

**SUBMISSION on the REPUBLIC OF UGANDA
PUBLIC ORDER MANAGEMENT BILL 2011**



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The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO working for the practical realisation of human rights in the countries of the Commonwealth.

SUBMISSION on the PUBLIC ORDER MANAGEMENT BILL 2011

Introduction

It is the view of CHRI that large sections of the Public Order Management Bill 2011 are inconsistent with the Constitution of Uganda.

As the Constitution is the supreme law of Uganda, all other laws must be consistent with it, otherwise they will be declared null and void. A large percentage of the Public Order Management Bill 2011, if passed as currently published, is likely to be declared unconstitutional by the Constitutional Court of Uganda (presuming there is a petition filed - a likely occurrence).

CHRI questions the point of trying to pass a Bill that so clearly contravenes the Constitution of Uganda. Apart from the domestic and international condemnation that the government is no doubt aware of, it may be a political embarrassment for the Parliament to have a law struck down after passing it.

In the opinion of CHRI, the Bill breaches the fundamental rights to freedom of assembly and association, enshrined in Article 29 of the Constitution. The Constitution clearly states that "*these rights are inherent and not granted by the State*" (Art 20) and that they cannot be limited, except to protect the rights of others and in the public interest. The Constitution is clear in stating that limiting rights in the name of public interest does not allow

"(a) political persecution;

(b) detention without trial;

(c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution" (Art 43(3)).

In the opinion of CHRI, the Bill clearly goes beyond what is acceptable and justifiable in a free and democratic society, and what is provided in the Constitution of Uganda. Arguably it may also be seen as a form of political persecution - all peoples are not allowed to discuss political matters of any kind in a group of 3 or more.

Furthermore, the Bill may also contravene the right to life, in allowing police officers to, in the context of public order management, use lethal weapons on people posing a 'danger' or escaping custody, but who may not be armed with lethal weapons or threatening serious injury or death to another. Use of firearms in this example would not be proportionate to the threat posed, and would be a breach of international principles.

In our view, the Bill clearly violates the Constitution of Uganda.

Section 6. Meaning of "public meeting"

The right to freedom of peaceful assembly is an essential component of democracy that provides individuals with - amongst other things - the opportunity to express



political opinion or protest government action. Article 29 of the Constitution guarantees this freedom. As such, it is the duty of the state to respect and fully protect the rights of all individuals to assemble peacefully and associate freely. This includes protecting the rights of persons espousing dissenting views or beliefs, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with applicable international human rights law, and their responsibilities.

This is not to say that the freedom comes with no restrictions. In democratic societies, the exercise of the right to peaceful freedom of assembly carries with it certain responsibilities for individuals and groups. It cannot be used for the propaganda of war or any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence as well as ideas or theories of superiority of one group of persons of colour or ethnic origin.

However, the definition at s.6 is too restrictive - it singles out those public meetings which are held to discuss policy actions or government failures and groups trying to form pressure groups to protest government action. In a democracy where the Constitution guarantees the right to peaceful assembly, the right should exist with as few restrictions as possible and it is not permissible to target a particular group or kind of group for special restrictions, nor should it be necessary to specify a particular number of participants. Any definition in this Bill should take care to conform with the requirements of Article 21 of the International Covenant on Civil and Political Rights, to which Uganda has acceded:

“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.”

The definition states that a gathering of 3 people or more can constitute a public meeting, if that group of people are discussing political matters. This is a significant violation of the Constitution of Uganda and international human rights law. This section, as drafted, means that a group of friends that happen to discuss politics whilst walking to a cafe could constitute a public meeting, and, in accordance with this Bill, be acting illegally if they do not have permission to meet. This is a blatant breach of the basic human rights. Although the Bill allows an exception for people meeting for social reasons, it is possible that the police could say it was a meeting for political purposes instead of social reasons.

If this Bill passes as it stands, it is likely that various sections of this Bill, including section 6 will face a constitutional challenge and come before the Constitutional Court of Uganda. This Court has previously unanimously held that a section of the Police Act, that attempted to provide the Inspector-General of Police with broad powers to prohibit demonstrations, was a breach of the Constitution and hence the section was declared null and void.

The government should be reminded that any limitations placed on the rights enshrined in the Constitution must be what in accordance with what is acceptable in a free and democratic society (Article 43 Constitution):

“The right to freedom of assembly and to demonstrate together with others peacefully is a fundamental right guaranteed under Article 29(1) (d) of the Constitution of this country....While I agree that such a right is not absolute, any limitation placed on the enjoyment of such a fundamental right like this one, must fall within the limit of Article 43 (2) (c) of the Constitution of this Country which prohibits:-

“Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in this Constitution.” [GM Okello JA, Muwanga Kivumbi v Attorney General (Constitutional Petition No. 9 of 2005) [2008] UGCC 4 (27 May 2008)]

It is highly likely that a law that requires gatherings of 3 or more people to have permission of the police before they discuss political matters would be judged as unacceptable in a free and democratic society and hence unconstitutional.

Section 7. Notice of public meeting, and Section 8. Notification by authorised officer

As outlined above, the right to peaceful assembly is protected at both a national level - in the Constitution of Uganda - and international level - in the International Covenant on Civil and Political Rights. The requirements of this section, that an organiser must give detailed notice of a meeting, and moreover provisions for prosecution and penalty where this is not done, is a violation of that fundamental right. Such requirements are not necessary restrictions, but rather unfair and unlawful burdens placed on citizens.

The State that has an obligation to protect the rights of all citizens, and citizens are not to be required to give notice that they will, quite simply, be exercising their rights. The scheme outlined in these two sections of the Bill is not permissible under international law, nor does it protect the rights guaranteed by the Constitution. Rather, if the State seeks to co-operate with the public, what can be lawfully requested is that persons inform the police if a public event or meeting is planned. This cannot be a mandatory requirement and, further, in the event that the police are informed of a planned event, then it is their obligation under the law to make any arrangements necessary. They cannot prevent people from meeting or assembling; they do not have the option to either allow or disallow the assembly, nor otherwise seek to restrict such peaceful and lawful activities. This is not to say that police cannot discuss arrangements with organisers, for example, in the event that they are informed about a planned event - but they are not to put

any pressure on those persons, or take any other actions, to cancel or restrict a peaceful gathering in any way.

Again, the drafters should remember that the Constitutional Court declared s.32(2) of the current Police Act “null and void” in *Muwanga Kivumbi v Attorney General*¹ - that section reads as follows:

“32. Power to regulate assemblies and processions.

....
(2) *If it comes to the knowledge of the inspector general that it is intended to convene any assembly or form any procession on any public road or street or at any place of public resort, and the inspector general has reasonable grounds for believing that the assembly or procession is likely to cause a breach of the peace, the inspector general may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession.*
.....”

It can reasonably be expected that any attempt to make a law that purports to include similar, or even more restrictive, provisions would be similarly found to be un-Constitutional and hence stuck down as null and void.

Finally, in regards to s.7(5) specifically, the way in which it is currently drafted does not make sense within the section. The notice referred to must be the notice to be given in writing by the person intending to hold a public meeting - in any event, there should be no need for a certified document under the hand of the IGP when the notice itself is kept and would be available as direct evidence in any proceedings.

Section 9. Powers of an authorised officer.

Subsection 9(3) refers to the authorised officer having regard to “the rights and freedoms” of persons in issuing orders, including orders for dispersal of a public meeting. It is submitted that this section is too brief and vague to be properly effective in protecting the rights of persons under both Ugandan law and international law. The section should be drafted more firmly, and state that the officer must have regard to the rights and freedoms. This would include stating explicitly that the police only have the right to order the dispersal of unlawful and/or violent assemblies, and not otherwise. Further, the law should specify which rights and freedoms are being referred to. For the purposes of this legislation, it should at least specify the rights and freedoms granted under Ugandan law, as well as the human rights of all persons concerned.

Section 10. Duties of the Police.

Given the co-operative spirit ostensibly promoted by this Bill, ss.10(1) may be better drafted to include the idea that the Police shall work together with the organisers and participants of public meetings to preserve law and order.

¹ *Muwanga Kivumbi v Attorney General* (Constitutional Petition No. 9 of 2005) [2008] UGCC 4 (27 May 2008)

Otherwise, the duties of the Police in this context are to maintain public safety by keeping the peace, and to protect certain fundamental rights, in particular:

- people’s right to life, liberty and security of the person; and
- people’s right of peaceful assembly.

However, the section as it is currently drafted does not make this clear. Furthermore, including a duty to disperse a public meeting where the “police officer has reasonable grounds to believe that a breach of peace is likely to occur” means that a police officer

Section 11: Use of firearms by a police officer

This provision may provide the police with the ability to misuse firearms, in violation of international principles and standards regarding the use of firearms, and the right to life enshrined in the Constitution and international law.

The current provision states that:

- A police officer may not use a firearm against any person except-*
- (a) in self defence against the imminent threat of death or injury;*
 - (b) in defence of others against the imminent threat of death or injury;*
 - (c) in preventing the perpetration of a particularly serious crime involving grave threat to life or serious injury;*
 - (d) in arresting a person presenting danger, and resisting the officer's authority;*
 - (e) preventing the escape of a suspect from lawful custody;*
 - (f) where a person, through force, rescues another from lawful custody;*
 - (g) where a person with the use of force:*
 - (i) resists lawful arrest; or*
 - (ii) prevents the lawful arrest of another person.*

The Constitution of Uganda protects the right to life and states that “no person shall be deprived of life intentionally except in the execution of a sentence passed in a fair trial...” (Art 22(1)). It is arguable that giving the police the power to use firearms, which are accepted to be lethal weapons, in situations where a life or serious injury is not threatened (therefore arguably unnecessary to use firearms), is a breach of the Constitution of Uganda.

It may also be a breach of the United Nations Basic Principles on the Use of Force and Firearms which states that:

- law enforcement officials may only use force when strictly necessary and only to the extent required to fulfil their lawful duty²;
- use of force must be exceptional, proportional, necessary in the circumstances and limited to the prevention of crime or apprehension of suspects³;
- the use of firearms is an extreme measure and must **only to be used when a suspected offender offers armed resistance or otherwise jeopardises**

² Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

³ Commentary to Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspect⁴.

Giving police officers the power to use firearms when they (or another person) faces threat of any injury (grave or not), is much too broad - it should be limited to only when the suspected offender offers armed resistance or otherwise jeopardises the lives of others. Additionally the power to use firearms in the following circumstances also clearly breaches the principle of only using firearms when the suspect poses a threat to the life of another:

- *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;*
- *where a person with the use of force:*
 - *resists lawful arrest; or*
 - *prevents the lawful arrest of another person.*

When the Basic Principles are considered, it can be seen that the suggested clause on use of firearms would require significant revision and improvement to be in line with international standards. Any provision would need to be much more comprehensive, and to that end the following points are worth noting:

- The section needs to outline the fundamental responsibility of the Police to protect people's right to life, liberty and security of the person and to maintain public safety by keeping the peace.
- Officers are permitted to use force and firearms in self defence, but it needs to be specified that this is only permissible where the force used is proportionate to the threat faced. In relation to the use of firearms, that is only permissible when no lesser alternatives are viable in the circumstances. Further, if lethal force is to be used intentionally, that can only occur when strictly unavoidable and only to protect life.
- Officers are permitted to use force and firearms in defence of others only where there is a threat of imminent death or serious injury.
- Officers are permitted to use force and firearms to prevent the perpetration of a particularly serious crime involving grave threat to life.
- Officers are permitted to use force or firearms to arrest a person presenting a danger to life or of serious injury, and resisting their authority, or to prevent his or her escape. Again, this is only when less extreme action is not sufficient to achieve the objective of the officer and lethal force is only to be used to protect life and when there are no other alternatives.
- In relation to the use of firearms generally, this is only permitted when less extreme means are insufficient to achieve the lawful objectives of self-defence/protection of others etc.

⁴ Commentary to Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

There should also be specific guidelines and safeguards in place to cover the practicalities of decision-making and appropriate procedures in the event that force or firearms are employed. The following must be covered in legislation:

- The decision to use firearms must be taken by a senior officer. The law should specify the particular rank, and should also take into account the fact that officers involved in making the decision of whether or not to issue firearms should have received a level of training which is sufficient to allow them to make a sound judgement on the matter.
- Once the decision to use firearms has been taken certain safeguards need to be followed - i.e. in the circumstances provided, the police shall, where the circumstances permit:
 - a.) identify themselves as police;
 - b.) give a clear warning of their intent to use firearms;
 - c.) ensure there is sufficient time for the warning to be observed before using firearms unless it would:
 - (i) unduly place the police at risk;
 - (ii) create a risk of death or serious harm to other persons; or
 - (iii) be clearly inappropriate or pointless in the circumstances of the incident; and
 - d.) not fire warning shots.
- When the use of lethal force is necessary, police will:
 - (a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved. This would mean that wherever possible minimum force will be used;
 - (b) minimise damage and injury and respect and preserve human life;
 - (c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible opportunity; and
 - (d) ensure that a relative or close friend of the injured or affected person is notified at the earliest possible opportunity.
- If there has been lethal use of force, the police will report all such instances promptly to their superiors, in accordance with established procedures.

Further, the UN standards also enshrine requirements for legislation on this issue concerning the nature of the firearms themselves as well as their storage and control. They standards cover the following:

- Rules that specify which officers are authorised to carry firearms, and when;
- Rules that specify what kinds of firearms and ammunition are authorised, as well as to limit or prohibit the use of those weapons and ammunition that cause unwarranted harm;
- Regulations to govern the storage, control and issuing of firearms to ensure accountability; and
- Procedures to be in place for reporting whenever firearms are used by officers in their duties (and not just when lethal force is used).

The above points describe the limits of the use of firearms outlined in the UN Basic Principles. All of these provisions apply to the use of force and firearms by police generally, and this includes the policing of public order. As such, any clause in this Public Order Management Bill regarding the use of force or firearms should adhere to these principles.

Section 12. Responsibilities of organisers and participants

The responsibilities enumerated in ss.12(1)(a) to (g) place unfair burdens on organisers. Depending on the nature of the event or meeting, they could not possibly completely ensure that all participants are unarmed and peaceful or control all statements made to the media, for example. It is unfair and unduly restrictive to attempt to make the organisers responsible for the actions of individuals that are outside of their control and all such provisions that attempt to do so should be removed.

In particular, s.12(1)(d) is problematic in the sense that it interferes with freedom of speech and expression, and in any event is too vague. For example, what would happen in the case of a person or group of persons who want to protest a particular law? For these reasons, it should be deleted. Also, in s.12 (1)(e), the time limit of 6pm should be removed.

If the legislation still seeks to encourage organisers to take some such actions, then it should be re-drafted to make the provisions more reasonable, and not mandatory obligations. For example, ss.12(1)(c) could instead provide: “make all reasonable attempts to advise all participants, as far as possible, that they should not carry arms and should conduct themselves peacefully”. In relation to all the obligations placed on organisers, the legislation should contain a standard that, rather than expecting organisers to be able to control all participants, requests them to make reasonable attempts to advise participants of their own obligations. Further, there should be no penalties attached to organisers in regard to these provisions at all.

Finally, it is submitted that ss.12(1)(g) should be removed completely. As already stated, it is unfair and unreasonable to hold organisers responsible for the actions of individual participants. This provision would hold them financially responsible for actions or events that are potentially completely out of their control or foresight. Rather, it is the persons who cause any loss or damage that should be held responsible, unless the organisers themselves can be held to account as encouraging or otherwise directly contributing to the loss or damage.

Section 13. Use of public address system.

This section, as currently drafted, does not seem to relate strictly to public meetings. At present, it could apply to any number of events - such as a music concert - which this Bill does not otherwise seek to govern. Given the purpose of this legislation, the section should be re-drafted to be more specific. Further, as is the case with the right to peaceful assembly generally, the police should not be given the power to allow or disallow the use of PA systems in all cases. In protecting the right to public assembly, such actions can only be restricted or prevented in cases where there is a threat to public safety or order.



Section 14. Register.

This section should specify further detail - whether the Register is to be kept in hard copy and/or electronically? It should also indicate the location of the Register.

Section 15. Gazetted Areas.

It is submitted that, in general, this section has the potential to be misused. There is no provision for oversight of, or appeal against, the Minister's decision to declare a particular area unsuitable for public meetings. This draft Bill is entirely unsatisfactory in this section, especially in the following areas:

- the Bill does not outline the factors to be considered in making such a decision. Further, the reasons for making such a decision should have to, at least, be put down in writing. Both of those steps lead to at least some transparency in the decision-making process - it is not enough to merely declare an area a gazetted area.
- the Minister is given complete discretion to declare an area unfit for public meetings by statutory instrument. The Minister's discretion should, at the very least, be able to be subject to challenge in the public interest or by persons who might be directly affected by such a decision.
- the Bill provides for a statutory instrument that declares an area unfit to be in force for one year, and thereafter renewed by another statutory instrument. Again, the Bill does not outline the factors or criteria to be considered in the renewal process. Further, the procedure outlined would seem to place the instrument before the parliament for approval and resolution - and presumably review - only after a period of one year. It is not satisfactory that such parliamentary or legislative oversight is only envisaged after one year, rather, the Minister's decision should be exposed to that kind of oversight in the initial instance of making the decision.

It should be noted, at this point, that the fact that an area might continue to remain unfit' is itself an indication that governance, regular policing, maintenance of law and order and safety and security in that area has completely failed.

In relation to ss.15(5) in particular, the section is drafted in such a way as to seem predisposed to a decision against persons wishing to hold a public meeting in a declared place. The section should be redrafted to give full expression to judicial discretion, and to state that the Magistrate will hear from both parties and will simply decide whether or not a public meeting should be allowed to proceed in the place.

Subsection 15(8) is procedurally unfair and should be removed completely. The section states that the evidence of a single police officer is determinative of the issue of the number of persons as a public meeting, in the event that a person is being prosecuted under the section. It goes against basic principles of natural justice to allow the evidence of a single person, uncorroborated, to be wholly relied upon. Police officers are no more or less reliable than any other person who may be a witness, simply by the nature of their job or function. The court is the

proper place for the evidence of all witnesses, including police officers, to be weighed and judged. Further, in addition to eye witnesses, it is easily to conceive other evidence that may be readily available in cases such as this - including photographs or video footage taken by participants, observers, police or the media. All forms of evidence should be able to be presented, in accordance with the laws and rules of evidence that normally apply in criminal proceedings.

General Comments

- Need for comprehensive law on the use of force and firearms.

There is a need for all laws to be reflective of international standards and, in those concerned with policing, particularly standards of human rights in law enforcement. In this area of public order management, the need for a comprehensive scheme of laws on the control and use of firearms, and the oversight thereof, is imperative. This is discussed above in these submissions, but is again emphasised in conclusion.

- Scheme for notification and co-operation between police and event organisers.

The foregoing analysis is not meant to suggest, in any way, that there should not be some scheme or system designed that encourages advance notice and co-operation between police and event organisers. Either by way of legislation, regulations or policy and practice, the police/government can provide a framework within which notice of planned events can be given and so the police can prepare in a way which protects and safeguards both the right of persons to participate in public assemblies, and also the human rights and safety of all persons when such an assembly takes place. Communication and, if relevant, negotiation can also be encouraged between police and organisers - provided that the police recognise that, ultimately, they have no power to put a stop to a peaceful gathering, even if, for example, they would prefer it occurred at a different time or place.

What can not be a feature of any such scheme or system, however, if international and national laws and standards are to be complied with, are those things that have been noted above - namely, that the police should not have power to disallow a peaceful assembly; that the giving of notice should not be a mandatory requirement, the absence of which attracts a possible prosecution and penalty; that particular kinds of public assemblies or groups of people should not be targeted etc.

- Repeal previous/existing law in Police Act.

As discussed at the beginning of these submissions, there is a need to reform other laws in Uganda to properly meet international standards in relation to use of force and firearms. If such provisions are placed in this law, then the sections of the Police Act that have been noted herein should also be amended so as to ensure consistency. Further, if a Public Order Management Bill is passed into law, the provisions of the Police Act that deal with those issues would need to be repealed.

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