ARTICLE 19

Uganda: Public Order Management Bill

August 2013

Legal analysis

Executive summary

On 6th August 2013, the Ugandan Parliament passed the Public Order Management Bill (the Bill), despite broad criticism by domestic and international civil society organisations. For the Bill to become law, it must receive Assent by President Yoweri Museveni within six weeks.

In this analysis, ARTICLE 19 warns that the Bill will seriously erode the rights to freedom of expression and peaceful assembly in Uganda if given the Presidential assent.

First and foremost, ARTICLE 19 is concerned that a final version of the Bill as approved by Parliament is still not publicly available. Our comments are based on the last publically available version of the Bill.

According to reports, sections of the Bill that clearly violate international standards on freedom of expression and peaceful assembly remain unchanged. The Bill clearly violates international and African human rights standards on the rights to freedom of expression and freedom of peaceful assembly, and is clearly incompatible with the Ugandan Constitution and decisions of the Constitutional Court.

In summary, **the most serious flaws** in the Bill from a freedom of expression and peaceful assembly perspective include:

- There is no overarching obligation on the State to promote and protect the rights to freedom of expression and peaceful assembly, and no presumption in favour of the exercise of these rights;
- The definition given to "public meeting" means the authorities must be notified of any gathering of three or more people where any political matters are discussed, making clear the intentions of the Bill to limit the space for dissent;
- Notification requirements operate effectively as an authorisation regime, with substantial administrative burdens for organisers to meet and a broad discretion for law enforcement authorities to refuse assemblies or subject them to conditions;
- No provision is made for allowing spontaneous demonstrations, nor simultaneous or counter demonstrations;
- Assemblies are prohibited between the hours of 6:00pm and 6:00am;
- There is a blanket ban on the use of any amplified noise equipment at any public meeting;
- The powers of the police in relation to dispersal are overbroad, not subject to a clear command structure, and the principles of necessity and proportionality are largely ignored;
- Firearms are authorised in a range of ambiguous defined circumstances where they are clearly not seen as a measure of last resort, where the principles of necessity and proportionality are ignored, and the use of lethal or potentially lethal force would clearly violate the right to life;
- Organisers may be held liable for assembly participants acting against their own instructions;
- There are broad powers for the Interior Minister to designate unlimited spaces in Uganda "gazetted areas", subjected to an additional authorisation regime with even broader grounds for denying an assembly or subjecting it to restrictions;
- The Bill contains no provisions relating to the access of the media or monitors to assemblies.

ARTICLE 19 calls on President Museveni to refuse to give his Assent to the Bill, and for it to be sent back to Parliament for substantial revision.

Table of contents

Analysis of the key provisions of the Bill

Failure to facilitate the exercise of fundamental rights

The explanatory memorandum to the Bill states its object as "safeguarding public order without compromising the principles of democracy, freedom of association and freedom of speech." However, the memorandum is not legally operational, and the substance of the Bill wholly reverses any presumption in favour of the exercise of these rights.

Uganda has ratified the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter), which protect the right to freedom of expression at Article 19 and Article 9 respectively, and the right to freedom of peaceful assembly at Article 21 and Article 11 respectively. Uganda is legally bound to protect and promote both rights.

In his first and second thematic reports to the UN Human Rights Council, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, emphasised that the presumption in favour of holding peaceful assemblies means that an assembly "should be presumed lawful and deemed as not constituting a threat to public order" and that this presumption should be enshrined in law (A/HRC/23/39, 24 April 2013, para 50). The Special Rapporteur offers Article 1 of the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008) as an example of good practice.

The Bill creates no overarching obligation on the authorities to promote and protect the rights to freedom of expression and peaceful assembly, and does not establish any presumption in favour of the exercise of these rights. The language of "regulating" and "managing" public meetings instead sets the tone for the remainder of the legislation; that the collective expression of political criticism or dissent is not a legitimate exercise of fundamental rights but a threat that must be minimised and controlled. The rights to freedom of expression and peaceful assembly are not referenced in Article 3 of the Bill (principles of managing public order), and the rights of participants in meetings otherwise only receive a limited reference in relation to the forced dispersal of meetings (Article 9(3)).

The Bill should be amended to specifically provide for the protection of the rights to freedom of expression and peaceful assembly, establishing a presumption in favour of their exercise as well as the obligation of the State to facilitate assemblies. This should be reflected in the title, purposes, and overarching principles of the law. Any restrictions provided for the exercise of these rights must reflect permissible restrictions as set out in Article 19(3) and Article 21 of the ICCPR.

Definition of "public meeting"

Article 6(1) of the Bill defines a "public meeting" as a meeting of three or more people in any public space or premises wholly or partly open to the air where "the principles, policy, actions or failure of any government, political party or political organisation … are discussed" or where the meeting is "held to form pressure groups to submit petitions to any person or to mobilise or demonstrate support for or opposition to the views, principles, policy, actions or omissions of any person or body of persons or institution, including any government administration or government institution."

Article 6(2) excludes from the definition of "public meetings": lawful meetings of public bodies; meetings of registered organisations in accordance with their constitutions; trade union meetings; meetings for social, religious, cultural, charitable, educational, commercial or industrial purposes; and political party or organisation meetings held exclusively to discuss the affairs of the party or organization.

This definition does not comply with the requirements of Articles 19(3) and 21 of the ICCPR that any restriction on the rights to freedom of expression or peaceful assembly be: "provided by" or "in conformity with" law; pursue a legitimate aim, and be necessary in a democratic society.

Firstly, the definition given to "public meeting" is legally imprecise and makes the applicability of the provisions in the remainder of the Bill unpredictable. The political purposes that bring a meeting within the regulatory scope of the Bill under Article 6(1) are so broad that their extent is largely indeterminable, and at the same time are contradicted by the exemptions under Article 6(2), which may also be characterised as "political". It is difficult to imagine, for example, an apolitical meeting of a trade union or a political party. This combination of ambiguity and contradiction allows for the arbitrary interpretation and enforcement of the Bill, and violates the requirement that any limitation on the right to freedom of expression be "provided by" and "in conformity with" the law.

Secondly, the singling out of political expression for regulation by this definition exposes the illegitimate intent of the Bill to enlarge the government's control over dissent. Restrictions on the right to freedom of expression or peaceful assembly are only permissible to protect national security or public safety, public order, public health or morals, or the protection of the rights and freedoms of others. Indeed, international standards on freedom of expression give heightened protection to political expression (See: Human Rights Committee, General Comment No. 34 at para. 20, 34, and 38), including in the context of peaceful assemblies. In *Viktor Korneenko et al v. Belarus*, Communication (No. 1274/2004), the HR Committee made clear that the right to freedom of peaceful assembly extends to the expression of ideas that are "not necessarily favourably received by the government or the majority of the population".

The definition of "public meeting" should be amended to ensure its exact scope is clear and content-neutral, and that any restriction on meetings is necessary for achieving upon a legitimate aim listed under Article 19(3) or Article 21 of the ICCPR.

"Notification" procedure

Articles 7 of the Bill establishes a "notification" procedure, requiring the organiser of any public meeting to give notice to the Inspector General of the Police at least 7 days but not more than 15 days before the meeting. The notification must be given by writing on a specific form that provides: the full name, physical and postal address of the organiser and immediate contact details; the proposed date and time of the proposed meeting; the proposed site of the meeting; the number of persons expected; the purpose of the meeting, and any other relevant information. The notice must be accompanied by a letter of authorisation from the proprietor of the venue or place where the meeting is to take place.

Any requirements for organisers of an assembly to notify authorities of their meeting ahead of time are a restriction on the rights to freedom of expression and peaceful assembly and should be justified according to the three-part test. The HR Committee have been clear that these procedures are only legitimate to the extent that they allow states to plan to adequately facilitate assemblies, and should serve no other purpose (HR Committee, *Kivenmaa v. Finland*, Communication No. 412/1990, 31 March 1994). The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that states should not impose

prior-authorisation requirements, but should at most require only notice of assemblies (2012 report, *op. cit*), and should be subject to a proportionality assessment.

The notification requirements of Article 7 establish a *de facto* authorisation procedure. Together with other extensive prior restraints, outlined below, any presumption in favour of assemblies is essentially defeated. The regime appears to be designed to restrict the total number of assemblies that may be considered lawful, and thereby expands the powers of the State to crackdown on assemblies they do not approve of. Taken together with other provisions, Article 7 violates international standards for a number of reasons:

- Assemblies without notice are prohibited (Article 7(4), Article 8(3)), its organisers or participants subject to a two year prison sentence under Article 117 of the Penal Code. Moreover, an assembly without notice may be dispersed without regard to other factors (Article 9(2)). International standards are clear that absence of a notification should not be the basis for dispersing a peaceful assembly (ECtHR, *Bukta and others v. Hungary*, Application No. 25691/04 (2007)). Additionally, spontaneous assemblies should be exempt from prior-notification requirements, since the need of individuals to respond urgently and with a degree of spontaneity to trigger events must be an acceptable practice in any democratic country (ECtHR, *Bukta and others v. Hungary*).
- A 7-day notification period is too long. While notification periods vary significantly between States, the Special Rapporteur has indicated that a notification period of 48 hours is adequate to give the State time to make necessary arrangements for the facilitation of any assembly. In some countries, notification is only required for marches and parades, and not for static assemblies (e.g. UK Public Order Act, 1986, s.11).
- Requiring notification for assemblies of three or more people is excessive and at the same time would impose an unworkable burden on the police to administer. It is not necessary for the State to be informed of small assemblies where there is no pressing need for facilitation by the State. By way of comparison, in Moldova, any assembly of fewer than 50 persons can take place without prior notification.
- There is no legitimate basis for the State to require notification of the *purposes* of a public meeting, as this does not assist law enforcement in making arrangements to facilitate the assembly. Rather, it opens the system of notification to abuse on the basis of the viewpoints of the assembly participants, and may have a chilling effect on assemblies, particularly those that are critical of the State.
- The notification procedure is overly bureaucratic and burdensome. To facilitate any assembly, the authorities should only require basic information, such as identifying information for one organiser, the start time and location, the route of the assembly if it is mobile, and the expected number of participants. This information should only be gathered for the purpose of facilitating assemblies and should not be retained otherwise. Notification should also be provided for by numerous means, including by writing, telephone, email, or in person, and not according to a specified form that may not be readily available to large sections of the population, particularly for people who have difficulty writing or getting to a police station.
- The requirement that a letter of clearance from a venue proprietor accompany any notification is an unnecessary administrative burden that serves no legitimate purpose. Additionally, it is unclear whether authorisation is required from public authorities where the location for the assembly is a public space. If this is the case, it creates two layers of authorisation and doubly restricts the right to freedom of peaceful assembly.

The notification regime must be substantially amended so that its only purpose is to provide the authorities with the information absolutely necessary to assist in the facilitation of an assembly.

Simultaneous assemblies and counter-demonstrations

Article 8(1)(a) allows an authorised officer to inform the organiser that their meeting is not permitted on the basis that another public meeting has already been notified at the same date, time, and venue.

Article 21 of the ICCPR and Article 11 of the African Charter require states to facilitate the right to freedom of peaceful assembly of all people, which extends to simultaneous and counter-demonstrations where they can be accommodated. In respect of counter-demonstrations, they should be facilitated within sight and sound of any assembly one wishes to oppose or offer an alternative perspective to, provided the rights of others to express their views are not thereby obstructed.

While there is always the potential for a public order disturbance from simultaneous or counter-demonstrations, the threshold for prohibiting expression or any assembly in these circumstances is high and must be evidence based, rather than premised on speculation (see, by way of comparison: ECtHR, *Barankevich v. Russia*, Application No. 10519/03, 26 July 2007, at para. 33). The possibility of a disturbance between opposed assemblies should not be the basis for denying the right to freedom of peaceful assembly by itself, as public assemblies always carry with them a degree of risk. Less restrictive measures, such as the deployment of additional law enforcement officers, should be considered instead.

The coincidence in time and place of two public meetings should therefore not be a basis for rejecting the notification of any assembly.

Time restrictions

Article 7(2)(b) of the Bill requires that any notice for a public meeting be between the hours of 6:00am and 6:00pm, effectively prohibiting meetings outside of those times.

A blanket prohibition on assemblies at anytime between 6.00pm and 6.00am is not proportionate to any legitimate aim. Prohibiting early morning and evening assemblies in particular limits the ability of working people to exercise their rights, while also curtailing the ability of any individual to participate in sustained protests over a number of days. Overnight demonstrations, such as vigils or encampments and other protests of a sustained duration, should be an expected part of any democratic system and facilitated by the State.

While certain restrictions on assemblies may be necessary to maintain public order or safety outside daylight hours, for example limitations on amplified noise equipment or requirements for adequate lighting, such concerns can be addressed through targeted restrictions or precautionary measures that are less restrictive than a blanket prohibition.

Bases for rejecting notifications

Article 8(1)(b) allows any notified assembly to be refused on the basis that the venue is considered unsuitable, or for issues of traffic control, or interference with other lawful business. Article 8(1)(c) further allows for any notified assembly to be refused for "any other reasonable cause". The burden is then on the organiser to suggest alternative arrangements.

Both provisions are vague, and afford far too much discretion to the authorities to deny any assembly without specifying a legitimate aim or demonstrating the necessity or proportionality of a measure.

Firstly, there is no guidance for how a decision-maker should consider a venue "unsuitable", the extent of disruption to traffic that would amount to an "issue of traffic control", or indeed what constitutes an "interference" with a lawful business. What "any other reasonable cause" for rejecting a notification would be is entirely unclear. These provisions are too vague to provide organisers or law enforcement with an indication of which assemblies would be permitted and which would not be, and therefore are not "provided by" or "in conformity with" the law for the purposes of Articles 19(3) or 21 of the ICCPR.

Secondly, while the rights to freedom of expression and peaceful assembly may be restricted to pursue a legitimate aim, the burden remains on the authorities to demonstrate that any restriction is necessary in a democratic society, i.e. that it responds to a pressing social need and is proportionate to that end. Article 8(1)(b) and (1)(c) allow an authorised officer to restrict any assembly without this individualised assessment being made. Indeed, Article 8(1)(c) allows for restrictions without specifying a legitimate aim at all.

An individualised assessment must bear in mind that the right to freedom of peaceful assembly is fundamental, and that assemblies are as legitimate a use of public space as any other usage (e.g. the use of roads for transport or access to business). The Organisation for Security and Cooperation in Europe Guidelines on Freedom of Assembly (OSCE Guidelines) require any decision-maker balancing the right to freedom of peaceful assembly against other rights to consider: the nature of any valid rights claims made; how, in the particular context, these rights might be infringed (outlining the specific factors considered); how, precisely, the authority's decision mitigates against any such infringement (the necessity of the restrictions); and why less intrusive measures could not be used.

The bases for refusing a notification and requiring alternative arrangements to be made by the organiser must be substantially revised to ensure that all decisions to deny or impose conditions on an assembly comply with the requirements of necessity and proportionality.

Place restrictions

Article 16, "restricted areas", forbids any public meeting in the places listed under Schedule 3, which includes Parliament and its precincts, State House Entebbe, State Lodges countrywide, International Airports, and Courts of Judicature. Schedule 3 may be amended by statutory instrument of the Minister with the approval of Cabinet.

While restricting the right to assemble inside these buildings may serve a legitimate aim, for example, to preserve the functioning of the Parliament or the administration of justice, the provision is not very detailed. It is unclear what the extent of the "precincts" of Parliament is, and whether protests within sight and sound of the other important sites listed would be permitted. For example, while it may be legitimate to restrict assemblies within Courts, it may be feasible to permit them on or near the steps to a Courthouse. At the same time, it is concerning that the list may be extended without recourse to Parliament, posing the danger that locations where there is no legitimate aim for prohibiting assemblies could be added.

The locations contained in Schedule 3 should be described more specifically, and it must be ensured that any restrictions do not prevent any assembly within sight and sound of the institution listed. Moreover, any extension of this list should be subject to Parliamentary oversight.

Restrictions on amplified noise equipment

Article 13 of the Bill prohibits, without written permission, the use in a public place *or* the use as to be public nuisance, of a megaphone, loudspeaker, loud hailer, public address apparatus or other means for amplifying, broadcasting or reproducing any music or speech or other sound.

Restrictions on amplified noise equipment may be necessary to maintain public order where there are competing uses of a public space, or depending on the time of an assembly. However, a *blanket* prohibition on such equipment at any time (particularly between 6am and 6pm) or in any public space is likely to fail the proportionality test, since less restrictive means of protecting public order in these circumstances are possible and should be considered on the basis of an individualised assembly.

Powers to prevent, stop, and disperse assemblies

Article 9 of the Bill gives powers to an authorised officer, subject to the directions of the Inspector General of Police, to stop or prevent the holding of a meeting (Article 9(1)), or where it has started, order its dispersal (Article 9(2)). Either power may be employed in response to a failure to comply with any provision of the Bill (Article 9(1)(a)), or on the basis of a clear, present or imminent danger of a breach of the peace or public order (Article 9(1)(b)).

Article 10(2)(f) additionally provides the police with the *duty* of dispersing "defiant or unruly crowds" at a public meeting, where there are reasonable grounds to believe that a breach of peace is likely to occur or if a breach of the peace has occurred or is occurring.

International standards are clear that the dispersal of any assembly should only be used as a measure of last resort and in exceptional circumstances, and never against a peaceful assembly. It is therefore concerning that nothing within Articles 9 or 10 indicates the power should be used as one of last resort, with each Article advancing a different standard for the use of force. Moreover, Article 9(1)(a) in conjunction with Article 9(2) allows for dispersal for lack of notification, where there is no breach of the peace or threat to the public order. It is not necessary in a democratic society to disperse a peaceful assembly on the basis that it was not notified or does not conform to other prior restraints (see, for example, *Bukta v. Hungary*, *op. cit.*) The 2011 Annual Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/17/28) noted that in countries where the right to freedom of peaceful assembly is suppressed, those demonstrations that do occur are more likely to become violent.

Where these powers are exercised to protect public order, Article 9(1)(b) at least requires the breach of the peace or public order to be clear, present or imminent. However, the provision does not require the authorities to assess the extent of the disturbance, or to distinguish in the use of force between violent and non-violent participants. It would be disproportionate to prevent or disperse an assembly on the basis of sporadic or isolated incidences of violence within an assembly; troublemakers should be differentiated from peaceful participants and where possible dealt with separately (through subsequent measures, such as arrest and prosecution) in order to preserve the rights of peaceful participants to continue their assembly (see, by way of Comparison, ECtHR, *Ziliberberg v. Moldova* (2005)).

It is also concerning that, other than dispersal, alternative means of preventing or stopping a public order violation are not specified in the Bill, as required by international standards (see, by way of comparison, ECtHR, *Güleç v. Turkey* (1998)). Less intrusive ways of minimising disorder, such as negotiation or mediation, or non-intervention or active facilitation, are not provided for. No guidance is given for ensuring that the response of the police is graded in compliance with the requirements of necessity or proportionality, and the command authority for issuing orders for

the use of force or dispersals is unclear. Experience demonstrates that attempts to disperse assemblies may antagonise participants or escalate disorder rather than neutralise or minimise it.

The Article 9 powers are subject to a limited safeguard whereby the authorised officer must "have regard to the rights and freedoms of the persons in respect of whom the order has been issued and the rights and freedoms of other persons" (Article 9(3)). As outlined above, it is concerning that there is not an overarching obligation on law enforcement to protect and promote the exercise of fundamental rights. Additionally, when employing force against an assembly, authorities must pay particular regard to the right to life (Article 6 ICCPR; Article 4, African Charter) and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (Article 7, ICCPR; Article 5, African Charter). Each of these rights is non-derogable, even during emergencies (Article 4(2) ICCPR).

Refusing to obey an order issued under Article 9 subjects a person to criminal liability under section 117 (disobedience of lawful orders) under the Penal Code Act, which is subject to a maximum of two years imprisonment.

Use of firearms

Article 11 prohibits the use of firearms by a police officer against any person, subject to a wide range of exceptions that do not comply with international standards on the use of force.

Any use of force by authorities against an assembly, whether peaceful or violent, must comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990 (UN Basic Principles) and the UN Code of Conduct for Law Enforcement Officials (General Assembly 34/169, 17 December 1979).

There are a number of grave flaws with the provisions of the Bill on the use of firearms:

- There is no requirement for the authorities to consider the right to life or the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Both of these rights are non-derogable, even during emergencies.
- The command structure and process for escalating a response to an assembly from measures under Article 9 to the use of firearms is not clearly specified or subject to clear considerations regarding proportionality (see UN Basic Principles, Principle 14). It is also not provided that firearms only be used in extreme circumstances as a matter of last resort.
- The power to use firearms is expressly permitted in ambiguously defined circumstances where their use would likely be grossly disproportionate. For example: "in arresting a person presenting danger, and resisting the officer's authority"; "preventing the escape of a suspect from lawful custody"; "where a person, through force, rescues another from lawful custody"; or "where a person with the use of force, resists lawful arrest or prevents the lawful arrest of another person." Any participant of an assembly defying the orders of a police officer, either willingly or due to circumstances beyond their own control, may find themselves subject to lethal force.
- No provision concerns the obligation on authorities to ensure access to adequate medical care for injured persons
- No provisions concern the necessity of any review of the use of force in relation to assemblies by authorities or any independent body. The draft law must provide for the accountability of law enforcement officers, security managers or the Ministry of Interior where authorities use excessive force to disperse an assembly (UN Basic Principles, Principle 7). Investigations must be prompt, and impartial and ensure redress for victims.

Responsibility of organisers

Article 12 requires organisers of any public meeting to undertake extensive criminal and civil liability for the conduct of individuals who attend their meeting. As well as responsibilities for following criteria agreed during the notification process, additional obligations include ensuring all participants are not armed, ensuring the meeting concludes before 6pm, and undertaking to compensate any part or person that "may suffer loss or damage from any fall out of the public meeting".

The OSCE guidelines advise that while cooperation between organisers and the police is essential and should be encouraged, organisers of assemblies should not be held liable for their failure to perform their responsibilities as organisers if they made reasonable efforts to do so, and should not be held liable for the conduct of individuals not acting according to their directions. Indeed, requiring organisers to be liable for the conduct of participants is likely to have a significant chilling effect on the organising of any assembly.

The Bill should be amended to ensure that organisers are not held liable for the acts of others that were beyond their control.

Gazetted areas

Article 15 provides the Minister of the Interior with the power, "in the interests of public tranquillity", to designate for one year any space in Uganda a "gazetted area" where meetings that *may* attract attendance of 25 or more people require a permit. Any time-extension on such an order must be approved by Parliament.

Subsection (4) provides discretionary powers for the permit to be issued with conditions as to place, the number of persons permitted to attend, and the time and duration of the meeting.

Subsection (5) provides for injunctions of a duration of one-month to be placed against individuals who authorised officers convince a magistrate have the intention to hold a non-permitted assembly in a gazetted area.

Extensive powers for dispersal are provided without clear safeguards, and additional criminal penalties are provided for violating these provisions.

As outlined above, international standards are clear that peaceful assemblies should not be subject to an authorisation regime. The "gazetted area" regime fails to meet each part of the three-part test for restrictions on freedom of peaceful assembly.

- The provision is not "provided by" or "in conformity with" the law. The discretion it affords to the Minister of Interior and law enforcement is essentially unfettered, and the scope of the powers therefore largely indeterminable.
- "Public tranquillity" is not a legitimate basis for imposing blanket additional authorisation requirements on assemblies, either under Article 19(3) or Article 21 of the ICCPR.
- There is no pressing need in a democracy for the Minister to have such broad powers to render the exercise of fundamental rights in entire and unlimited areas subject to governmental permission. Even if such a pressing social need were identified, the extensive powers of prescription for the time, place, and manner of any assembly would be considered grossly disproportionate.

Access to assemblies for media and monitors

The Bill contains no provisions relating to the access of the media to assemblies.

ARTICLE 19 notes that international law requires that states protect, promote, and respect the right to freedom of expression and media freedom at all times, including during assemblies. Journalists and the media play an important role in informing the public about assemblies. In addition, a media presence – akin to the presence of people monitoring the assembly - acts as a safeguard for the rights of the participants to freedom of assembly and expression.

It is recommended that police officers are obliged to give to journalists and assembly-monitors from domestic and international organisations as much access as possible to public assemblies.

Unconstitutionality of the measures

ARTICLE 19 observes that the Bill largely reproduces the provisions of the Article 32 of the Police Act (Chapter 303 of the Laws of Uganda) in conferring broad powers on the police to regulate assemblies and processions.

The Constitutional Court of Uganda ruled in *Muwanga Kivumbi vs. Attorney General* (Petition No. 9/2005, 27 May 2008) that Article 32 of the Police Act violated Article 29 (1)(d) of the Constitution, which guarantees the right to freedom of assembly and freedom to petition, by "authorizing the Police to prohibit assemblies including public rallies or demonstrations." The unconstitutionality of the measures advanced by the Bill are therefore firmly established as a matter of domestic law.

If President Musevni signs the Bill into law, he would be breaking the oath he took when taking office to "preserve, protect and defend" the Ugandan Constitution.

Conclusion and Recommendations

ARTICLE 19 urges President Yoweri Museveni to refuse his assent to this law, instead sending it back to Parliament for substantial revision.

We recommend that the following recommendations be considered during the redrafting process, in full and frequent consultation with civil society organisations:

- The purpose of the law must be to facilitate the exercise of the fundamental rights to freedom of expression and assembly. The law should establish a presumption in favour of the exercise of these rights, and protecting those rights should be regarded as the primary obligation of law enforcement authorities when policing assemblies;

- The definition of "public meeting" should be amended to ensure its exact scope is clear and content-neutral, and that any restriction on meetings is necessary for achieving a legitimate aim listed under Article 19(3) or Article 21 of the ICCPR.

- The notification regime must be substantially narrowed in scope so that its only purpose is to provide the authorities with the information absolutely necessary to assist in the facilitation of an assembly;

- The state should be under a positive obligation, where possible, to facilitate spontaneous, simultaneous and counter-demonstrations. The basis for denying such assemblies (Article 8(1)(a)) should be removed;

- Assemblies should not be subject to blanket time-restrictions, and the legitimacy of public meetings of extended duration should be recognised;

- There should be no blanket prohibition on amplified noise equipment.

- The list of prohibition locations in Schedule 3 should be described more specifically, and ensure that assembly within sight and sound of the institution listed is still possible. Any power to extend Schedule 3 should be subject to Parliamentary oversight.

- The provisions on dispersal and the use of force require substantial revision to ensure that force is only used as a last resort, in accordance with a clear command authority, and subject to the requirements of necessity and proportionality. Any use of force must be subject to subsequent review.

- The Bill should not make organisers of assemblies liable for the acts of individuals outside of their control.

- Article 15 on "gazetted areas" should be removed from the Bill entirely.

- The Bill should stipulate that the media and national and international monitors have access to assemblies and the policing operations facilitating assemblies.