, Europe, Latin America, the Pacific, and Africa – notably in recent years in Tanzania, Sierra Leone, Kenya, and Rwanda, among other countries. We have worked closely with the United Nations, OSCE, the European Union, the World Bank, New Zealand AID, USAID, private foundations, and scores of in-country colleagues.

ICNL has been asked to review the draft “Public Order Management Bill, 2009” (hereinafter referred to as “the Bill”), in light of international commitments undertaken by Uganda and comparative regulatory practice. This analysis is not intended to be exhaustive, but rather to highlight priority concerns. We remain available to provide additional support, as necessary and appropriate.

Analysis

The freedom of assembly is enshrined in international legal instruments binding on Uganda.¹ Article 21 of the **International Covenant on Civil and Political Rights (ICCPR)**, to which Uganda assented on 21 June 1995:

¹ In addressing questions of regulation of assembly, it should be understood that the freedom of assembly protected under law is *peaceful* assembly. Armed insurrection or mob action that places people and property in “clear and present” danger is universally proscribed and subject to protective police control. So long as the assembly is peaceful in nature, it is protected under international law, as well as under the constitutional law of most states.

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 11 of the **African Charter on Human and People's Rights (ACHPR)**, which Uganda signed on 18 August 1986 provides:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 60 of the African Charter provides that the African Commission shall “draw inspiration” from international law on human and people's rights. In addition to the ICCPR, there are several UN conventions, resolutions and instruments that embody the freedom of assembly. Notably, the *Universal Declaration of Human Rights* affirms that “Everyone has the right to freedom of peaceful assembly and association.”² In addition, Article 8 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*³ guarantees trade union rights; Article 15 of the *Convention on the Rights of a Child*⁴ affirms that “State Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly”; and the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* emphasizes that police must not interfere with lawful and peaceful assemblies, and prescribes limits on the ways in which force may be used in violent assemblies.⁵

Furthermore, the freedom of assembly is enshrined in several regional treaties and covenants. Notably:

- The European Convention on Human Rights and Fundamental Freedoms states: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.” (Article 11)
- The American Convention on Human Rights states: “The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.” (Article 15)

² Article 20 of the Universal Declaration of Human Rights.

³ <http://www2.ohchr.org/english/law/cescr.htm>

⁴ <http://www2.ohchr.org/english/law/crc.htm>

⁵ <http://www2.ohchr.org/english/law/firearms.htm>

I. Scope and definitions

Issue: *Section 4* confers on the Inspector General of Police alone the “power to regulate the conduct of all public meetings...” *Section 6* of the Bill defines the term “public meeting” to include:

... a gathering, assembly, concourse, procession or demonstration of three or more persons in or on any public road ... or other public place or premises wholly or in part open to the air,” where the “principles, policy, actions or failure of any government, political party or political organisation ... are discussed; or held to form pressure groups to hand over petitions ... or to mobilise or demonstrate support for or opposition to the views, principles, policy, actions or omissions” of another person, organization, the government or political party.

In *section 6(2)* the term “public meeting” is rendered inapplicable to virtually any other kind of meeting or gathering.⁶

Discussion: The Bill provides the legal basis for actions on the part of the Government, through the agency of the police, to control and even to prevent certain gatherings defined as “public meetings.” The targeted focus of the bill on the substantive content of public meetings suggests a legislative purpose to regulate meetings intended to affect public opinion on public policy issues. *In short, the regulatory focus of the Bill is on political discussion and debate.*

Notably, the African Commission has favorably cited the European Court finding that “freedom of political debate is at the very core of the concept of a democratic society...”⁷ The African Commission, in the same case communication, affirmed the views of the Inter-American Court of Human Rights which held that: “freedom of expression is a cornerstone upon which the very existence of a society rests. It is indispensable for the formation of public opinion ... It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed.”⁸ In light of the special concern that political discussion and debate is given under international law, the regulatory focus of the Ugandan Bill, which would seem to allow for restrictions to be imposed on political debate, is particularly troubling.

By setting a low threshold regarding the number of persons that constitute a public meeting, the requirements of the Ugandan Bill would have a wide-reaching scope. Wherever three or more persons gather in a public place to discuss government policy,

⁶ Section 6(2) expressly excludes from the definition of “public meeting” the following: meetings convened by public bodies for any lawful purpose, meetings of registered organizations held for a “lawful purpose;” trade union meetings; social, religious, charitable, educational, commercial, or industrial meetings; or political party or organization meetings held to discuss the affairs of the party or organization.

⁷ ACHPR: 228/99 *The Law Office of Ghazi Suleiman v. Sudan*, para. 48, citing *Lingens v. Austria*, Judgment of the Eur. Ct.H.R. Series A.N. 236 (April 1992) and *Thorgeirson v. Iceland*, Judgment of the Eur. Ct.H.R. Series A.N. 239 (June 1992).

⁸ *Id.*, para. 49.

they would be subject to the requirements of the Bill. The South African Regulation of Gatherings Act (RGA), by contrast, sets a minimum number of 15 persons to constitute a gathering subject to regulation. According to the RGA, demonstrations of one or more persons but not more than 15 persons are not subject to any kind of permitting requirement or regulatory procedure in order to convene the demonstration.

Recommendation: We recommend revising the definition of public meeting by (1) eliminating the substantive focus on political issues; and (2) raising the threshold of members required to constitute a public meeting, and thereby exempting smaller public meetings from the obligations of the Bill.

II. Notice of public meeting

Issue: According to *Section 7(1)*, organizers of “public meetings” are required to give notice between 7 and 15 days before the planned date of the meeting. *Section 7(3)* provides for criminal sanctions for a person or agent of the person “who holds a public meeting and fails to comply with the conditions under this Act.” The Bill does not envision any exceptions to the notice requirement.

Discussion: It is common for laws to require advance written notice of public meetings.⁹ The period of notice should not be unnecessarily lengthy,¹⁰ authorities should be required to reply in a timely manner, and there should be an opportunity for an expeditious appeal should the organizer wish to contest any restrictions imposed by the regulatory body.¹¹

Under the Ugandan Bill, however, no time limit is provided within which the police must respond. A delay in response by the police to the required notification could serve to deny permission for the “public meeting” with no realistic opportunity for the organizers to appeal and receive a favorable ruling permitting the holding of the event.

Moreover, *Section 7(3)* provides for criminal sanctions for a person or agent of the person who holds a public meeting and “fails to comply with the conditions under this Act.” Because the definition of “public meeting” includes an assembly of as few as three persons, the criminal sanctions are potentially wide-reaching. The Bill seems to envision no exceptions to the notice requirement, such as for spontaneous assemblies that may

⁹ The ICCPR Human Rights Committee has held that a requirement to give notice, while a *de facto* restriction on freedom of assembly, is compatible with the permitted limitations laid down by Article 21 of the ICCPR. In *Kivenmaa v Finland* (412/90), the Committee noted that “A requirement to pre-notify a demonstration would normally be for reasons of national security, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” It should further be emphasized that the requirement of notice is distinct from a request for permission or authorization. Permitting requirements to exercise peaceful assembly have been struck down as unconstitutional in a number of jurisdictions, the Zambian Supreme Court has held that “The requirement of prior permission to gather and to speak, which permission can be denied sometimes for good and at other times for bad cause not contemplated by the constitutional derogation, directly affects the guaranteed freedoms of speech and assembly.” *Mulundika and Others v. The People*, Supreme Court of Zambia, Judgment No. 25 of 1995 [1996] ZMSC 27 (10 December 1996) (<http://www.saflii.org/zm/cases/ZMSC/1996/27.html>)

¹⁰ The required notice period is 48 hours in Tanzania, 3-14 days in Kenya, and 5 days in Ghana.

¹¹ See *Guidelines on Freedom of Peaceful Assembly*, © OSCE/ODIHR 2007, para. 93.

arise in immediate reaction to some event, where the giving of notice is impracticable. In order for the freedom of assembly not be deprived of all meaning, spontaneous peaceful assemblies should also be protected by the state.¹²

The South African Regulation of Gatherings Act (RGA) specifically addresses the issue. While the RGA encourages that notice of gatherings be given 7 days in advance, if possible, it allows for notice to be provided inside of 7 days, provided that reasons for the shorter notice are given. Indeed, even where notice is given less than 48 hours before the proposed gathering, prohibition of the gathering is not automatic. Instead, section 9(1) of the RGA lists precautionary measures that should be taken before dispersing a gathering. The focus is on the powers of the police in managing a gathering, *even if the gathering does not comply with the provisions of the Act*. Thus, the RGA emphasizes managing, rather than prohibiting, a gathering. For example, if notice of the gathering is given less than 48 hours before the gathering, the gathering may be restricted to a place or along a certain route, rather than prohibited altogether.¹³

Recommendation: We recommend that section 7 be modified to (1) provide an exception from the requirement of prior notification where giving such notification is impracticable (i.e., to allow for spontaneous peaceful assembly); and (2) to remove the possibility of criminal sanctions, especially where there are reasonable grounds for non-compliance with the notification requirement. In addition, we recommend that section 8 be modified to require that the regulatory body provide a prompt official response to the initial notification, in order to allow for an expeditious appeal, if necessary.

III. Grounds for restrictions on public meeting

Issue: *Section 8(1)* lists the circumstances where “it is not possible to hold the proposed public meeting,” including where:

- the time and venue of the proposed gathering has already been booked by another party;
- the venue is considered “unsuitable for the purposes of crowd and traffic control or will interfere with other lawful business;” or
- “for any reasonable cause.”

¹² The European Court has held that “where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance. Accordingly, the Court considers that in the instant case the police’s forceful intervention was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.” *Oya Ataman v. Turkey*, Judgment of European Court of Human Rights (2006), paras. 42-43.

¹³ See South African Regulation of Gatherings Act, section 9(1): “If a gathering or demonstration is to take place, -whether or not in compliance with the provisions of this Act, a member of the Police- ... (c) May, in the case of a responsible officer not receiving a notice in terms of section 3(2) more than 48 hours before the gathering, restrict the gathering to a place or guide the participants along a route, to ensure- ...”

Where it is not possible to hold the proposed public meeting, the government must notify the organizer and invite him or her to identify an alternative and acceptable venue or to reschedule the public meeting. [8(2)]

Discussion: Article 21 of the ICCPR enumerates the only *exceptions* under which restrictions on this right are acceptable. Specifically, restrictions may only be imposed “*in conformity with the law*” and “*when necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or protection of the rights and freedoms of others.*”¹⁴ (Emphasis supplied.) Article 11 of the African Charter similarly provides that “*The exercise of this right [freedom of assembly] shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.*”

These grounds should not be supplemented by additional grounds in domestic legislation.¹⁵ The African Commission has noted specifically that: “To allow national law to have precedence over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter.”¹⁶

The grounds for restricting public meetings in the Ugandan Bill go beyond the limiting clauses of Article 21 of the ICCPR and Article 11 of the African Charter. As is evident from the terms of *Section 8(1)*, the police may in fact prevent a public meeting from being held at all if the authorized officer determines that the time and venue of the proposed gathering is “unsuitable” for crowd and traffic control or will “interfere with lawful business” ... and “for any reasonable cause.” The “reasonable cause” standard is particularly troubling as its vagueness opens the door to subjective and arbitrary decision-making by the regulator. Indeed, the effect of this standard of “reasonableness” is to provide the police effective discretionary power to prevent or close down, as they see fit, any public meeting. The lack of a limited list of objective grounds could have a disproportionate impact on groups that engage in advocacy or expressive activity that supports unpopular causes or is openly critical of government policy or action.

Moreover, the wide discretion afforded to the police under the Ugandan Bill contrasts with the scope of discretion given to authorities in many other African countries. For example, the Kenyan law allows for prohibition of a public meeting only where there is “clear, present, or imminent danger of a breach of the peace or public order.”¹⁷ The Police Force and Auxiliary Services Act in Tanzania empowers the police to prevent the assembly or procession, if they believe such activity is “likely to cause a breach of the

¹⁴ In Kivenmaa v Finland (412/90), the ICCPR Human Rights Committee noted that “*any restriction upon the right to assemble must fall within the limitation provisions of Article 21.*”

¹⁵ See Guidelines on Freedom of Peaceful Assembly, © OSCE/ODIHR 2007, para. 61.

¹⁶ African Commission on Human and People’s Rights, Media Rights Agenda, etc. v. Nigeria, para. 66.

¹⁷ The Public Order Act, Chapter 56, (2003, revised edition 2009), Part III, Section 5(8).

peace or prejudice the public safety or be used for any unlawful purpose.”¹⁸ Under South African law, a public gathering may be prohibited before the event takes place only when independent evidence under oath provides convincing grounds for believing that serious traffic disruption, injury to persons or extensive property damage is probable, and such risks cannot be averted.¹⁹

Recommendation: We recommend that the grounds for preventing a public meeting contained in Section 8(1) be limited only to objective grounds consistent with Article 21 of the ICCPR.

IV. Responsibilities of organizers and participants

Issue: Section 11 of the Bill imposes certain requirements on the organizers of a public meeting. Among others, organizers must “ensure that all participants are unarmed and peaceful” [11(c)]; “ensure that statements made to the media and public do not conflict with any existing laws of Uganda” [11(d)]; and “compensate any party of person that may suffer loss or damage from any fall out of the public meeting” [11(g)].

Discussion: To conform to international law standards, restrictions on freedom of assembly must be “necessary in a democratic society.”²⁰ The standard “necessary in a democratic society” means that the interference must correspond to a “pressing social need” and be proportionate to the legitimate aim pursued.²¹ In interpreting Article 11 of the African Charter, the African Commission on Human Rights has similarly emphasized the need for *proportionate* governmental action.²²

The requirements imposed by the Ugandan Bill [Section 11] on organizers place onerous burdens and unrealistic expectations on them. For example:

- The requirement that the organizer “ensure that all participants are unarmed and peaceful” [11(c)] may not be reasonably possible for any organizer, however well-intentioned, to carry out, especially if the number of participants is large, and includes members of the public outside of the group or groups engaged directly in the activity sponsored by the organizer. It would require a physical search of all persons present, clearly a standard of care beyond the powers of private citizens to meet.

¹⁸ The Police Force and Auxiliary Services Act, section 43(3).

¹⁹ See Regulation of Gatherings Act, No. 205 (1993), section 5 (“Prevention and prohibition of gathering”).

²⁰ ICCPR, Article 21.

²¹ See *Stankov v. Bulgaria*, cited above, section 91-112 (The fact that the authorities “resorted to measures aimed at preventing the dissemination of the applicants’ views at the demonstrations they wished to hold ... in circumstances where there was no real foreseeable risk of violent action or of incitement to violence or any other form of rejection of democratic principles” was in breach of the proportionality principle.)

²² See African Commission on Human and People’s Rights: 228/99 *The Law Office of Ghazi Suleiman v. Sudan*, para. 63 (http://www.achpr.org/english/Decison_Communication/Sudan/Comm.228-99.pdf), (the Commission found that the actions of the Government of Sudan against Mr. Ghazi Suleiman, in prohibiting him from traveling and in threatening him with arrest, disproportionate.)

- Similarly, the obligation to “ensure that statements made to the media and public do not conflict with any existing laws of Uganda” [11(d)] is beyond the capacity of any organizer to ensure.
- The requirement of an organizer “to compensate any party of person that may suffer loss or damage from any fall out of the public meeting” [11(g)] is likely to act as a powerful disincentive to public meetings. Moreover, organizers should not be held liable for the actions of individual participants or for unlawful conduct that the organizer did not intend or directly participate in.²³ Furthermore, “if an assembly degenerates into serious public disorder, it is the responsibility of the state, not of the organizer or event stewards, to limit the damage caused.”²⁴

Taken together, the responsibilities imposed by the Bill on organizers of public meetings are so difficult to meet as to likely discourage the exercise of and thereby constitute an infringement on the freedom of assembly. While the government interest in ensuring peaceful assemblies is legitimate, the means of protecting that interest, as set forth in Section 11, is disproportionate. The law might legitimately require that organizers (and participants) obey the lawful orders of the police and consider the use of stewards to assist the organizer in managing the event. But it is the state, through the police, which shoulders ultimate responsibility for public order²⁵, and this burden may not be shifted to the organizer.

Recommendation: We recommend revising Section 11 by removing the requirements highlighted above.

V. *Gazetted Areas*

Issue: Section 14 empowers the Minister of Interior, where “it is desirable in the interests of public tranquility,” to “declare that in any particular area in Uganda it is unlawful for any person or persons to convene a public meeting at which it is reasonable to suppose that more than twenty-five persons will be present unless a permit has been obtained ...” [14(1)] The Minister shall name an authorized person to issue permits for public meetings of more than 25 persons; the authorized person has full discretion to issue or deny the permit based on time and place considerations. [14(4)] The authorized person has powers to order the public meeting to disperse where no permit has been obtained or where conditions of the permit are not complied with. [14(5)] And in criminal proceedings, the evidence of the authorized person as to the number of persons present shall be conclusive. [14(8)]

Discussion: We highlight two concerns. First, Section 14 grants excessively broad discretion to the State and thereby opens the door for subjective, arbitrary decision-

²³ See *Guidelines on Freedom of Peaceful Assembly*, © OSCE/ODIHR 2007, para. 161.

²⁴ *Guidelines on Freedom of Peaceful Assembly*, © OSCE/ODIHR 2007, para. 162.

²⁵ And it is the state that has the affirmative responsibility to protect and promote the exercise of the right to peaceable assembly.

making. Specifically, the provision allows for restrictions on freedom of assembly where the Minister is “*of the opinion* that it is desirable in the interests of public tranquility.” (emphasis added) This is an extraordinarily vague and subjective standard. Moreover, the authorized person appointed by the Minister to issue or deny permits for public meetings of more than 25 persons has full discretion to decide as s/he deems fit, and is bounded only by conditions relating to the place and time of the meeting and the number of persons. Furthermore, there are no procedural safeguards in place to challenge governmental decision-making, whether through a public hearing or an appeal process.

Second, the authorized officer’s evidence of the number of participants in such a gathering is deemed conclusive in any proceeding to penalize a person addressing such a “public meeting” after an officer has ordered it to disperse. This conclusive presumption renders moot the submission of any evidence which may contradict the State’s evidence, which is particularly disturbing in the context of a criminal proceeding. In addition, the presumption renders impossible any appeal from the officer’s actions, and effectively confers on the officer blanket discretion to prevent the public meeting from occurring, wherever the organizers may wish to hold such meeting.

Taken together, these provisions, if enacted, would likely amount to a violation of Article 21 of the ICCPR. Blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies. “Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”²⁶

Recommendation: We recommend that Section 14 be removed in its entirety from the Bill, or, alternatively, be modified to include a limited list of objective standards for the designation of gazette areas; procedural safeguards for those seeking permits for public meetings in such designated areas; and the removal of the presumption of conclusive state evidence in criminal proceedings.

We have been pleased to provide these comments on the Bill. If we can provide any additional clarification of our comments or other information, please let us know.

Respectfully submitted,
International Center for Not-for-Profit Law

²⁶ See *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29225/95 and 29221/95, section 97, ECHR 2001-IX (2 October 2001).