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Strengthening Activity (CSSA)

POCKET GUIDE BOOK ON FREEDOM OF ASSEMBLY IN UGANDA:

PRINCIPLES, RIGHTS, OBLIGATIONS AND RESPONSIBILITIES



2022

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Disclaimer

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ACRONYMS

ACHPR	African Charter on Human and People's Rights (ACHPR),
AU	African Union
CSSA	Civil Society Strengthening Activity
ICCPR	International Covenant on Civil and Political Rights
JAP	Justice Access Point
UHCR	Uganda Human Rights Commission
USAID	United State Agency for International Development
UN	United Nations

FOREWORD

Justice Access Point (JAP) is exceedingly delighted to be part of this most crucial effort under the aegis of USAID/CSSA. The pockets guide book has been developed and produced at a critical stage in the history of the country when guidance is most needed.

‘The people shall not be restrained from peacefully assembling and consulting for their common good, nor from applying to the legislature by petitions, or remonstrance for redress of their grievances’ **James Madison**

For starters, management of public assemblies has been a constant thorn in the flesh of both participants and managers of public assemblies. Gladly, a strong guiding light is available to direct the steps of the different actors in this important area. The UN guiding principles, The African Union Guidelines on Freedom of Assembly and Association and the Uganda Human Rights Commission guidelines for organizing public demonstrations and processions in Uganda. There is no doubt, the Pocket guidebook will be an invaluable resources clarifying rights, duties, and responsibilities of the management of different stakeholders in public assemblies. I truly wish you a useful interaction with and learning from this resource.

Mohammed Ndifuna,
Executive Director
Justice Access Point (JAP).

INTRODUCTION:

This pocket guide book has been compiled by JAP to support participants in public assemblies in Uganda as well as other stakeholders keen on improving the legal and operating environment defining public assemblies in Uganda. The pocket guide does not cover all there is on freedom of assemblies but extensively excerpts from The United Nations Principles on Public Assemblies, The African Union Guidelines on Freedom of Assembly and Association, and the Uganda Human Rights Commission guidelines for organizing public demonstrations and processions in Uganda.

THE PURPOSE OF THE POCKET GUIDE.

The pocket guide book will serve as a guide to a range of stakeholders:

- ◆ Citizens of Uganda in pursuing their rights to freedom of assembly
- ◆ People interested in reviewing the law hence seeking further amendments in the law.
- ◆ The organizers and officers about policing of public assemblies.

THE LEGAL BASIS FOR GUIDELINES

1. The pocket guide is premised on international, regional and national legal framework. It draws upon the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights (ICCPR), African Charter on Human and People's Rights (ACHPR), The Constitution of the Republic of Uganda, 1995 (as amended) as well as key guidelines including The United Nations Principles on Public Assemblies, The African Union Guidelines on Freedom of Assembly and Association and the Uganda Human Rights Commission guidelines for organising public demonstrations and processions in Uganda.

THE UNITED NATIONS GUIDING PRINCIPLES ON PROPER MANAGEMENT OF ASSEMBLIES

The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry. It is therefore essential that the right to assemble is protected against violation, disruption, and opportunistic breach of peace. The UN has developed ten (10) guiding principles on proper management of public assemblies:

UN Guiding Principle One:

“States shall respect and ensure all rights of persons participating in assemblies”

Therefore, in achieving this, States must respect and ensure the rights of all individuals as well as respect and ensure rights without discrimination on the basis of any prohibited ground.

UN Guiding Principle Two:

“Every person has the inalienable right to take part in peaceful assemblies”

Hence, Assemblies should be presumed lawful, subject to the permissible limitations set out in article 21 of the ICCPR. The peacefulness of an assembly should be presumed, and a broad interpretation of the term “peaceful” should be afforded.

- ◆ The State's obligation to facilitate and protect assemblies includes spontaneous assemblies, simultaneous assemblies and counter-protests. Assemblies, including spontaneous assemblies and counter-protests, should, as far as possible, be facilitated to take place within sight and sound of their target.
- ◆ The State's obligation to facilitate extends to taking measures to protect those exercising their rights from violence or interference.
- ◆ Organizers should not be held responsible for the unlawful behavior of others.
- ◆ No person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.

UN Guiding Principle Three:

“Any restrictions imposed on peaceful assemblies shall comply with international human rights standards”

This principle emphasizes that:

- ◆ The freedom of peaceful assembly is a fundamental right, and should be enjoyed without restriction to the greatest extent possible;
- ◆ Only those restrictions which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, and

are lawful, necessary, and proportionate to the aim pursued, may be applied;

- ◆ Restrictions imposed must conform to the “principle of legality,” meaning they must have a legitimate and formal basis in law, as must the mandate and powers of the restricting authority;
- ◆ Restrictions must conform to the “principle of proportionality,” meaning they must be appropriately tailored to achieve their protective function;
- ◆ Restrictions must also conform to the principle of necessity, meaning they must be the least intrusive instrument among those which might achieve the desired result;
- ◆ Restrictions on the content of assemblies may be imposed only in conformity with the legitimate limitations on rights;
- ◆ The onus of justifying a limitation rests with the authority. If any restriction is imposed there should be an option for organizers to seek judicial review and, where relevant, administrative review, that is prompt, competent, independent and impartial.

UN Guiding Principle Four:

“States shall facilitate the exercise of the right of peaceful assembly”

This principle requires among other things the following:

- ◆ The positive obligation of the State to ensure rights requires that authorities facilitate assemblies. States should plan

properly for assemblies, ensure decision-making is transparent, and put in place contingency plans and precautionary measures;

- ◆ Law enforcement agencies and officials should take all reasonable steps to communicate with assembly organizers and/or participants regarding the policing operation and any safety or security measures;
- ◆ The State's obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance and clean-up services. Organizers should not be held responsible for the provision or cost of such services;
- ◆ Law enforcement officials must be adequately trained in facilitating assemblies;
- ◆ Stop-and-search of assembly participants must not be arbitrary and must not violate the principle of non-discrimination. It must be authorized by law, necessary and proportionate;
- ◆ Intrusive pre-emptive measures must not be used unless a clear and present danger of imminent violence actually exists;
- ◆ Arrest powers must be exercised consistently with international human rights standards, including those relating to the rights to privacy, liberty, and due-process rights;
- ◆ No one may be subject to arbitrary arrest or detention. Where an arrest takes place detention conditions must meet

minimum standards under international law. Detainees must be treated in a humane manner and with respect for their dignity, and shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment;

- ◆ Any penalty imposed on assembly organizers or participants must not be excessive.

UN Guiding Principle Five:

“Force shall not be used unless strictly unavoidable, and if applied it must be done in accordance with international human rights law”

For that reason:

- ◆ States law enforcement officials are obligated under international law to respect and protect, without discrimination, the rights of all those who participate in assemblies, as well as monitors and bystanders;
- ◆ The principle of legality requires that States develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards;
- ◆ The principle of precaution requires that all feasible steps be taken in planning and conducting an operation related to an assembly to avoid the use of force or, where force is unavoidable, to minimize its harmful consequences;
- ◆ Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain

all the other rights, subject to the normal limitations. No assembly should thus be considered unprotected;

- ◆ States must ensure that their law enforcement officials are periodically trained in and tested on the lawful use of force, and on the use of the weapons with which they are equipped;
- ◆ Equipment for law enforcement officials deployed during assemblies should include both appropriate personal protective equipment and appropriate less-lethal weapons; Equipment that cannot achieve a legitimate law enforcement objective or which present unwarranted risks should not be authorized for use;
- ◆ The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Use of force must comply with the principles of necessity and proportionality;
- ◆ Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries and, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life;
- ◆ Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful. Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat;

- ◆ A clear and transparent command structure must be established to minimize the risk of violence or the use of force, and to ensure responsibility for unlawful acts or omissions by officers. Law enforcement officials must be clearly and individually identifiable, for example by displaying a nameplate or number;
- ◆ States must establish effective reporting and review procedures to address any incident in relation to an assembly during which a potentially unlawful use of force occurs.

UN Guiding Principle Six:

“Every person shall enjoy the right to observe, monitor and record assemblies”

This principle requires that:

- ◆ All persons enjoy the right to observe, and by extension monitor, assemblies;
- ◆ All persons shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. All persons also enjoy the right to record an interaction in which he or she is being recorded by a State agent. The State should protect this right;
- ◆ States have an obligation to protect the rights of assembly monitors. This includes respecting and facilitating the right to observe and monitor all aspects of an assembly, subject to the narrow permissible restrictions outlined in article 19(3) of the ICCPR;

- ◆ The State should fully investigate any human rights violation or abuse against monitors, and should pursue prosecution and provide adequate remedy.

UN Guiding Principle Seven:

“The collection of personal information in relation to an assembly must not interfere impermissibly with privacy or other rights”

This principle requires among other things the following:

- ◆ The collection and processing by authorities of personal information, such as through recording devices, closed-circuit television and undercover policing, must comply with protections against arbitrary or unlawful interference with privacy;
- ◆ Legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must incorporate legality, necessity and proportionality tests;
- ◆ Restrictions to online access or expression must be necessary and proportionate and applied by a body independent of any political, commercial or other unwarranted influences, and there should be adequate safeguards against abuse.

UN Guiding Principle Eight:

“Every person has the right to access information related to assemblies”

This principle requires among other things the following:

- ◆ The public should have easy, prompt, effective and practical access to information related to assemblies. Legislation facilitating such access should be based on the principle of maximum disclosure, establishing a presumption that information is accessible, subject only to a narrow system of exceptions;
- ◆ Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information;
- ◆ The onus should be on the public authority to demonstrate that the information falls within the scope of an exception. Its decisions must be subject to oversight and review.

UN Guiding Principle Nine:

“Business enterprises have a responsibility to respect human rights in the context of assemblies”

This principle entails among other things the following:

- ◆ Business enterprises have a responsibility to respect human rights, including in the context of assemblies. This requires that businesses avoid causing or contributing to adverse human rights impacts through their own activities, and

address adverse human rights impacts in which they are involved;

- ◆ The rights related to assembly may require positive measures of protection even in the sphere of relations between individuals;
- ◆ Business entities should carry out human rights due diligence, and where a potential impact on assembly and related rights is identified mitigate these risks;
- ◆ States have a duty to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct by business enterprises, and to hold to account private parties that are responsible for causing or contributing to an arbitrary deprivation of life in the State's territory or jurisdiction.

UN Guiding Principle Ten:

“The State and its organs shall be held accountable for their actions in relation to assemblies”

This principle entails among other things the following:

- ◆ The State bears an obligation to provide to those whose rights have been violated in the context of an assembly an adequate, effective and prompt remedy determined by a competent authority having the power to enforce remedies;
- ◆ States must investigate any allegations of violations in the context of assemblies promptly and effectively through bodies that are independent and impartial;

- ◆ Liability should extend to officers with command control where they have failed to exercise effective command and control;
- ◆ Prosecutors should carry out their functions impartially and without discrimination, and should give due attention to prosecuting crimes committed by public officials;
- ◆ Defendants should be brought before an ordinary court or tribunal, and shall be availed of the fair trial protections guaranteed under international law.

The State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS GUIDELINES ON FREEDOM OF ASSOCIATION AND ASSEMBLY IN AFRICA.

The guidelines were developed in accordance with the relevant provisions of the African Charter on Human and Peoples' Rights (African Charter), which stipulates under Article 45 (1) (b) that the African Commission is mandated "to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms...."

Guideline 63: The right to freedom of assembly is guaranteed under Article 11 of the African Charter and Article 8 of the African Charter on the Rights and Welfare of the Child.

Guideline 64: The right to freedom of assembly is also guaranteed under Article 20(1) of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 15 of the International Convention on the Rights of the Child.

Guideline 65: National constitutions shall guarantee the right to freedom of assembly, which shall be understood in a broad manner consistent with regional and international human rights law.

Guideline 66: Where States enact laws on freedom of assembly, those laws shall aim primarily at the facilitation of the enjoyment of the right. Legislation and regulations on assemblies shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.

Guideline 67: The right to freedom of assembly applies to all individuals, groups, peoples, unregistered and registered associations, and others.

Guideline 68: Everyone has the right to assemble freely with others. No one shall be compelled to participate in an assembly. The right to freedom of assembly applies to meetings on private as well as public property.

Guideline 69: The right to freedom of assembly applies to meetings on private as well as public property

Guideline 70: The right to freedom of assembly extends to peaceful assembly. An assembly should be deemed peaceful

if its organisers have expressed peaceful intentions and if the conduct of assembly participants is generally peaceful.

- a. Peaceful shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties;
- b. Isolated acts of violence do not render an assembly as a whole.

Guideline 71: Participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens.

- a. A notification regime requires that the presumption is always in favor of holding assemblies, and that assemblies not be automatically penalized, through dispersal or sanction, due to failure to notify, subject to the provisions further detailed below;
- b. Lack of notification shall not be understood to make an assembly illegal.

Guideline 72: Notification procedures shall be nonburdensome:

- a. A notification regime shall not stipulate that notifications be required too far in advance; rather, any notice period shall be as short as possible. Notification may be sought far enough in advance for an exchange of views as to any

- possible conditions, and for the relevant authorities to prepare;
- b. An appropriately simple procedure would involve the filling in of a clear and concise form, available and submittal online and elsewhere, requesting information as to the date, time, location and/or itinerary of the assembly, and the name, address and contact details of principle organizer(s);
 - c. Procedures shall be flexible in instances of late notification or submission of incomplete information, with a view to facilitating the conduct of assemblies;
 - d. Notification shall be free of charge.

Guideline 73: A failure to respond by the authorities shall be taken as acknowledgement that the assembly may go ahead along the lines proposed.

Guideline 74: Should the authorities receive notification from multiple groups aimed at holding assemblies in the same space at the same time, efforts shall be made to facilitate multiple concurrent assemblies. Where this is impossible, an impartial and reasonable means shall be found to allocate the space.

Guideline 75: No notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. Spontaneous assemblies include assemblies that occur as immediate reactions to events, and planned assemblies that necessarily occur within a tighter deadline than that required relative to notification.

Guideline 76: A single authority shall be designated as the entity responsible for receiving notifications. The designated

authority shall be impartial. Upon receipt of notifications, the authority in question shall be responsible for communicating with other concerning agencies.

Guideline 77: The authority in question shall have a membership broadly representative of the diversity in society. It shall make the relevant procedures, including decision making procedures, as clear, transparent and readily available as possible. It shall have a procedure for receiving information from individuals who believe their rights will be negatively affected by particular assemblies.

Guideline 78: All authorities involved in administering assemblies shall be adequately trained in human rights law and aware that their primary task is to facilitate peaceful assemblies.

Guideline 79: The operations of the authority in question should be subject to oversight and monitoring by an independent authority with a rights-advancement mandate, such as an ombudsman or a national human rights institution.

THE UGANDA HUMAN RIGHTS COMISSION GUIDELINES FOR ORGANISING PUBLIC DEMONSTRATIONS AND PROCESSIONS IN UGANDA

In Uganda staging a peaceful public demonstration successfully presents many challenges for the organizers and law enforcement agencies alike. The right to assemble and to demonstrate peacefully is enshrined in international, regional and national standards. However, enjoyment of this right brings with it responsibilities for all parties involved. The Human Rights Commission is at the forefront in the promotion and the protection of human rights in Uganda and is committed to finding a workable and lasting solution to allow the proper enjoyment of this right.

On the basis of the above, the Uganda Human Rights Commission (UHRC), produced the “Guidelines for organizing public demonstrations and processions in Uganda.”

All events including demonstrations, rallies, charity walks and processions are referred to as “Demonstrations”

Role of the Police

Uganda Police Force [UPF] Demonstrations and Processions Planning Unit (DPPU) in each District Police Commander's office (DPC office) shall:

- ◆ Receive notices of impending public demonstrations,
- ◆ Issue and receive Statements of Intent;
- ◆ Hold a planning meeting with the Chief Organiser of the Demonstration at least (5) five days (or as soon as practicable) before the demonstration;
- ◆ Give consistent responses to the organisers of demonstrations at all times;
- ◆ For each planned demonstration, assign a contact officer to be in charge of dealing directly with the Chief Organiser. The contact officer should be readily available to work with the demonstration organisers throughout the event;
- ◆ Respond in writing to a completed statement of intent within three (3) days of receipt of the same;
- ◆ Work with the chief organiser of the demonstration to determine an appropriate traffic plan that allows for free flow of vehicles, pedestrians and participants. The traffic plan includes an orderly formation for boda-bodas, taxis, private cars and other vehicles and pedestrians including people with disabilities) to ensure safety and limited inconvenience for all;

- ◆ Carry out a risk assessment before the demonstration and notify the chief organisers;
- ◆ Provide the chief organisers with a written explanation and legal justification regarding refusal or change of plan of the demonstration;
- ◆ Ensure the demonstration is dispersed in an orderly manner before the hour of 6:00 pm;
- ◆ Allow and not restrict the media from freely filming and covering the demonstration;
- ◆ Ensure adequate debriefing with organisers after the demonstration;
- ◆ Carry out any other lawful duties under the laws of Uganda;
- ◆ During a demonstration, police may intervene appropriately; with only as much force as is reasonably necessary, in cases of, Criminal behaviour, Breach of peace, anticipated imminent violent situations, Sight of any weapon/firearm and/or the use of any potentially dangerous weapon;
- ◆ Police powers of arrest will be exercised where deemed appropriate.

Role of the Organiser(s)

The organiser(s) of demonstrations shall:

- ◆ Identify a Chief Organiser for the Demonstration;
- ◆ Submit to the Demonstrations and Processions Planning Unit at the District Police Commander's Office, a completed Statement of Intent in triplicate (10) ten days prior to the intended demonstration (or as soon as Practicable.) Submit an endorsed copy of the Statement of Intent to the relevant / local police post/station;
- ◆ Obtain permission from relevant bodies for restricted venues/gazetted places;
- ◆ Meet with the Demonstrations and Processions Planning Unit to draft a demonstration and plan;
- ◆ Work with the Assigned Police Contact Officer [DPPU] to determine an appropriate traffic plan that allows free flow of vehicles, pedestrians and participants. The traffic plan includes an orderly formation for boda bodas, taxis, private cars and other vehicles plus pedestrians (including people with disabilities), to ensure safety and limited inconvenience for all;
- ◆ Comply with the agreed plan during the demonstration;
- ◆ Before the demonstration commences, ensure all participants are aware of the demonstration plan including the route, their responsibilities and the purpose of the demonstration;

- ◆ Ensure safety of person and property during the demonstration;
- ◆ Provide no less than one steward per fifty demonstrators;
- ◆ Ensure that the stewards are clearly identifiable from the demonstrators;
- ◆ Ensure that the participants are unarmed and law abiding. In the event of any criminal behaviour, breach of peace, anticipated imminent violent situations, sight of any weapon/firearm and/or the use of any potentially dangerous weapon or deviation from the agreed plan, notify the closest police officer or chief organiser;
- ◆ Take responsibility for all statements made to the media or the public and participants during the demonstration;
- ◆ Ensure the demonstration is dispersed in an orderly manner before the hour of 6:00 pm;
- ◆ Ensure adequate debriefing within forty eight (48) hours after the demonstration with the police.

ROLE OF THE PARTICIPANTS

The participants shall at all times during the demonstration:

- ◆ Comply with the law and lawful orders;
- ◆ Take responsibility for their individual actions;
- ◆ Comply with the agreed demonstration plan;
- ◆ Comply with the rules and maintain focus on the purpose of the demonstration;
- ◆ Identify and report spoilers and criminals to the stewards, police and/or organisers;
- ◆ Attend the demonstration unarmed and without any weapon of any kind;
- ◆ Avoid the incitement of violence during the demonstration.

REFLECTION POINTS

Reflection 1: The right to assembly is guaranteed under the international and regional treaties as well as the constitution of the Republic of Uganda 1995.

Reflection 2: The right to assemble and to demonstrate peacefully is a right and not a privilege.

Reflection 3: The right to assemble and demonstrate peacefully is not an absolute right and can be regulated by the State.

Reflection 4: Restrictions on freedom of assembly should not be arbitrary but in accordance with the law, pursue legitimate aim and are necessary in a democratic society.

Reflection 5: Isolated incidents of violence do not make a public assembly non peaceful.

Reflection 6: Failure to issue notice of intention to hold a public assembly should not be used to negate the right to peaceful assembly.

Reflection 7: Both public assembly organisers and the police have duties and responsibilities in the management of public assemblies.

Reflection 8: The persons invoking their right to assemble peacefully should be peaceful and mindful of the rights of others.

REFERENCES

1. The African Charter on Human and Peoples' rights
2. The African Union Guidelines on Freedom of Assembly and Association: https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf
3. The Constitution of the Republic of Uganda 1995
4. The International Covenant on Civil and Political Rights (ICCPR)
5. The Uganda Human Rights Commission guidelines for organizing public demonstrations and processions in Uganda.
6. The Universal Declaration of Human Rights.
7. The 10 UN principles for the proper management of assemblies: <https://www.ohchr.org/sites/default/files/10PrinciplesProperManagementAssemblies.pdf>

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