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PROCEDURES SPECIALES DU
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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: OL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
UGA 1/2013

17 December 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 24/5, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the following situation.

On 2 October 2013, the President of Uganda assented to the Public Order Management Act 2013 (the Act). The Bill was the subject of a previous communication sent to your Excellency's Government on 14 June 2012, and of a press release on 9 August 2013 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders. We acknowledge receipt of the response of your Excellency's Government dated 23 August 2013 to this press release.

The Act contains elements that curtail the rights to freedom of peaceful assembly and of expression. In addition, several key provisions in the Act lack clarity which may lead to interpretations unduly limiting the free exercise of the mentioned rights.

Definition of a public meeting

Section 4(1) of the Act defines "public meeting as a gathering, assembly, procession or demonstration in a public space or premises held for... discussing, acting upon, petitioning or expressing views on a matter of public interest". Section 4(2) excludes from the definition: meetings of public bodies "held exclusively for a lawful purpose"; meetings of registered organizations "held

exclusively for a lawful purpose of that organization”; trade unions’ and organs of a political party or organization’s meetings, and meetings for social, religious, cultural, charitable, educational, commercial or industrial purpose.

We are concerned that the definition of “public meeting” inadequately protects individuals exercising their right to freedom of assembly, which includes inter alia demonstrations, gathering, rallies, strikes and sit-in protests organized by any individual without any discrimination.

Restrictions to hold peaceful assemblies

Section 5(1) of the Act requires organizers of assemblies to submit a written notification “at least 3 days but not more than 15 days before the proposed date of the public meeting”. It is alleged that where applicable, organizers will have to seek for approval of the venue’s owner and stick to the authorized time frame that it is set between 07:00 to 19:00 (section 5(2)(c). Moreover, under section 6(1), the authorized officer by the Inspector General of Police has the possibility to reject the hosting of an assembly if there is another one at the same date, time and place and “if the venue is considered unsuitable for purposes of crowd and traffic control or will interfere with other lawful business”. Under section 7, although there is no requirement to provide a notification about spontaneous public meetings, similar restrictions apply to these meetings. Section 8 allows the authorized officer to stop or prevent the holding of an assembly when held contrary to the Act, and to order the dispersal of an assembly where “reasonable in the circumstances”.

We are concerned that the Act introduces burdensome requirements on organizers of peaceful assemblies that could be used for unduly restricting the right to freedom of peaceful assembly. Moreover, we are concerned that the Act uses vague terms such as “unsuitable”, and imposes undue limitations to the right to assemble peacefully, most notably in relation to ‘time, place and manner’, that exceed of the permissible restrictions linked to national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. As any restriction imposed must be necessary and proportionate to the aim pursued, we are of the view that, for example, free flow of traffic should not automatically take precedence over freedom of peaceful assembly, and that States have the obligation to implement plans that will facilitate the exercise of the right to freedom of peaceful assembly. Similarly, we express concern about the possibility of an authorized officer to reject the hosting of an assembly if there is another one taking place simultaneously; the authorities should be prepared to handle, facilitate and protect them, whenever possible.

Responsibilities of organizers and participants and sanctions

According to your response on 23 August 2013 to our press release, “[a]n organizer of a meeting means any person or his or her agent in charge of calling the public meeting”. Section 10 of the Act requires organizers to take on certain responsibilities, including providing sufficient stewards proportionate to the

number of participants, cooperating with the police to ensure that all participants are unarmed and peaceful, ensuring that there is no traffic obstruction, confusion or disorder, and guaranteeing that the assembly is concluded peacefully by 19:00. Section 5(8) ascribes liability to an organizer “who holds a public meeting without any reasonable excuse and fails to comply with the conditions under this Act”. Finally, Section 10(3-4) stipulates that failure to comply with the Act constitutes an offense subject to a fine or/and imprisonment up to 12 months.

We are concerned that organizers and participants of peaceful assemblies could be held criminally and financially liable for a range of vaguely described offenses and for the unlawful acts of others. We are further concerned that disproportionate sanctions against organizers could deter the holding of future assemblies. Concern is also expressed that the vague definition of the term “organizer” may lead to consider organizers any individual posting calls for assemblies on social media.

We are similarly concerned that the regulations do not clearly distinguish between the roles and responsibilities of authorities, including law enforcement officials, and the organizers of assemblies. While authorities have the ultimate responsibility to facilitate the peaceful conduct of assemblies, the roles assigned to organizers should only extend to the legitimate expectations that they will obey lawful orders of the police and consider other actions that may assist the smooth running of the assembly. Organizers should never replace law enforcement authorities, who are responsible for maintaining public order.

Furthermore, we are concerned that the Act does not include a clause or section on how this Act should be interpreted, which could contribute to ensure clarity and assist legislators in the application of the Act.

We would like to draw the attention of your Excellency’s Government to the first two thematic reports (A/HRC/20/27 and A/HRC/23/39) of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, which both contain specific recommendations that could be relevant in the case of this specific Act.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

We would also like to refer to the right to freedom of opinion and expression as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would further like to refer to article 21 of the ICCPR, which provides that "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.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, 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 their obligations under international human rights law."

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the facts alleged in the analysis herein accurate?
2. Please explain how the provisions of this Act are in accordance with Uganda's obligations under international human rights law, particularly with regard to the rights to freedom of assembly and freedom of expression.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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