ARTICLE 19

Uganda: Public Order Management Act

October 2013

Legal analysis

Executive summary

In this brief, ARTICLE 19 analyses the Ugandan Public Order Management Act (the Act), signed into law by President Museveni on 12 September 2013. ARTICLE 19 is concerned that despite some positive amendments, the Act remains seriously flawed from a freedom of expression perspective. We call on the Ugandan Parliament to reform the Act in line with international human rights standards.

The Act contains welcome improvements on the earlier draft of the Public Order Management Bill (the draft Bill),[1] addressing several of the concerns that we raised previously, including:

- Greater prominence of rights-based language, including to the right to freedom of peaceful assembly;
- The removal of most problematic language from the definition of "public meeting"
- A reduction in the notification period from 7 to 3 days;
- An exemption from notification requirements for spontaneous assemblies;
- The removal of prohibitions on amplified noise equipment;
- The removal of problematic provisions on the use of firearms;
- The narrowing of civil liability of organisers for loss or damage as a consequence of an assembly.

Nevertheless, serious flaws remain in the Act, and substantial reforms are required to ensure that the right to freedom of expression and freedom of peaceful assembly are safeguarded in Uganda.

In summary, the most serious shortcomings in the Act are that it:

- Fails to establish a presumption in favour of the exercise of the right to freedom of peaceful assembly, or the duty on the State to facilitate peaceful assemblies;
- Defines "public meeting" by reference to "public interest," potentially excluding critical meetings from the scope of the Act;
- Establishes a *de facto* authorisation procedure for peaceful assemblies that is unnecessarily bureaucratic with broad discretion for the State to refuse notifications;
- Fails to make provision for the facilitation and protection of simultaneous and counter-demonstrations;
- Prohibits public meetings, except those in Town Halls, between 7pm and 7am;
- Prohibits public meetings at and around democratic institutions, including Parliament and Courts;
- Allows the Interior Minister broad powers to designate "gazetted" areas where assemblies are absolutely prohibited;
- Grants law enforcement authorities broad powers to use force to disperse assemblies, with no guidance for alternative methods of managing public order disturbances;
- Criminalises organisers of assemblies for the unlawful conduct of third parties;
- Provides no protection to the rights of the media, including bloggers, to access and report on assemblies.

[1] See: ARTICLE 19 legal analysis, "Uganda: Public Order Management Bill", 13 August 2013, available at: http://www.article19.org/resources.php/resource/37201/en/uganda:-public-order-management-bill

We believe that many of these problems with the Act could have been avoided if the drafting process had been more transparent, and had more effectively engaged stakeholders including civil society organisations.

ARTICLE 19 calls on the Ugandan government to amend the Act through Parliament to ensure that the rights to freedom of expression and of peaceful assembly are protected.

We also call on the Minister of the Interior to ensure that any implementing regulation taken under Article 14 of the Act comply with international standards. Absent reforms to the Act itself, the implementing regulations should seek to address the shortcomings of the Act as far as possible.

Summary of Recommendations

1. The Act should establish a presumption in favour of the right to freedom of expression and of peaceful assembly, and an obligation on the State to facilitate and protect the exercise of these rights;
2. The definition of "public meeting" (Article 4) should be content neutral; references to the "public interest" should be deleted;
3. The notification regime (Article 5) should be substantially narrowed so that its purpose is to provide authorities with notice of only the information absolutely necessary to assist in the facilitation of a peaceful assembly;
4. The coincidence of two demonstrations at the same location and time should not be the basis for rejecting a notification (Article 6(1)). The Act should establish that it is a responsibility of the State to facilitate peaceful simultaneous demonstrations, including counter-demonstrations. Where this is not possible, the law enforcement authorities should provide a suitable alternative in agreement with the organisers;
5. The definition of "spontaneous public meeting" (Article 7(3)) should be read to include circumstances where organisers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organiser;
6. The time restrictions in Article 5(2)(c) and Article 10(e) should be repealed. Any time restrictions on assemblies should be justified accordingly to an individualised assessment of their necessity and proportionality;
7. Any regulation on the manner of an assembly must comply with the three-part test of Article 19(3) and Article 21 of the ICCPR;
8. Article 13 prohibiting assemblies at specific locations of public interest should be repealed. Any restrictions on the location of an assembly must justified on an individualised basis according to the three-part test under Articles 19 and 21 of the ICCPR;
9. Article 12 and the power of gazetting areas as no protest zones should be repealed. Any emergency powers to derogate from the right to freedom of peaceful assembly must comply with the obligations of Uganda under Article 4 of the ICCPR;
10. The provisions regarding the use of force to disperse assemblies (Article 8, Article 9(2)(f) and Article 7(2)) must be revised to ensure consistency, and must clearly establish that force may only be used as a last resort and only where necessary and proportionate, where alternative methods of public order management, which should also be specified in the Law or regulations, have been exhausted. There must be a clear command authority and provision for subsequent review of the use of force;
11. The Act should establish the principles governing the use of firearms in compliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and UN Code of Conduct for Law Enforcement Officials;

12. The Act should clearly define "organiser", and provide greater clarity on the extent of their obligations to cooperate or coordinate with law enforcement authorities, with primary responsibility for maintaining public order resting at all times with law enforcement authorities;
13. Article 10 of the Act should be revised to ensure that organisers are not held criminally liable for failure to comply with legal requirements where they have made reasonable efforts to do so;
14. Article 10 of the Act should be revised ensure that organisers of assemblies are not criminally or civilly liable for the acts of third parties not acting in compliance with their directions or those of law enforcement;
15. Article 10(1)(d) requiring organisers to refrain from making unlawful statements to the media should be repealed;
16. The Law should make clear that law enforcement should ensure access of the media and assembly monitors to assemblies so far as is possible. This must include the freedom to report on the assembly itself as well as the policing operation.

17. Table of Contents

Introduction

This legal analysis assesses the Public Order Management Act (the Act) for Uganda, signed into law by President Museveni on 12 September 2013, for compliance with international human rights standards on the rights to freedom of expression and freedom of peaceful assembly. The analysis compares the Act to an earlier draft of the Public Order Management Bill (the draft Bill) that we also analysed.[2]

Positive amendments to the earlier draft Bill include the addition of positive rights-based language, a reduction in the notification period for assemblies, allowances for spontaneous assemblies, fewer restrictions on the manner of assemblies and amendments to provisions on the liability of organisers of assemblies. Problematic provisions regarding the use of firearms have also been removed.

While these amendments are welcome, the Act remains substantially flawed and a range of amendments are required to bring the Act into compliance with international human rights standards.

ARTICLE 19 believes that in addition to the substantial reforms to the Act that must be undertaken by the government through Parliament, we urge the Minister of the Interior to ensure that any implementing regulations comply with international standards and, where possible, rectify the shortcomings in the Act.

[2] *Ibid.*

International Standards

International human rights law places a responsibility upon States to protect and promote the right to freedom of expression and the right to freedom of peaceful assembly.

The right to freedom of expression

Freedom of expression is guaranteed in Article 19 of the Universal Declaration of Human Rights (UDHR)[3] and in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).[4] The ICCPR protects the right of all people to seek, receive, and impart information of any form, including political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.[5] Importantly, the right protects expression that others may find deeply offensive.[6]

The right to freedom of expression is integral to the enjoyment of the right to freedom of assembly.[7] The UN Special Rapporteur on the right to freedom of opinion and expression described the right as a collective right that "endows social groups with the ability to seek and receive different types of information from a variety of sources and to voice their collective views. This freedom extends to mass demonstrations of various kinds. It is also a right of different peoples, who, by virtue of the effective exercise of this right, may develop, raise awareness of, and propagate their culture, language, traditions and values."[8]

At the regional level, both the African Charter on Human and Peoples' Rights (the African Charter) also protects the right to freedom of expression.[9]

The right to freedom of peaceful assembly

The right to freedom of peaceful assembly is guaranteed in Article 20 of the UDHR, and given legal force through Article 21 of the ICCPR, and is reflected in many other international human rights treaties.[10]

The right to freedom of peaceful assembly protects any intentional and temporary presence of a number of individuals in a private or public space for a common expressive purpose.[11] This

---

[3] UN General Assembly Resolution 217A(III), adopted 10 December 1948. Article 19 provides: "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."
[4] Uganda acceded to the ICCPR on 21 June 1995.
[5] General Comment No. 34, HR Committee, CCPR/C/GC/34, 12 September 2011, para. 11.
[6] *Ibid.*
[7] General Comment No. 34, *op. cit.*, para. 4. General Comment No. 34 provides guidance with regard to elements of Article 21; see *Kivenmaa v. Finland*, Communication No. 412/1990, 31 March 1994, para 9.2.
[8] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, 20 April 2010, para. 29. General Comment No. 34, *op. cit.*, para. 4.
[9] At Article 9. Uganda acceded to the African Charter on 10 May 1986.
[10] Article 8 of the International Covenant on Economic, Social and Cultural Rights; Article 7(c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labour Organization Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise; Convention on the Rights of the Child, Article 15.
[11] Based on proposals of the 2012 annual report of the UN Special Rapporteur on the rights to freedom of

includes but is not limited to political demonstrations, inside-meetings, strike actions, pickets, processions, rallies, commemorations, and cultural or religious celebrations. The right to freedom of peaceful assembly also extends to the expression of ideas that may be considered controversial or that are "not necessarily favourably received by the government or the majority of the population"[12] or that "may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote."[13]

The State is under a positive obligation to enable the exercise of the right to freedom of peaceful assembly, including the obligation to exercise a presumption in favour of the holding of assemblies.[14] Importantly, peaceful assemblies must be protected by the State, including from private third parties such as counter demonstrators and *agents provocateurs*.[15]

The HR Committee[16] and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association[17] have both noted the interrelatedness between this right and the right to freedom of expression. The right to freedom of peaceful assembly has also been recognised as central to the right to participate in the conduct of public affairs.[18] In particular, the right to freedom of peaceful assembly has been noted as particularly important for bringing attention to local issues where mass media are limited or restricted.[19]

Also at the regional level, the African Charter also protects the right to freedom of peaceful assembly.[20]

Limitations on the right to freedom of expression and peaceful assembly

The right to freedom of expression and the right to freedom of peaceful assembly are not guaranteed in absolute terms and may be subject to narrowly tailored limitations. Limitations must comply with the three-part test under the following terms:[21]

---

peaceful assembly and of association ("an intentional and temporary gathering in a public space for a specific purpose", *op. cit.*, at para. 24); and the OSCE Guidelines on Freedom of Peaceful Assembly ("the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.")

[12] HR Committee, *Viktor Korneenko et al v. Belarus*, Communication No. 1274/2004, para. 7.3.

[13] European Court of Human Rights (ECtHR), *Stankov & UMO Ilinden v. Bulgaria*, Application Nos. 29221/95 and 29225/95 (2001), para. 86. See also: ECtHR, *Hyde Park and Others v. Moldova*, Application No. *33482/06* (2009), para. 30: the prohibition on a protest on the basis that the claims of participants were "unwelcome and unfounded" was not compatible with Article 11 of the European Convention on Human Rights (ECHR).

[14] The HR Committee has found that a failure by the State to produce reasons for interfering with the right to freedom of peaceful assembly is a violation of the ICCPR. E.g. *Mecheslav Gryb v. Belarus*, op. cit; *Chebotareva v. Russia*, communication No. 1866/2009 (2012); *Belyazeka v. Belarus*, communication No. 1772/2008 (2012).

[15] Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, 2nd revised edition, at Article 21, para. 11. See also EctHR, *Plattform "Ärzte für das Leben",* Application No. 10126/82 (1988), para. 34.

[16] See, for example: *Mechislav Gryb v. Belarus*, communication No. 1316/2004 (2011), para. 9.5 and paras. 13.3 to 13.4; and General Comment No. 34, *op. cit,* para. 4.

[17] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 12.

[18] General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), CCPR/C/21/Rev.1/Add.7, 12 July 1996, para. 25.

[19] OSCE Guidelines on Freedom of Peaceful Assembly, Second Edition, section B.1.5.

[20] At Article 11, although the term "peaceful" is absent from this provision.

[21] The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, part I.A.2 and I.A.9, UN Commission on Human Rights, 28 September 1984, E/CN.4/1985/4.

- **Provided by law**: all limitations must "be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public."[22] It should be noted that limitations on the right to freedom of expression must be "provided by law", whereas limitations on the right to freedom of peaceful assembly must be "in accordance with law".[23]

- **Legitimate aim:** all limitations must be in pursuit of a listed "legitimate aim", namely: respect for the rights or reputations or others; the protection of national security or of public order; or the protection of public health or morals.[24] Additionally, the right to freedom of peaceful assembly may also be restricted to protect public safety.[25]

    - Limitations to protect the **rights of others** must be constructed with care and should not be interpreted, *inter alia*, to restrict political debate.[26]

    - The genuine purpose and demonstrable effect of restrictions on the basis of protecting **national security** must be to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.[27]

    - The State must demonstrate that any limitation to protect "**public morals**" is *essential* to the maintenance of respect for fundamental values of the community.[28] States are not permitted to invoke protection of "public morals" to "justify discriminatory practices"[29] or "to perpetuate prejudice or promote intolerance."[30] International human rights bodies have also noted that concepts of morality are constantly evolving,[31] that any limitation "must be based on principles not deriving exclusively from a single tradition",[32] and "must be understood in the light of the universality of human rights and the principle of non-discrimination."[33]

---

[22] General Comment No. 34, *op. cit.;* the Siracusa Principles, *ibid*., ECtHR, *Muller and Others v. Switzerland*, application No. 10737/84 (1988), para. 29.
[23] See: Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, p. 489. Any law regulating the right to freedom of peaceful assembly must prevent arbitrary interferences with the right and meet the requirements of legality; ECtHR, *Mkrtchyan v. Armenia*, application no. 6562/03 (2007), para. 39.
[24] Article 19(3) ICCPR, and Article 21 ICCPR. Similarly, under the ECHR these rights may be restricted to protect national security, the prevention of disorder or crime, for the protection of health or morals, and the protection of the rights and freedoms of others; Article 10(2) ECHR and Article 11(2) ECHR.
[25] Article 21 ICCPR.
[26] General Comment No. 34, *op. cit*., para. 28.
[27] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, ARTICLE 19 London, 1996, Principle 2.a. Also, the HR Committee held that restrictions on publicly supporting a labour dispute, including calling for a national strike, did not constitute a threat to national security; *Sohn v. Republic of Korea*, communication No. 518/1992 (1994).
[28] The Siracusa Principles, *op. cit.*
[29] *Ibid*. See also: General Comment No. 34, *op. cit*., para. 32: Morality based limitations on rights "must be understood in the light of the universality of human rights and the principle of non-discrimination."
[30] *Hertzberg et al v. Finland*, Communication No. 61/1979, individual opinion by Committee members Opsahl, Lallah and Tarnopolsky, 2 April 1982.
[31] The Siracusa Principles, *op. cit.* See also: *Muller vs. Switzerland*, *op. cit*., para. 35; and *Alekseyev*, *op. cit*., at para. 82.
[32] General Comment No. 34, *op. cit*., para. 32.
[33] *Ibid.*

- International standards maintain that measures to protect **public health** must be "both evidence-based and proportionate to ensure respect of human rights."[34]

- States are under a positive obligation to promote and protect the right to freedom of expression, and to take reasonable and appropriate measures to enable demonstrations to proceed peacefully.[35] The threshold for prohibiting expression on the basis of protecting **public order** or public safety is high and must be evidence based, rather than premised on speculation.[36] The potential for a public order disturbance, in particular from counter-demonstrators, should not be the basis for denying the right to freedom of peaceful assembly. Less restrictive measures, such as the deployment of additional law enforcement officers, should therefore be considered. Any prior restraints of a blanket nature, especially where based on the content of expression, are almost always illegitimate.[37]

- **Necessity and proportionality:** States must demonstrate in a "specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat."[38] Moreover, this must be supported by evidence and should not be speculative.[39] The restriction must also not be overly broad and must be the least restrictive means available for achieving the protective function. Account must also be taken of the form of expression and the means of its dissemination.[40]

Notification requirements for assemblies

Any requirements for organisers of a peaceful assembly to notify authorities ahead of time are a restriction on the right to freedom of peaceful assembly and should be justified according to the three-part test.

International standards are clear that prior-notification procedures are compatible with the right to freedom of peaceful assembly to the extent that they allow states to plan to adequately facilitate the assembly.[41] The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that states should not impose prior-

---

[34] Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, A/66/254, para. 18.
[35] ECtHR, Plattform "Ärzte für das Leben", *op. cit.*, paras 32 and 34.
[36] ECtHR, *Barankevich v. Russia*, Application No. 10519/03, 26 July 2007, at para. 33: "mere existence of a risk is insufficient for banning [a peaceful assembly]: in making their assessment the authorities must produce concrete estimates of the potential scale of disturbance in order to evaluate the resources necessary for neutralising the threat of violent clashes."
[37] ECtHR, *Stankov & UMO Ilinden v. Bulgaria*, *op. cit.*, para. 97: "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."
[38] General Comment No. 34, *op. cit.*, para 35; also: *Shin v. Republic of Korea*, Communication No. 926/2000, HR Committee, 16 March 2004, para. 7.3.
[39] *Alekseyev v. Russia*, Applications nos. 4916/07, 25924/08 and 14599/09, 21 October 2010, para. 86.
[40] General Comment No. 34, *op. cit.*, para. 34. The same paragraph provides that particular regard should be paid to "the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain."
[41] *Kivenmaa v. Finland*, *op. cit.* See also: OAS Int-AmCHR report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, para. 57.

authorisation requirements, but should at most require only notice of assemblies.[42] The notification procedure should be subject to a proportionality assessment, should not be unduly bureaucratic, and require a maximum of 48 hours prior to the day the assembly is planned to take place.[43] The need for notification only exists where there are a large number of demonstrators,[44] in some countries, notification is only required for marches and parades, and not for static assemblies.[45] Moreover, absence of a notification should not be the basis for dispersing a peaceful assembly.[46] In particular, spontaneous assemblies should be exempt from prior-notification requirements.[47]

Dispersal of assemblies

The dispersal of any assembly should only ever be used as a measure of last resort and in exceptional circumstances; force should never be used against a peaceful assembly. It has been noted that where the right to freedom of peaceful assembly is suppressed, those demonstrations that do occur are more likely to become violent.[48]

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 (UN Basic Principles)[49] and the UN Code of Conduct for Law Enforcement Officials.[50] Regard must be paid to the right to life[51] and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[52] Each of these rights is non-derogable, even during emergencies.[53]

---

[42] 2012 annual report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, *op. cit.*, para. 28.
[43] *Ibid.*
[44] *Ibid.* Articles 3 and 12 of Moldova's Law on Public Assemblies only requires notification where there are more than 50 participants. The Polish Law on Assemblies only requires notification on assemblies of more than 15 people; the Croation Law on Public Assemblies only requires notification on assemblies of more than 20 people. See the Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (2012).
[45] See, e.g. UK Public Order Act, 7 November 1986, s.11.
[46] ECtHR, *Bukta and others v. Hungary*, Application No. 25691/04 (2007), para. 36.
[47] *Ibid.* See also: 2012 annual report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, *op. cit.*, para. 29.
[48] Annual Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28, 23 May 2011, para. 13.
[49] Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders Havana, Cuba, 27 August to 7 September 1990. In particular: Principles 5, 9, and 12 – 14.
[50] Adopted by the UN General Assembly in resolution 34/169 of 17 December 1979.
[51] Article 6, ICCPR; Article 4, African Charter.
[52] Article 7, ICCPR; Article 5, African Charter.
[53] Article 4(2), ICCPR.

Analysis of the Law

Failure to facilitate the exercise of fundamental rights

The Act includes positive changes to the "principle of managing public order", now contained in Article 2.

Previously human rights language was conspicuously absent from this provision. Now, Article 2(1) specifies regulation of the freedoms of peaceful assembly and petition as "underlying principles" for public order management. Explicit reference is made to Articles 29(1)(d) and Article 43 of the Ugandan Constitution that guarantee these rights.

Although these amendments are positive, Article 2 remains focused on regulation rather than the obligation of the State to facilitate the exercise of these rights. As the UN Special Rapporteur on the right to freedom of peaceful assembly and of association has recommended, laws should make clear it is the obligation of the State to facilitate and protect the exercise of the right to freedom of peaceful assembly, and there should be a presumption in favour of the exercise of these rights.[54] Article 2 could therefore go further to establish these principles more firmly.

ARTICLE 19 notes that Article 2(2) now additionally states that for the purpose of Article 2(1), "regulation" means "to ensure that conduct or behaviour conforms to the Constitution." This is positive to the extent that it stresses that any exercise of State power must be constrained by the provisions of the Constitution. However, the definition may be misinterpreted as applying only to the conduct or behaviour of participants at assemblies and not to the behaviour or conduct of law enforcement. The powers of regulation given to law enforcement authorities in subsequent provisions may consequently be interpreted too broadly. Article 2(2) could be articulated to clarify that the conduct of law enforcement is expressly constrained by the Constitution.

Recommendation:

- The Act should establish a presumption in favour of the right to freedom of expression and of peaceful assembly, and an obligation on the State to facilitate and protect the exercise of these rights.

Definition of "public meeting"

ARTICLE 19 welcomes that the definition of "public meeting" (Article 4, previously Article 6) has been revised so that the Act no longer specifically targets critical political expression.

However, the definition remains problematic.

Previously, the Draft Bill had singled out meetings that had the purpose of discussing the failures of government, political parties or other political organisations, or that had the

[54] A/HRC/23/39, 24 April 2013, para. 50

purpose of forming pressure groups. At the same time, a range of equally ambiguous exemptions contradicted this provision.

Article 4 of the Act now defines a public meeting in the following terms:

> A gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest.

ARTICLE 19 is concerned that the definition is not viewpoint neutral. References to the "public interest" give authorities too much discretion to exclude from the protective scope of the Act legitimate viewpoints that they may disagree with. The OSCE guidelines on freedom of peaceful assembly define an assembly as "the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose."[55] The content of the expression should not be considered relevant to defining an assembly.

It is positive that the definition otherwise brings a wide range of common expressive conduct within the scope of the Act. Law enforcement authorities and the judiciary should give broad interpretation to this provision.

Recommendation:

- The definition of "public meeting" (Article 4) should be content neutral; references to the "public interest" should be deleted.

Notification period

The notification period for assemblies has been reduced from 7 to 3 days (Article 5 of the Act, Article 7 of the previously analysed Bill). However, notification must still be in writing, according to a provided form (Article 5(2)) and specify: 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; an indication of the consent of the owner of the venue; the number of persons expected; the purpose of the meeting, and any other relevant information. Where the form is not used, written notification will still be accepted if it contains the same information that the form requires (Article 5(3)).

Article 5(5) establishes that it is an offence to organise a meeting where the notification requirements have not been met, or where the date, start time, or route is different from that notified. Article 5(8) provides separately that holding an assembly without complying with the Act is an offence of disobedience of statutory duty (Section 116 Penal Code Act). Absence of notification is also a basis for preventing an assembly occurring or dispersing it (Article 8 (1) – (2)), with failure to disperse constituting an offence of disobedience of lawful orders (Section 117 Penal Code Act, sentence of 2 years imprisonment available).

ARTICLE 19 welcomes the reduction of the notification period from 7 days to 3 days, as this substantially reduces the burden on organisers, while also providing adequate time for law enforcement authorities to make preparations to facilitate an assembly if necessary.

---

[55] Guidelines on Freedom of Peaceful Assembly, Second Edition (2011), prepared by the Organisation for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) Panel of Experts on the Freedom of Assembly.

However, we are disappointed that extensive requirements for organisers to provide written information have been retained, and that assemblies may be prohibited or dispersed for failing to meet these requirements. We are also concerned that taken together with Article 6 (analysed below), the "notification" regime is in fact on one authorisation.

The following criticisms of the notification procedure under Article 5 are still applicable:

- Absence of a notification should not be the basis for prohibiting or dispersing a peaceful assembly, since in many circumstances notification may not be practical or possible and shouldn't be the basis for restricting the enjoyment of the right. This was stressed by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his first and second thematic reports.[56] The European Court of Human Rights (European Court) has also articulated this principle in the case of *Bukta and others v. Hungary*.[57]

- The notification requirement applies irrespective of the number of expected participants in the assembly. However, where there the number of participants is small, State facilitation will not be necessary and therefore the basis for requiring notification is absent. By way of comparison, in Moldova, any assembly of fewer than 50 persons can take place without prior notification and in the United Kingdom there is no *requirement* of notification for static assemblies at all.

- The requirement that organisers specify the purpose of a public meeting to the State is not legitimate, as this information does not assist law enforcement in making arrangements to facilitate the assembly.[58] 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. By way of comparison, the European Court has stated that it is "unacceptable… that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest."[59]

- The notification procedure remains overly bureaucratic and burdensome, constituting a disproportionate restriction on the right to freedom of peaceful assembly. 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.[60]

---

[56] A/HRC/23/39, at para. 51.
[57] *Bukta and others v. Hungary*, Application No. 25691/04, 2007.
[58] UN Special Rapporteur on the right to freedom of peaceful assembly and of association, A/HRC/23/39, 24 April 2013, at para. 53
[59] *Hyde Park&Others v. Moldova No.1*, Application Nos. 33482/06, 45094/06, 45095/06, 31/03/2009, para. 26.
[60] *Ibid.*

- The requirement that notification include an indication of consent from the venue proprietor is an unnecessary administrative burden that serves no legitimate purpose. There is no need for the State to receive notification of assemblies that take place on or in a privately owned space. Additionally, where the location for the assembly is a public space it is unclear whether authorisation is required from the authority responsible for that space. If this is the case, it creates an additional layer of authorisation and doubly restricts the right to freedom of peaceful assembly in a way that is wholly illegitimate.

Recommendation:

- The notification regime (Article 5) should be substantially narrowed so that its purpose is to provide authorities with notice of only the information absolutely necessary to assist in the facilitation of a peaceful assembly.

Powers for law enforcement authorities to refuse assemblies or direct changes

Article 6 of the Act provides the power to an authorised officer to "notify" an organiser of an assembly that it is not possible to hold an assembly on the basis of one of two grounds. Article 6(3) makes clear that this is essentially a power of refusal, and renders the "notification" procedure established by Article 5 one of de facto authorisation.[61]

International standards are clear that notification procedures should be preferred over authorisation or permission-based procedures.[62] The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association gives Cote d'Ivoire, Morocco, Senegal and Tanzania as examples of African Union member states that have notification procedures for assemblies.[63]

The two grounds for refusal under Article 6(1) are that:

(a) notice of another public meeting on the date, at the time and at the venue proposed has already been received by the authorised officer; or
(b) the venue is considered unsuitable for purposes of crowd and traffic control or will interfere with other lawful business,

These grounds are both too broad and too ambiguous, and thus only constitute superficial constraints on the power of law enforcement to refuse an assembly. The following criticisms should be addressed:

- **Simultaneous demonstrations, including counter-demonstrations, should be facilitated**: Article 6(1)(a) establishes a discretionary power on law enforcement authorities to prohibit simultaneous demonstrations, in circumstances where such restrictions may serve no legitimate aim or conform to the requirements of necessity and proportionality.

[61] Artilce 6(3) reads: "Where the authorised officer notifies the organiser or his or her agent that it is not possible to hold a proposed public meeting on the date or venue proposed, the public meeting shall not be held on that date or at the venue proposes."
[62] Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, A/HRC/20/27, at para. 28; see also, OSCE guidelines on peaceful assembly, 2nd edition, *op. cit.*, at paras. 118 – 120.
[63] Ibid.

The coincidence in time and place of two public meetings should not be a basis for rejecting the notification of any assembly. The State is under a positive obligation to facilitate the right to freedom of peaceful assembly of all people, which necessarily requires simultaneous and counter-demonstrations to be accommodated where possible.[64] Where this is not possible, alternatives should be agreed between assembly organisers and law enforcement through dialogue and on the basis of non-discrimination.[65]

In respect of simultaneous 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.[66]

While there is always the potential for a public order disturbance from simultaneous demonstrations, in particular counter-demonstrations, the threshold for prior-restraints on an assembly in these circumstances is high and must be evidence based, rather than premised on speculation.[67] 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.

- **Law enforcement should not be given unfettered discretion to determine the suitability of an assembly location:** The ambiguity of Article 6(1)(b) grants law enforcement authorities a broad discretion to reject a notification of an assembly on the basis of the suitability of the venue without providing adequate guidance to decision-makers. While the language in the Act is more specific than in the Bill, ambiguity remains regarding the meaning of "unsuitable" and "interference with a lawful business." This leaves the provision open to abuse, and the restrictions it allows are therefore not "provided by" or "in conformity with" the law for the purposes of Articles 19(3) or 21 of the ICCPR.

  The language of "unsuitable" and "interference" may also be interpreted as implying a very low threshold for justifying restrictions on the right to freedom of peaceful assembly that would not be necessary in a democratic society or proportionate.

  The Act should make clear that peaceful assemblies are as legitimate a use of public space as any other usage (e.g. the use of roads or access to business),[68] and a high threshold should be overcome before the rights or interests of others are used as the basis for restricting an assembly.[69] Law enforcement authorities require more specific guidance on how competing interests in relation to an assembly should be balanced, and any

[64] Article 21 of the ICCPR; Article 11 of the African Charter.
[65] OSCE guidelines on peaceful assembly, 2nd edition, *op. cit.*, at para. 122.

[66] See, by way of comparison, ECtHR, *Plattform "Ärzte für das Leben" v. Austria*, Application No. 10126/82, 21 June 1988, at para. 32: "the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate."

[67] See, by way of comparison: ECtHR, *Barankevich v. Russia*, Application No. 10519/03, 26 July 2007, at para. 33
[68] See, by way of comparison: ECtHR, *Patyi and Others v. Hungary*, Application No. 5529/05, 7 October 2008, at para. 42.
[69] See, by way of comparison: ECtHR, *Ashughyan v. Armenia*, Application No. 33268/03, 17 July 2008, at para. 90.

restrictions justified according to the three-part test of Article 19(3) and 21 of the ICCPR. The OSCE guidelines propose that consideration should be given to: 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.[70]

The timescale set out for refusals under Article 6(1) also means an individual could discover their assembly has not been permitted as little as 24 hours before it is scheduled to take place. Law enforcement authorities may abuse this timeframe to cause maximum frustration to the organisers of assemblies. The Act should establish a presumption that where the State has failed to respond to a notification promptly, the assembly may proceed as notified.[71]

Where there is a refusal, Article 6(2) places the onus on the organiser to propose an alternative date, time or venue. The Act should establish it as an obligation of law enforcement to reach a suitable alternative, within sight and sound of the organisers' target audience.[72] It is also regarded as best practice that negotiation and dialogue should be encouraged between all interested parties to ensure that any alternative meets the needs of organisers.[73]

It is positive, however, that provision is made for the decision of the authorised officer to be appealed to a magistrates court (Article 6(3)), although this would be enhanced by a requirement for an expedited proceeding to ensure that a decision is reached as quickly as possible to allow minimum interference with the exercise of the right to freedom of peaceful assembly.[74]

Recommendation:

- The coincidence of two demonstrations at the same location and time should not be the basis for rejecting a notification (Article 6(1)). The Act should establish that it is a responsibility of the State to facilitate peaceful simultaneous demonstrations, including counter-demonstrations. Where this is not possible, the law enforcement authorities should provide a suitable alternative in agreement with the organisers.

Provision for spontaneous assemblies

ARTICLE 19 welcomes the addition of Article 7 to the Act, which provides that "spontaneous public meetings" are exempt from the notification requirements, whereas the Bill provided no such exemption. A spontaneous public meeting is defined in the Act as one that is "unplanned, unscheduled or unintended."

International standards require spontaneous assemblies to be exempt from prior-notification requirements, since the need of individuals to respond urgently and with a degree of

[70] OSCE guidelines on freedom of peaceful assembly, 2nd edition, *op. cit.*, at para. 82.
[71] See, for example, Article 12, Armenia's Law on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008).
[72] See, by way of comparison: ECtHR, *Rai, Almong and "Negotiate Now" v. United Kingdom* (1995) admissibility decision.
[73] OSCE guidelines on freedom of peaceful assembly, *op. cit.*, at para. 134.
[74] See, for example, Article 14(2) of Georgia's Law on Assemblage and Manifestations (1997, amended 2009).

spontaneity to trigger events must be an acceptable practice in any democratic society.[75] However, it should be noted that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association gives a broader definition to what assemblies should be considered "spontaneous". This includes assemblies where organisers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organiser.[76] Notification requirements must therefore recognise the reality that in many circumstances requiring notification is not practical in the circumstances, and States should therefore be generous in their interpretation of exemptions. In particular, the UN Special Rapporteur emphasised to the UN General Assembly in October 2013 that exemptions for spontaneous assemblies are especially important in the context of elections.[77]

ARTICLE 19 is concerned that excessive discretionary powers are given to the authorities to disperse spontaneous assemblies (Article 7(2)(a)-(c)). These include when notification of another public meeting has already been given for the same venue, time and date, the venue is considered unsuitable for purposes of traffic or crowd control, or will interfere with other unlawful business. These bases for dispersal are also provided in relation to notified assemblies, and are analysed above; the same criticisms apply.

Recommendation:

- The definition of "spontaneous assembly" should be read to include circumstances where organisers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organiser;

Time restrictions on assemblies

Article 5(2)(c) requires organisers to notify authorities of a start and end time for their meeting between 7am and 7pm, with the exception of town hall meetings (Article 7(2)(b) in the Bill). Article 10(e) makes it the responsibility of organisers to ensure the meeting is concluded within this period. The Act therefore continues to effectively prohibit assemblies outside of these hours unless they take place inside a town hall. The prohibition will have a disproportionate effect on those who work long hours during daytime, and also curtail the right of people to participate in sustained protests of an extended duration.

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.[78]

Recommendation:

- Article 5(2)(c) and Article 10(e) should be repealed, and any time restrictions on assemblies justified accordingly to an individualised assessment of their necessity and proportionality.

---

[75] Report of the special Rapporteur on the right to freedom of peaceful assembly and of association, A/HRC/23/39, 24 April 2013, at para. 51. See also, by way of comparison, ECtHR, *Bukta and others v. Hungary*, *op. cit.*

[76] *Ibid.* See also: OSCE guidelines on freedom of peaceful assembly, 2nd edition, 2011, at para. 126. The OSCE guidelines cite Decision 75/2008 (V.29) AB of the Hungarian Constitutional Court and the Brokdorf decision of the Federal Constitutional Court of Germany, BVerfGE 69, 315 as examples of positive practice.

[77] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/68/299, 7 August 2013, at para. 24.

[78] OSCE Guidelines on peaceful assembly, 2nd edition, *op. cit.*, at para. 43.

Manner restrictions on assemblies

ARTICLE 19 welcomes that the blanket prohibition on amplified noise equipment at public meetings has been removed from the Act. The blanket prohibition that was contained in Article 13 of the Bill did not allow for an individualised assessment of the necessity and proportionality of such a measure in relation to any particular assembly.

However, the Act does not replace this provision with guidance on how legitimate restrictions may be placed on the manner of assemblies, including noise levels, to balance other individual and collective rights and interests. Any restriction in this regard should be constrained by the requirements of legality, legitimate aim, and necessity, as required by Article 19(3) and Article 21 of the ICCPR.

Recommendation

- Any regulation on the manner of an assembly must comply with the three-part test of Article 19(3) and Article 21 of the ICCPR.

Place restrictions on assemblies

As outlined above, law enforcement authorities are empowered to reject notification of an assembly on the basis of the proposed location (Article 6(1)) or to prevent or disperse on the same basis in relation to spontaneous assemblies (Article 7(2)).

Article 13 additionally sets out "restricted areas", where entry is prohibited with punishment of 2 years imprisonment and/or a fine of 48 currency points. The list of restricted areas is set out in Schedule 3 as Parliament and its precincts, State House Entebbe, State Lodges countrywide, International airports, Courts of judicature. Article 13 requires Parliamentary approval before the Minister of Interior can add to this list.

ARTICLE 19 is concerned that Article 13 establishes a list of no-protest zones without regard to the necessity or proportionality of any such measure to achieve a legitimate aim. Absolute bans on protests in or in the vicinity of these locations go against international standards on freedom of peaceful assembly. This is particularly the case in relation to protests within sight and sound of major democratic institutions, where the right to freedom of assembly.

Article 12 grants the Minister the power, subject to Parliamentary approval, to declare any area in Uganda as "gazetted", and thereby absolutely prohibit assemblies in that area. The power may be exercised where the Minister "is of the opinion that it is desirable in the interests of public order".

The power of the Minister, although subject to Parliamentary approval, is so extreme that it essentially equates to a power for the Ugandan government to derogate from its commitments under the ICCPR to protect and promote the right to freedom of peaceful assembly. Such derogations are only permitted in times of war or public emergency that threaten the life of the nation.[79] Disturbances to public order, including internal conflict and unrest that do not

[79] Article 4 of the ICCPR.

constitute a grave and imminent threat to the life of the nation, are insufficient to justify a derogation.[80]

Even if Article 12 is regarded as a power to restrict the right to freedom of peaceful assembly rather than derogate from it, it fails to meet the three-part test under Article 21 of the ICCPR. The discretion granted to the Minister to exercise his or her own subjective judgment, and the lack of guidance given to Parliament in its oversight function, create significant legal uncertainty over the scope of the power and when it may be exercised. The language of "desirable in the interests of public order" also indicates a much lower threshold than that of "necessity" for imposing limitations. There are also no requirements that gazette declaration be proportionate, for example by requiring any declaration to be time or space bound, or subject to regular review by Parliament to ensure the measure remains necessary and proportionate.

Recommendations:

- Article 13 prohibiting assemblies at specific locations of public interest should be repealed. Any restrictions on the location of an assembly must justified on an individualised basis according to the three-part test under Articles 19 and 21 of the ICCPR.
- Article 12 and the power of gazetting areas as no protest zones should be repealed. Any emergency powers to derogate from the right to freedom of peaceful assembly must comply with the obligations of Uganda under Article 4 of the ICCPR.

Power to disperse assemblies

ARTICLE 19 is concerned that provisions relating to the power of law enforcement to disperse assemblies are more ambiguous than in the Bill.

Article 8(1) and (2) give powers to an authorised officer, subject to the directions of the Inspector General of the Police, to stop or prevent the holding of a meeting (Article 8(1)) or where it has started to disperse it (Article 8(2)). Either power may be employed in response to a failure by organisers or participants to comply with the Act.

Additionally, Article 9(2)(f) establishes the *duty* of the police to "disperse defiant or unruly crowds or individuals at a public meeting in order to prevent violence, restore order, and preserve the peace."

In relation to spontaneous assemblies, Article 7(2) provides more specific grounds for authorising dispersal. These are the same as the grounds for refusing notification, discussed above.

The Act fails to establish a coherent legal framework for the use of force against assemblies, with powers of law enforcement authorities fragmented across numerous ambiguous provisions that may be interpreted differently.

[80] The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1984/4, 1984, at paras. 40 – 41.

International standards are clear that the use of force should only ever be used as a measure of last resort in exceptional circumstances, and never against a peaceful assembly, even if it is technically unlawful.[81] The Act not only fails to establish these principles, but seemingly establishes a presumption (or a duty in Article 9) in favour of the use of force. Article 8(2) foresees dispersal for violations of the Act for as little as a technical violation of provisions on notification, which would clearly violate international standards.[82]

Less confrontational alternatives to maintain public order while minimising violence are not considered in the Act, such as negotiation or mediation, or non-intervention or active facilitation. 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.

Where the use of force is considered necessary under the Act, no requirement is imposed to distinguish peaceful participants form non-peaceful participants.

There is a general qualification on the Article 8 powers requiring law enforcement officials to have regard for the rights of participants and others (Article 8(3)). However, in relation to the use of force this provision would be strengthened if it made specific reference to the right to life,[83] and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[84]

Failure to comply with an order to disperse is a criminal offence under Section 117 of the Penal Code Act (which provides for up to 2 years imprisonment).

Recommendation:

- The provisions regarding the use of force to disperse assemblies (Article 8, Article 9(2)(f) and Article 7(2)) must be revised to ensure consistency, and must clearly establish that force may only be used as a last resort and only where necessary and proportionate, where alternative methods of public order management, which should also be specified in the Law or regulations, have been exhausted. There must be a clear command authority and provision for subsequent review of the use of force.

Use of firearms

ARTICLE 19 welcomes the removal of controversial provisions from the Act regarding the use of firearms against participants in assemblies. Article 11 of the previously analysed Bill provided wide-ranging exceptions to a general prohibition on the use of firearms that did not comply with international human rights standards.

However, ARTICLE 19 is concerned that the Act has not replaced these problematic provisions with specific guidance on the use of force that comply with the UN Basic

[81] OSCE guidelines, at paras. 165 – 166. See also, OSCE Guidebook on Democratic Policing (2008), at para. 65 – 74.
[82] See, by way of comparison: ECtHR, *Bukta v. Hungary*, *op. cit.*
[83] Article 6, ICCPR; Article 4, African Charter.
[84] Article 7, ICCPR; Article 5, African Charter.

Principles on the Use of Force and Firearms by Law Enforcement Officials 1990 and the UN Code of Conduct for Law Enforcement Officials (General Assembly 34/169, 17 December 1979). This guidance should prevent against the arbitrary and abusive use of force, and comprehensively set out the circumstances under which force may be used, the range of means that may be used to ensure a differentiated and proportionate response, and adequate review mechanisms where the use of force has been used.

Recommendation:

- The Act should establish the principles governing the use of firearms in compliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and UN Code of Conduct for Law Enforcement Officials.

Responsibility of organisers

It is positive that the Act no longer requires organisers of public meetings to undertake to compensate others who may suffer loss or damage as a consequence of their meeting (Article 12 of the Bill). However, liability may still arise where an organiser has been found criminally liable (Article 10(4)).

ARTICLE 19 is also concerned that Article 10 of the Law continues to impose substantial and poorly defined responsibilities on organisers of assemblies to maintain public order, when this should be a primary responsibility of law enforcement. The threshold for criminal liability for organisers and participants is also very low, and premised on poorly drafted and ambiguous offences that are neither necessary nor proportionate.

The obligations under Article 10(1) include for the organiser to ensure that the terms of notification are adhered to, to "coordinate" and "cooperate" with the police to ensure participants are unarmed, to ensure the meeting concludes by 7pm, and to refrain from making unlawful statements to the media. Article 10(2) places an obligation on all participants to ensure "obstruction of traffic, confusion or disorder" is avoided.

Article 10(3) provides sanctions of 24 currency points or imprisonment of up to 12 months for violating Article 10(1) or (2).

The provisions and the criminal sanctions they impose are not provided for by law. The Act does not define who an "organiser" is or how they may be identified and distinguished from participants. There is a lack of clarity regarding what constitutes "coordination" or "cooperation" with the police, and how individuals may fail in this obligation. The circumstances under which a participant may be criminally liable for failing to ensure the avoidance of "confusion" is equally unclear and unpredictable.

Although the protection of public order is a legitimate basis for imposing restrictions on peaceful assemblies, Article 10(1) and (2) are framed so broadly that they potentially encompass peaceful conduct where there is no real or substantial threat to the public order. In this respect, the imposition of criminal sanctions, e.g. for failure to comply exactly with the provisions of a notification, would be wholly disproportionate.

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.[85] 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.

Separately, ARTICLE 19 considers that the obligation on organisers under Article 10(1)(d) to "ensure that statements made to the media and public by the organiser do not conflict with any law" serve no purpose other than to deter organisers and participants from speaking to the media. Criminal laws apply at all times, including to organisers during assemblies, and there is no legitimate aim or necessity in reminding organisers of this through such a provision.

Recommendations:

- The Act should clearly define "organiser", and provide greater clarity on the extent of their obligations to cooperate or coordinate with law enforcement authorities, with primary responsibility for maintaining public order resting at all times with law enforcement authorities;
- The Act should ensure that organisers are not held criminally liable for failure to comply with legal requirements where they have made reasonable efforts to do so;
- The Act should ensure that organisers of assemblies are not criminally or civilly liable for the acts of third parties not acting in compliance with their directions or those of law enforcement;
- Article 10(1)(d) requiring organisers to refrain from making unlawful statements to the media should be repealed.

Access to the media

ARTICLE 19 remains concerned that the Law contains no provisions relating to the access of media to assemblies.

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, including bloggers, 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.[86]

Moldova's Law on Public Assemblies (2008), for example, guarantees press access to assemblies at Article 17, and prohibits the seizure of technical, video and audio equipment. Similar guarantees for the media should be incorporated to the Law.

Recommendation:

- The Law should make clear that law enforcement should ensure access of the media and assembly monitors to assemblies so far as is possible. This must include the freedom to report on the assembly itself as well as the policing operation.

[85] OSCE guidelines on peaceful assembly, *op. cit.*, at paras 197 – 198.
[86] Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, A/HRC/20/27, at para. 48.

About ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression and develops policy papers and other documents. This work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All materials developed by the Law Programme are available at http://www.article19.org/resources.php/legal/.

If you would like to discuss this policy brief further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

For more information about this brief, please contact Andrew Smith, Legal Officer of ARTICLE 19 at andrew@article19.org or +44 20 7324 2500. For more information about the work of ARTICLE 19 in East Africa, please contact Henry Maina, Director of ARTICLE 19 East Africa, at henry@article19.org.

This analysis is wholly financed by the Swedish International Development Cooperation, Sida. Sida does not necessarily share the opinions here within expressed. ARTICLE 19 bears the sole responsibility for the content.