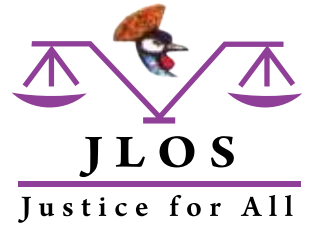




# THE JLOS BULLETIN



THE JLOS BULLETIN ISSUE 002, 2011

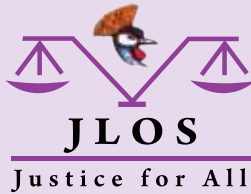


**Public Order Management**  
is much more than riot control



**Human Rights minimum standards**  
on public demonstrations

**City planning impacts on public order management**  
-- Netherlands Ambassador



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## Word from His Lordship the Chief Justice of Uganda

The uneven handling of the recent 'Walk-to-work' campaigns and agitation for improved living and trading conditions have brought to the fore the need to handle public order situations in a professional manner and to enact a comprehensive law on public order management for Uganda, which professes to be an open and democratic country. There have been accusations and counter accusations on the use of public order situations. Those who want to use public order to advance their cause have accused the police and other security agencies of brutality and indiscriminate violence. Those on the other side accused proponents of public order situations for using them to interfere with the rights of others and sow seeds of violence across the country.

For the Justice Law and Order Sector (JLOS) whose mandate included the maintenance of law and order, public order situations have demonstrated the state of our unpreparedness to calmly, professionally and candidly deal with the situation. The absence of a comprehensive law on public order management has equally made JLOS predicament more complicated.

Whereas there might be a lacuna in the law, what is clear is that the 1995 constitution is progressive and ushered in an all-round bill of rights which inter alia provide for the right to assembly, freedom of speech and association. These rights are at the core of democracy because they permit citizens to lawfully express their view to government, with a legitimate expectation that Government will consider them. In fact public order situations supplement the work of Parliament by bringing to the attention of government issues that require their most immediate attention. Therefore public order situations, if carefully used, can prevent a democracy from overheating by providing the necessary ventilation to diffuse the tensions and pressures for the common good of all.

It is therefore in the interest of JLOS that public order situations are managed properly. In the absence of a comprehensive law, article

20 (2) of the Constitution comes in handy. Article 20 (2) provides that every organ or agency of the government and all persons shall respect, uphold and promote the bill of rights. In particular, JLOS is required to ensure that all persons who live within the borders of Uganda enjoy all rights including the public order rights except if their enjoyment violates the rights of others or jeopardises public interest in article 43 of the Constitution. Respect for the law by all and rule of law cannot therefore be overemphasised.

I dare say that the rule of law demands that the state shall uphold the dignity of the person, act with compassion and restraint in dealing with people of different opinions for the sake of addressing issues affecting the common good of the citizenry. Likewise the rule of law requires those who want to use public order means to be mindful of the rights of others, to preserve peace and harmony and to respect the bill of rights in its entirety. Violence should never be the vehicle for causing social or political change.

I therefore salute JLOS for having taken up public order through training the Uganda Police Force in public order management and for creating a forum through the JLOS Bulletin to discuss public order and craft solutions for dealing with such situations in the future. I particularly thank the Netherlands Ambassador for sharing with us his views on the issue, the Irish and British Governments for supporting public order management in Uganda all contributors to the bulletin for sharing their views on so important a matter. I have no doubt that their views will influence in a substantial manner the future of public order management.

I wish you enjoyable reading!



**BENJAMIN J. ODOKI**

CHIEF JUSTICE AND CHAIR OF THE JLOS LEADERSHIP COMMITTEE

## We must understand the bigger picture in public order management

Everybody likes order, whether at an individual level, in private circumstances or at the community or country level and in the public arena. It is for this reason that norms, traditions, agreements, policies, laws, rules and regulations have been instituted to establish and maintain order at whatever level.

Unfortunately, the zeal with which we like order is not matched equally with keenness to contribute to that order by fulfilling responsibilities and obligations expected of us. Often we want someone else to play their part for us to enjoy order. We forget that it all begins with oneself.

Organised and civilised communities make every effort to keep order either through pro-active means or reactive ones. That is why states institute legal and policy frameworks to guarantee public order as well as institutions to enforce it.

### From the Editor

Many times though, public order has been narrowly defined and reduced to riots and confrontation between the public and police often characterised by violence and serious consequences on either part. It has not helped matters that the most conspicuous public order situations in the recent past have been this kind of confrontation.

This second issue of the JLOS Bulletin has therefore come so timely with the theme of public order management. It is intended to expound on what public order management really is, what it entails, the obligations and responsibilities of each individual and institution who all have a major stake therein and the minimum accepted standards for the enjoyment of public order. It brings experiences from other countries as well as the issues at stake in regulating public order. We hope the issue will be inspiring to you to understand the bigger picture and embrace both your individual and official responsibility and obligation to contribute to public order for the common good of all citizens and the nation.



Police keeping law and order during an international football match

## Public Order Management is much more than riot control

To many people, public order management is synonymous with police and riot control. However in the article below, Rose Mary Kemigisha explains what public order entails and how its management goes beyond police and warrants the intervention of several other institutions of government as well as citizens who play a critical role in the maintenance of public order as it is both their right and duty.

The scenes have been as many as they have been predictable. Some people declare they will exercise their right to freedom of assembly and demonstration unhindered. The Police reacts and orders the demonstrators not to proceed with their actions unless they notify and cooperate with police. The demonstrators go ahead and the police keep their promise to disperse them sometimes resulting in violence on the part of all players. A number of times these scenes have had terrible consequences with loss of life and property and engulfing other people not concerned with the demos. As a result, any mention of public order management is likely to bring to the fore images of rioters and police, not in a friendly football match but in clashes that more often than not reek of violence. However, public order management is much more than riot control and should be viewed from the positive, proactive requirements for the realisation of rights and freedoms.

### Public order

In any democracy that recognises law and order as an essential element, maintenance of peace and order

becomes critical. Public order is not essentially the absence of disorder, it is synonymous with peace, safety and tranquility of a community. It is the quiet and orderly behaviour of people in public space.

Public order has also been described as a condition characterised by the absence of widespread criminal and political violence and intimidation against targeted groups or individuals. Public order prevails when widespread criminality and violence are reduced to the bare minimum, perpetrators pursued, arrested and detained and the local population is able to move and live freely without fear of undue violence.

In India, the Supreme Court has defined public order as “the potentiality of an act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.” The effect of the contravention should not be confined to a few individuals directly involved as distinct from a wide spectrum of public. If the effect is on a few individuals then it is a question of law and order; if it affects a wide spectrum of people then it tantamount to a question of public

order. It has been stated therefore, that the dividing line between law and order and public order is very thin. Any violation of law is a law and order issue although not all such violation of law is an issue of public order. Maintenance of public order is without doubt a function of governance.

Public order is largely associated with the way people conduct themselves during public gatherings, demonstrations or processions that determines or qualifies the situation to be referred to as public order or disorder.

### **Importance of public order**

Peace and public order are critical for any economic development aspirations. Therefore efficient and effective management of public order can facilitate economic development as well as survival of a vibrant democracy. Needless to say, it is impossible to seriously pursue development goals in a situation of public disorder. Maintaining public order safeguards the weaker sections of society who almost always suffer in any situation of public disorder.

Public order is a significant component of the public interest; alongside public security, public health and public morality. It is one of the factors for which most human rights are legitimately limited. The major factor though is that human rights are limited in order to safeguard the rights of others. Such human rights include the freedom to assemble and demonstrate with others peacefully and unarmed.

### **Public order management**

Public order management is part of a conflict management culture which is a result of a democratisation process. The conflict requires striking a balance between the enjoyment and practice of one's basic human and constitutional rights without infringing on the human and constitutional rights of others. The issue is that one person's exuberance on the street according to the law and order

enforcement agencies should not constitute an annoyance to another. It is a cardinal duty therefore, of whoever is exercising their rights to duly respect the rights of others. Public order management has of necessity to do with ensuring the balance between enjoyment of human rights and freedoms on the one hand, and fulfillment of attendant duties and responsibilities on the other.

A host of proactive measures are in place to pre-empt public disorder. These go beyond the ordinary police mandate. Every institution of government exists to proactively contribute to public order through its respective mandate. When such mandate is effectively implemented, it creates a situation of public order; and the reverse is true. In a way, each agency in its own way participates in public order management. The failure of the proactive measures to bring about or maintain public order may result into reactive and often forceful enforcement of public order, sometimes with disastrous consequences. Nevertheless, any regulation of public order situations should be for the objective of facilitating the exercise of the rights and freedoms in such a situation than to completely prevent and prohibit it.

The core of public order management should be informed by the need for pro-active policing of order rather than reactive policing of disorder. Appropriate response is critical so the actions of police should always be aimed at a de-escalation of the violence. Experience has shown that the use of force often negatively amplifies situations that would have otherwise been resolved in a non-violent manner or fizzled out altogether.

Even when situations get out of hand as they have done, the inevitable use of reasonable force should be based on fine judgment by well-trained and well facilitated commanders who know that it would help public order much more than not using it at all.

Understanding the complexity of the situation, including the politics therein, the crowd dynamics and psychology and responding appropriately is the key to successful public order management according to experts.

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Police apprehending a disruptive football fan who run onto the pitch during an international match

# Public order management is about striking the balance between human rights & public interest

– Chief Justice



The Justice Law and Order Sector is at the forefront of managing public order in Uganda given that its institutions are key players in the maintenance of public order. In an exclusive interview below, the Chief Justice of Uganda His Lordship Benjamin Odoki (in picture), who chairs the Leadership Committee of JLOS, shares with Didas Bakunzi Mufasha, his wise counsel on pertinent policy issues regarding public order in Uganda. He discusses among others, the relationship between public order and human rights, the lack of a national policy, the police and military involvement in public order management, the role of Parliament, the challenges and how to overcome them.

**Q** My Lord, it is a fact that public order management is an important ingredient of good governance. How do you relate public order management and the observance of human rights?

**CJ** – Yes, I agree it is an important area in terms of good governance because it involves or it affects security of the people, their freedom of expression, their freedom of association and freedom of assembly. It is basically something which impacts on the growth of democracy and the rule of law. It also impacts on the aspects of human rights.

**Q** Does Uganda have a policy on Public Order Management?

**CJ** - I don't know whether we have a policy or whether it is being evolved. You know that we don't have policies on many things. I have not heard of a justice policy, I have not heard of an agricultural policy. I have heard of a gender policy I have heard of a land policy which is being formulated. What I am saying is that policies are not in every sector and not in every aspect of governance. Laws are made without necessarily evolving a policy. That is why some are not comprehensive. That is why they are sometimes not streamlined.

That is why sometimes they are in conflict with other national objectives and other policies. So, sometimes the evolution of some laws affecting some sectors is not based on any agreed policy. The police or the Ministry

of Internal Affairs will tell you whether we have a policy for that sector.

**Q** - My Lord, you are the Chairman of the JLOS Leadership Committee. What is the contribution of this sector to the management of public order in the country?

**CJ** - Some of the goals set out by the sector to accomplish include promotion of the rule of law, protection of human rights, causing access to justice, prevention of crime, and contribution to the economic development. These are some of the main goals. So, in terms of all those I think that public order is a cross-cutting issue in all those goals because unless you have peace, security and stability within the country none of those goals can be achieved. Public order and safety is part of crime prevention but also impacts on human rights. Justice impacts on all those objectives in the sector.

**Q** - How does the management of public order balance the focus of public order management between the rights holders (who are the public) and the duty bearers (who are the state and its agencies)?

**CJ** - This has been an on-going debate. The need to balance what are called here human rights and public interest is a delicate issue. In some countries human rights are subject to limitations of national security, public order, public morality, etc. Here the rights are only subject to limitations that are demonstrably justifiable in a free and democratic society. So, the limitations on

the rights of the community or the citizens based on public interest are those that are important for public order. So in terms of freedom of expression or assembly there are certain limitations or regulations which may be imposed on public demonstrations or public assemblies which are justifiable in a free and democratic society to prevent causing insecurity and interfering with the rights of others. This balance which the courts have a right to do when cases are brought to us is a delicate balance and nevertheless it must be carried out taking into account the definite objectives of the law and action and the means to use and the professionalism of those means. The courts have tried to strike the right balance in certain cases like demonstrations or assemblies the right to assemble without asking for permission and also they have tried to deal with police or law enforcement officers who use un-proportional force. Those have been charged with crimes. This is an ongoing challenge to ensure that the right balance is struck. Because when duty holders are exercising their powers sometimes at the spur of the moment the balance is lost. So, the courts must come in to guide them.

**Q - My Lord, why does it seem like there is more visibility of reactive means when it comes to enforcement or handling of public order than proactive means of civic education? Are there any attempts to balance the two?**

**CJ** - First of all there is general weakness in civic education. Avenues for civic education are limited. We don't have a sustainable programme of civic education. NGOs depend on handouts and when funds run out that is the end. They also have their own interests in terms of civic education.

Only the Uganda Human Rights Commission is notable for carrying out civic education. Generally the issue of civic education for the population is a challenge which needs to be addressed. We don't have an institution responsible for national civic education and as a result the general empowerment in terms of civic competence is very weak.

That is why you call it reactive. Both are reactive. The population is reactive and law enforcers are reactive. It is a weakness on both sides in my view. The public does not know how to handle peaceful demonstrations and assemblies. For instance they do not retreat easily, they do not take consultation or negotiation as an important thing and so the police also react proportionally and with the necessary speed before the situation gets out of control.

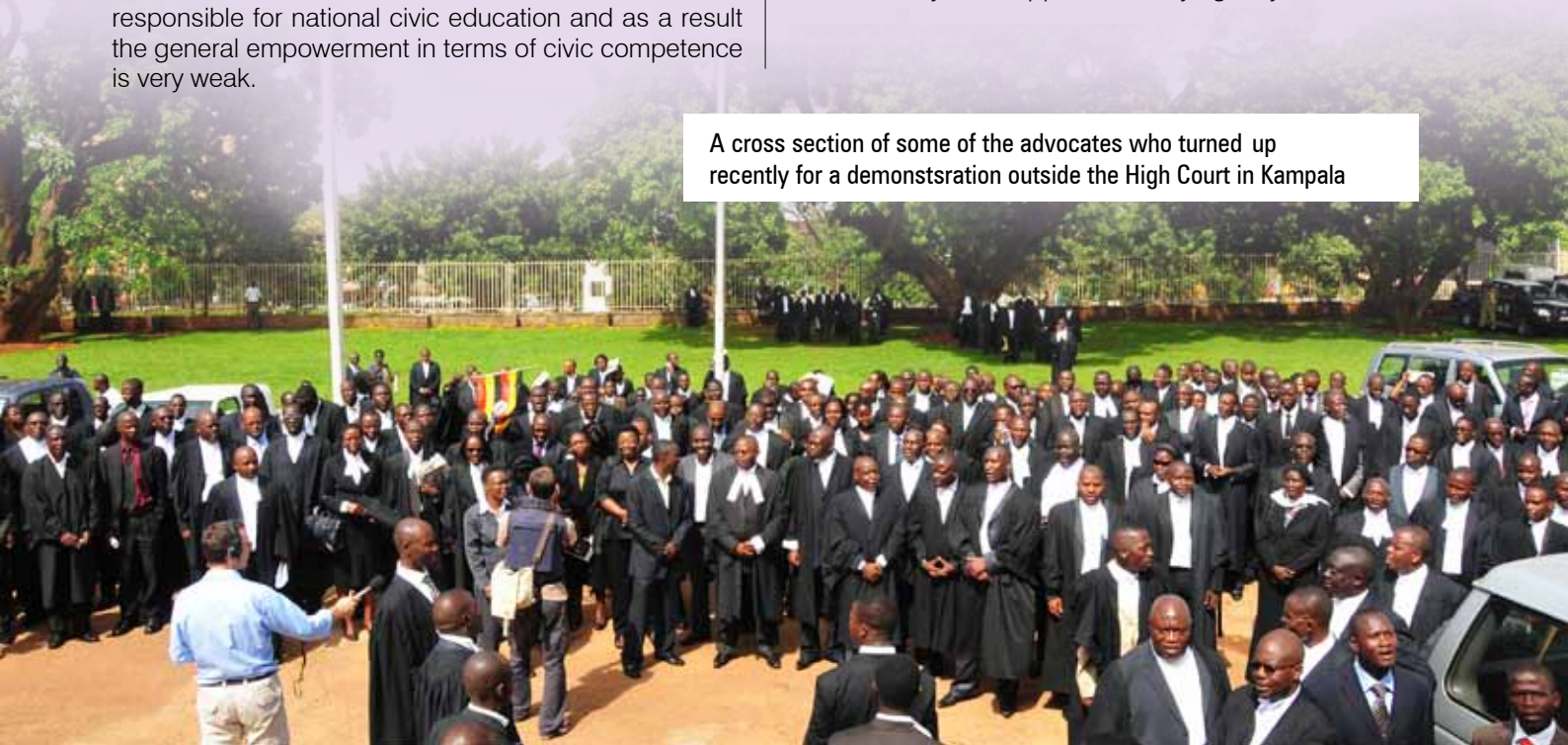
**Q - In this country we have seen situations where the military has occasionally been called in to reinforce police to restore public order in accordance with Article 212(d) of the Constitution. That being the case, are there any efforts being made to ensure that the military is technically competent to engage in law enforcement which, ordinarily, is not their mandate – particularly public order management?**

**CJ** - I may not be able to speak on behalf of the military because they are not part of the Justice, Law and Order Sector but they are partners. May be we should bring them on board. They should only be brought in (public order management) as the last resort - only if the police has no capacity. But now police has capacity with various specialized units to deal with various situations. But on the other hand, there are arguments that the current military is friendlier to civilians than the police.

**Q - My Lord, we know that Parliament legislates on public order, among other matters. But is it technically equipped to evaluate the national strategy or approach to public order management? For example how effectively would they veto equipment and weapons to be used by police to enforce public order?**

**CJ** - Parliament is empowered under the Constitution to pass any law for public governance, peace and order. So, they are presumed to know and must be empowered to know. They are stopped from saying they don't know.

A cross section of some of the advocates who turned up recently for a demonstration outside the High Court in Kampala



The challenge is how to make sure that Parliament is able to address these issues. Whenever there is a new Parliament, they undergo an orientation programme for the new MPs – the issue is how far does this go in addressing such concerns? Secondly, when there is a new Bill – to what extent can MPs keep in a seminar to address the issues? Whom do they consult or what are the consultation processes apart from their committees? Within their committees how empowered are they? Do they generate information before they write reports to send the Bill to the Floor of Parliament? They need to have expertise and varying options and opinions about Bills and policy issues from the concerned ministries and sectors.

**Q - Do you think government is taking the right direction with regard to addressing the issue of indiscipline or excesses or impunity in enforcement of public order?**

**CJ** - Those arrested are not treated with kid gloves. For example there is someone who shot people at Lubiri. He was arrested taken to court, convicted and jailed. The law is allowed to take its course.

**Q - My Lord, what do you see as policy challenges in the effective management of public order in this country?**

**CJ** - First of all the level of political development is a challenge. For instance the transition from no party to multiparty system has caused a number of challenges. There is a lot of freedom now to associate, to talk, freedom of expression in the press and so on. The challenge has been to ensure that law and law enforcement is able to appreciate the free extent of these rights in a situation different from what it was before. Public order was slightly easier to enforce before because everybody was looking at the national objectives of stability. Today people are looking for political power and others are looking for economic power. There are those who are protecting their property, there are those protecting their political interests. In order to ensure that all these competing interests can be achieved peacefully, you need a policy, law and security organisations which do appreciate the ideas of pluralism.

Pluralism has caused a challenge in terms of public order. The way people now look at elections. Elections are now seen as a political investment. People invest heavily. If someone who has invested heavily loses it can lead to a breach of public order. That is what is at the forefront now. The Police and other security agencies must contend with this new development.

The stakes are very high. There are other people who want to advance their interests using violent means. All these are challenges. In reaction to that – you have the Anti-terrorism Act. In managing public order we need not only human resource, we need equipment. All these are challenges. We need a policy, we need a good law to contain this - and may be public discussion of the law. People should be able to understand how we are going to live peacefully together while we have different interests.

**Q - You are at the helm of dispensing justice in this country. What recommendations can you propose for improving public order management in Uganda?**

**CJ** - I believe very much in building national consensus. I believe very much in dialogue. I believe in consultation. I believe in getting all the various political shades in the country on board. I believe that a consultation process should be put in place in order to develop public order policy and if there is a law there should be sufficient discussion on the Bill so that everybody owns and abides by it.

**Q - My Lord, there is a pending Public Order Management Bill. Some organizations like Amnesty International have pointed out that it might be a threat to freedom of assembly and expression – and that it conflicts with the objectives of the Constitution. What is your view about such proposed law?**

**CJ** - We have had such Bills before which tried to restrict the rights of political parties and it was struck down by the Constitutional Court. The yardstick for limiting rights is quite restrictive. If the law goes beyond what is necessary to protect the rights of others then it is not proportional. That is what those bringing the law ought to seriously consider. The Constitution of Uganda is very liberal.

**Q - Any other matter you may want to address with regard to public order management, my Lord.**

**CJ** - What we are suggesting is that there should be sufficient training for those security people who are enforcing the law to ensure that they do so having regard to basic human rights. Creating public awareness, civic education, the public knowing their role, rights and obligations and law enforcers knowing the rights of those they are trying to control. These are the main concerns

*Didas Bakunzi Mufasha is the Editor and Head of the Law Reporting Department of the Law Development Centre*

Pluralism has caused a challenge in terms of public order. The way people now look at elections. Elections are now seen as a political investment.



## City planning impacts on public order management

-- Netherlands Ambassador

The Justice Law and Order Sector is supported by several development partners. The JLOS Donor Group is chaired by the Kingdom of the Netherlands. Public order management being one of the aspects of the sector that the development partners support, His Excellency, the Ambassador of the Embassy of the Kingdom of Netherlands Jeroen Verheul, (in picture) granted the editor an interview to discuss it. The ambassador shared his thoughts on what public order management entails, the successes and challenges of Uganda in managing it, the lessons that can be learnt from other countries as well as recommendations on how to effectively manage public order in Uganda.

**Q** Most times the mention of public order management brings to mind police, demonstrations and the violence involved. How would you explain in plain terms what public order management means generally?

RESPONSE: There are two points I would like to make. First of all it would be a mistake to limit public order management to demonstrations and violence because it deals with processions, markets, regulation of traffic. Just to limit it to the negative aspects, the confrontational aspects would be underestimating the importance of public order management.

The second thing is that it is not an exact science, it is more a form of art because you need to reconcile many different interests; we have people doing business, crossing certain areas, different interests are involved. Reconciling all those interests is quite hard; it is not an easy job or something which you can put a formula on, it requires skill and experience, not only in Uganda but also in other countries.

**A** side from the violence, what are the positive aspects of public order management?

The positive aspects if I look at demonstrations or manifestations are when we see relaxed policemen for example at soccer games in the Netherlands, often you see it is going quite well, with policemen enjoying the game, not fighting hooligans. These are some of the positive aspects. There is often collaboration between organisers and authorities and Uganda should aspire to achieve this. Where there is mutual collaboration police do not have to stand ready with tear gas and live bullets.

**W**hat is the relationship between public order management and respect for human rights?

I think the relationship is quite direct. Public order management is instrumental in enabling the exercise of a number of fundamental human rights like freedom of speech, assembly and association. In public order management there is an interface between those basic human rights, so the better you organise it to interact the better you can allow the exercise of those freedoms. There is a very direct link between human rights and public order management.

In public order management how can the balance be struck between the legitimate interests of rights holders (like demonstrators) vis a vis the duty bearers (like the state agencies in charge of justice, law and order)?

I think the first thing to strike the balance, the first condition is a clear legal framework; unfortunately Uganda does not have such framework. There are provisions in the Constitution, there are regulations, but there are also rulings from the courts of law that have repealed certain provisions of the Police Act. It is a bit blurry. What is now exactly the framework that regulates public order management? That is the first thing that needs to be clarified.

Secondly, that the framework is an expression of the consensus amongst all stakeholders, that there is a debate and consultations, that there is agreement on 'the rules of the game'; these are the rules that we all want to abide by.

Thirdly, of course is that the framework is being used. Such a framework is then the mechanism that you use in order to balance the legitimate interests on the one

hand of those who want to express a certain opinion and the duty bearers on the other hand. It will also help people who have other interests as well, like people who are doing all the essential parts of our human rights system. Enjoying your human rights does not mean infringing on anybody else's human rights so you need to strike the balance; and let us say a clear framework with a clear procedure on how decisions are made about public order management may help in getting the balance right. If it is a framework based on broad consensus among stakeholders then chances are higher that you can get good balance between rights holders and duty bearers.

It seems like politics; particularly the perceived or actual politicisation of issues like the freedom to assemble and demonstrate, the state reaction, has had a big impact on actors and players in situations of public order. What is your observation in this regard?

Refer to the legal framework of public order management; the precondition is that such a framework is impartially and equally applied to those that support the government and the opposition. You cannot

disassociate expression of opinion from politics; they are intrinsically linked. Politics and public order management are closely related. But a condition for successful public order management is that it is managed without political fear or favour.

There have been concerns that the tendency in Uganda in public order management is to emphasise the reactive approach (enforcement) rather than the proactive approach (civic education, community policing). What is your take on this?

True; within the framework for political debate, if the proponents of a certain issue have the feeling that their views are not properly being represented and are not being taken into account in decision-making, then you create tension. Tension in society or in politics needs to find a way out and usually it gets itself out in demonstrations. Prevention thrives in a political framework in which those for or against a certain position debate the arguments on the table after which they all have the idea that their arguments have been taken seriously. There is need to avoid creating these tensions.

Second is to enable those who need to use the framework to use it; the police need to apply the framework and organisers of demonstrations need to be taught to interact with each other. It is important that the police is not perceived as some body which is against you, but as a body that impartially applies the framework, and that you need to interact with the police in order to organise your demonstrations.

More concerns have been expressed on the means and equipment of enforcing public order in Uganda that include lethal weapons like live bullets as well as excessive force of security agents. What is your comment?

With regard to the equipment: one part of the equation is that we need to have proper equipment, but the people who use them are equally important. The human factor is quite important, because the police officers need to apply restraint in using this equipment. The officers should be trained for that purpose. Demonstrators can be quite persistent in trying to provoke a reaction from the policeman. You need a lot of training not to respond to such a provocation. I would say it is partly an issue of equipment but also an issue of training. How do you handle situations? In what situation can you refrain from using the gun?

In our countries a policeman is only allowed to use the gun if his personal security or life is threatened or that of others; he does that by firing in the air. Targeted shooting at people comes at the very end of the spectrum, in very extreme cases. Before you use guns, there are a number of other approaches to address the situation. There is a range of other equipment you use before you bring in the gun; encircle, use a baton, in our country we have the horseback policemen which are quite effective. Most of the equipment that we see in Europe like water cannons, shields, protection gear for the policemen, is in the hands of law enforcement officers here; the issue is how do you deal with it.



There has been direct involvement of the military in public order management in some instances in Uganda which has attracted scepticism and criticism, even though the Constitution allows it. What is your comment on this?

Most of the victims occur when the military have been involved. Using the military might be necessary in some situations, but they are less trained in public order management. There is need for restraint in using the military in handling public order management.

Furthermore, it is not only military personnel that is involved, but also many others, who do not necessarily wear uniforms. It is not quite clear which groups are involved and who they respond to. It is important that those who handle public order management are identifiable as representing the authority dealing with public order management and that they can also be identified individually. Individual identification is important in case members of the public want to complain about behaviour of agents involved in public order management.

How do you rate Uganda's performance in management of public order; even focusing on the recent and current events surrounding the walk to work campaign? What are the successes and challenges?

I think there is substantial room for improvement. I am disappointed that the law on public order management has taken such a long time to proceed for public debate. The issue has been on the table for quite some time. We have been encouraging government to come with the public order management bill but it took a long time before the draft bill was tabled and there is still no public discussion taking place. That means we have to wait for the new Parliament and still Uganda has to deal with public order situations. I am disappointed about the slow speed. The other elements we already discussed; I mean training in the use of equipment.

Uganda has a long way to go before police can use the equipment appropriately. The trend is positive, a bit with ups and downs, for example, the public order management during the 2011 elections compared to 2006 showed great improvement; the military was only in the background and that went very well.

As development partners, how have you supported Uganda to address the challenges of public order management and effectively manage public order?

We have been encouraging Uganda to put in place a legislative framework and to promote Uganda's institutions to solve issues even in the absence of such a law. For example, the Uganda Human Rights Commission organised a workshop with different stakeholders to come to an agreement on how to deal with demonstrations and manifestations. It was done with the support of development partners.

Specific development partners are looking at the management of this human factor; training and raising professional standards in public order management, for example, the Irish and UK work with the police to especially look at the human factor; conflict; training and management of public order.

And then the police review. We supported the review of the performance of the police by the public and civil society. That was an opportunity to hold public consultations; an opportunity for the public and other stakeholders to express how they look at the performance of the police, including crime detection and prevention, public order management. This offered an opportunity for consultations in the different regions of Uganda on how people perceive police performance.

We have supported HURINET (the network of human rights organisations in Uganda) to promote accountability for police performance. A complaints procedure has been developed and then this issue of identifiable police personnel who have been complained about.



Anti-riot police truck spraying tear gas to disperse a crowd

Are you satisfied that this support has achieved some results?

There is some progress as already mentioned. I would have liked to see more progress. I would have liked to see more and faster progress.

With the recent happenings of confrontation and violence in public order management, do you then see this support to police increasing?

More support? I am not sure. We are now focusing through HURINET on the other side of public order management; the responsibility of the organisers of demonstrations, public order marshals, members of political parties, civil society organisations (CSOs) to liaise with the police. There is need to increase communication between CSOs and police and other stakeholders.

What good practices and examples can Uganda pick from your country on public order management?

Identify a certain area within the city where it could be easy to organise demonstrations. For example we have the Malievelde in Netherlands in the middle of the city of The Hague, close to where the governments sits.

It is easily accessible and the demonstrators will know that they will get the attention. In Amsterdam we have the Museum Square in the centre of town designated for demonstrations, it is a huge area. All this is linked to city planning. In Kampala, there is less and less of public space; city planning is not effective. The interaction between the set up of the city and demonstrations is critical for public order management. Here everyone wants to demonstrate at the Constitution Square.

There are also differences in the way political parties work with the police. Back home, they would always communicate with police and have good relationship with police. They do not seek permission but inform the police. The police is seen as very professional, it is apolitical, impartial, it is accepted as a neutral arbiter; referee to apply the legal framework.

There is acceptance by all stakeholders of who the referee is. Our police is decentralised and works with any political party. Even if there is only a perception of partiality then it has to be addressed. Police can do this by proving that it treats everyone the same way. There can be discussions on how, when and where rather than if the demonstration should not be held. To forbid a demonstration can only happen in extreme circumstances.

By default, most demonstrations are against government policy – both here and back home. It is important for people to air their views, it is important to diffuse the tension. Even when Parliament or government may not be obliged to listen or act.

Demonstrations are good for politicians because they are keen to know which way the vote would go; to know the feeling of the voters between two elections; they are important for communication between voters and representatives. Politicians need to know where the voters want the country to go.

The Ministry of Internal Affairs is planning to bring to Parliament a proposed Bill on public order management, which has caused mixed reactions from different sections. What is your comment on the proposals in that bill or the process of enacting such a bill?

We have already made comments on certain aspects some of which we have discussed under the legal framework. There should be public debate on the bill before it is enacted. There should be consensus. Have all Ugandans participated in this debate on public order management?

Secondly, the Uganda Human Rights Commission guidelines on public demonstrations should be an important part of the discussions on the bill.

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“By default, most demonstrations are against government policy both here and back home. It is important for people to air their views, it is important to diffuse the tension. Even when Parliament or government may not be obliged to listen or act.”

A police officer on horseback controlling a demonstrator





<Women leaders led by the then Deputy Chief Justice march to commemorate 60 years of the UDHR

# Police should facilitate peaceful demonstrations -- civil society

**In September 2009, thirty people died in riots arising out of the Kabaka's failed visit to Kayunga. The government admitted to Parliament that some of the people who died were not in the riots. Since then, no investigation has been carried out; no body has been prosecuted for the killings. The spontaneous riots, their intensity and the numbers involved took the government by surprise; the police responded with show of force and the military was called in for back up. Radio stations were closed, some journalists lost their jobs and hundreds of people were arrested, writes Sheila Nabacwa Muwanga**

Shortly after the riots, the Ministry of Internal Affairs came up with the Public Order Management Bill, 2009. The proposed bill seeks to restore to the IGP the powers contained in the provisions of the Police Act which were nullified by the constitutional court in *Muwanga Kivumbi v. Attorney General*. This is a violation of Article 92 of the Constitution which prohibits the enactment of legislation designed to defeat or overturn a judicial ruling. Not only does the proposed bill give the IGP very wide discretion in (dis)allowing demonstrations, it proposes to regulate the content/purpose of a meeting, allow the police to use firearms in virtually all circumstances as a first line of approach to demonstrations, and it seeks to regulate all meetings and discussions by three or more people at which government policies are discussed. There is no possible justification for such restrictions in a democratic society

The introduction of the law in 2010 at the time when the country was about to go for elections was seen in bad taste and was interpreted as a measure to clampdown

dissenting voices especially where the bill, which is to regulate public meetings, defines public meeting to mean a meeting at which principles, policies, actions of any government, political party are discussed or a meeting held to form a pressure group to hand in a petition to any person or demonstrate support of dissatisfaction with any government policy.

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## Public Order Management is much more than riot control

from page 03

A police trainer has cautioned that the use of force can often negatively amplify a situation that was close to resolution on its own. However, where situations are beyond reconciliation and necessitate the use of force, non-lethal force and reasonable force if warranted are recommended to quell the situation. In this respect, every commander should be well trained to identify situations where the use of force will foster public order more than not using it at all. This calls for high levels of professionalism.

The role of the media in public order management cannot be overemphasised. Whereas the media as a mirror of society may serve as an early warning mechanism, bringing to the attention of authorities potential disorder situations before they happen, they have to play their role responsibly and professionally. The media have tried to play their role in contributing to the proactive approach to public order management.

However, more often than not, they have also been responsible for fuelling prejudices and tensions, in effect

stimulating the disorder. Nonetheless, the media provide the opportunity to expose the excesses of enforcement agencies in public order management when forceful enforcement becomes the option. The citizens themselves, the rights holders, must be responsible enough to cooperate with public order management agencies in exercising their rights in order to avert public disorder.

It is critical to institutionalise mechanisms to ensure that all government agencies concerned as well as other stakeholders coordinate, communicate and collaborate to appropriately and effectively address public order management. The starting point is to break out of the hitherto narrow interpretation of public order and its management and appreciate that each individual, agency and institution has a role to play, either proactively or reactively to contribute to public order, and ensure that it plays it effectively.

**Rose Mary Kemigisha is a Senior Human Rights Officer / Editor of the Uganda Human Rights Commission**

## City planning impacts on public order management

from page 10

### What are your recommendations for the effective management of public order in Uganda?

It is important for the different points of view to be expressed, the impression that only one particular point of view is allowed to be expressed creates dissatisfaction and tension. The preventative approach is by giving people of different walks of life the opportunity to express their views, those with certain thoughts, just allow them to express them; that already is a very important thing in public order management.

Effective management is mainly in the political management of the solution to public order issues and you cannot solve political issues with a gun or tear gas and bullets. If you leave it to the police, it is already too late.

Dialogue is critical; allow debate and dissenting issues to be raised. The culture of political tolerance is directly related with effective management of public order management. The Constitution has very strong provisions on demonstrations; there should be freedom to express views amicably. This is very critical.

### Any other issues you would like to discuss in respect of public order management in Uganda?

There is one more issue and that deals with impunity; the idea that if security forces misbehave that they can do that without being punished.



An example of this is that Uganda has not enacted an anti-torture legislation. It is not clear if individual officers are held accountable; no investigations have been instituted into misbehaviour of security forces, at least none are known to the public. For example, in September 2009 there were riots when the Kabaka was stopped from going to Kayunga, there were a lot of riots, there was misconduct by security forces, investigation was done, but nobody knows what the outcome of the investigation has been. There are reports by human rights organisations on human rights violations by anti terrorism units and by the Rapid Response Unit. There are a number of allegations of misconduct by security forces which are left in the open without being answered. This creates an idea of security forces misbehaving and nothing being done. To deal with that image of impunity is very important.

I would be interested to know what the response of government is on such public allegations against members of the security forces misbehaving. If you hear nothing then you assume that they are not being punished. The way human rights violations are handled is important in order to create consensus among stakeholders in public order management and security officials.



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1. President Yoweri Museveni launching the National Identity Card project
2. Staff of the Immigration Directorate attend the Client Charter Development workshop
3. Guests at the opening of a magistrates court at the Law Development Centre funded by JLOS.
4. Inmates of Gulu prison attend a workshop organised by the Judicial Service Commission.
5. An inmate in Katojo prison receiving a copy of the Citizens handbook from Mr. Michael Elubu of Judicial Service Commission
6. Participants at a workshop organised by the Judicial Service Commission at Nyakinama Sub County, Kisoro District
7. UHRC presents its 13th Annual Report to the Speaker, 28th June 11



5



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6

## Police should facilitate peaceful demonstrations -- civil society

*from page 11*

The sum effect of the above provision would be that any debate by civil society organizations, the academia or the public on government policies would be subject to police permission. Public discourse that may raise disaffection with a particular government policy can be stopped under the cited provision. This will curtail public participation in governance and subject them to the whim of the authorized officers under the law. The reliance on or misinterpretation of the law to selectively block demonstrations or confine them to places out of sight defeats the exercise of the right rather than ensure its peaceful enjoyment.

This is not to say that public meetings should not be regulated; or that demonstrators should be left to run amok and bring all else to a stand still but the role of the police should be regulatory as opposed to prohibitive; their actions should not be seen to defeat the enjoyment of the right but rather to enable its peaceful enjoyment.

Unfortunately, recent events in Uganda show that the police continues to view demonstrators as common criminals; hence the instant response with overzealous use of excessive force, police appearance in combat gear with helmets, shields and truncheon as if ready for combat, teargas, and on some occasions in the company of stick wielding goons and soldiers. For the Uganda police, success in handling a public meeting has come to be defined in terms of snuffing out the meeting in the shortest time possible.

The right to peaceful demonstration is one of the means by which the citizenry participate in their own governance. It is a mechanism by which people vent their dissent and/or approval with the policies and actions that affect them.

The presumption that demonstrations will lead to the abuse of the rights of others, is often speculative but also an admission of failure on the part of the police to maintain law and order. While police presence in public demonstrations is necessary for the maintenance of law and order, it should be de-escalatory. Their conduct/presence should not incite violence rather; the people should feel safer in their presence. The police should epitomize safety and orderliness and not be a sign of violence during demonstrations. Police presence must be recognizable and approachable not menacing enhances the wider perception of regime as opposed to democratic policing. In managing a rally, the police ought to exercise their discretion in a progressive manner so that the use of force is the last not the first line of action. The inclusion of firearms as an alternative in handling public meetings in the proposed Public Order Management Bill is deplorable.

With response from Government only aimed at tightening the limitations on the exercise of civil rights through restrictive legal frameworks such as the proposed Press and Journalist Amendment Bill 2010, and no concrete measures to address the root causes of such dissatisfaction, only time will tell.

*Foundation for Human Rights Initiative (FHRI)*



Anti-riot police patrolling a Kampala street.



## The role of JLOS institutions in public order management

By Justus Muhanguzi

Stakeholders attending the 5th JLOS Forum in Mbale, 2010

The Justice Law and Order Sector JLOS was established essentially to stem the tide regarding the constraints in the justice delivery chain caused by the extensive breakdown of functions of the state including the maintenance of law and order. This was after a long period (1966 to 1986) in which Uganda experienced political, civil and economic regress.

The Sector-wide approach adopted by the government was aimed at bringing together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision, policy framework, unified on objectives and plans over the medium term. One of the five objectives of the sector is to promote the rule of law and due process. The fact that the line dividing the rule of law and public order is very thin means that the JLOS institutions have a big and distinct role in the maintenance of public order.

It is a fact that enforcing the rule of law, and maintaining public order, are inseparable and they form the bedrock of a civilised society and sound liberal democracy. The establishment of the sector was due to the need to restore and enforce the rule of law and the maintenance of public order. All the 15 institutions that constitute the sector have closely linked mandates that focus on a holistic approach to the administration and management of public order.

However, some institutions under the sector play more visible roles such that their names are synonymous with public order management.

Some of those institutions include; the Uganda Police Force, the Directorate of Public Prosecutions, the Uganda Prisons

Service, the Ministries of Justice and Constitutional Affairs (MoJCA) as well that of Internal Affairs, and the judiciary. Nonetheless, other JLOS institutions also significantly contribute to public order management because of their ultimate contribution to the rule of law and access to justice which are in turn critical for public order. These include the Uganda Law Reform Commission, the Judicial Service Commission, the Law Development Centre (LDC), the Local Council Courts, the Uganda Law Society (ULS) and the Ministry of Gender, Labour and Social Development. The Uganda Human Rights Commission (UHRC) plays a key role in public order management in terms of promotion and protection of the rights involved as well as an oversight function over the institutions directly involved.

### The Police Force

The police are the principal public order enforcement agency. The Constitution charges the UPF with a specific mandate to preserve law and order. Even within its other mandate to protect life and property and to prevent and detect crime, police directly gets involved in public order management. Unfortunately, the police's role in the management of public order has always sparked off debate about rule of law and people's freedoms; in particular, the right to freedom to assemble, associate, demonstrate and freedom of expression.

More often than not, there has always been a conflict between the police and the sections/groups within the Ugandan community who claim that what the police call public disorders are basically their individual human and constitutional rights. For example, the police have always insisted that it is a requirement for one to notify them before holding any gathering or demonstrations/procession; a condition that has created a collision path with persons seeking to exercise their rights under Article 29 of the Constitution.

#### The Ministry of Justice

The Ministry of Justice and Constitutional Affairs (MOJCA), the Judicial Service Commission (JSC), the

“ public order management  
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JLOs institutions

who continue to make important contributions  
despite some challenges along the way”

Law Development Centre (LDC), the Uganda Law Society (ULS) the Directorate of Public Prosecution (DPP) play both the primary and secondary roles as they are involved in the legal and prosecution aspects in respect of public order management i.e. the drafting formulation, interpretation, application of the law. The drafting of the Public Order Management Bill of 2009 is one such effort undertaken by these institutions in that respect. According to the Ag. Director, Civil Litigation MoJCA, Ms Robina Rwakoojo the ministry has been instrumental with regard to the public order management legislation. “Our role involves making a contribution in the drafting of the relevant legislation and ensuring that justice is done and people’s rights respected” Ms Rwakoojo explains.

#### Judiciary

Similarly, the Judiciary’s role has equally been prominent in public order management by ensuring that access to justice is fundamental to the rule of Law. According to the PRO Mr. Elias Kisawuzi, the institution’s prime concern has and continues to be that of adjudication. By adjudicating, the Judiciary contributes to interpreting and applying minimum standards in matters of public order; settling matters that would otherwise cause public disorder and also determining and holding culprits to account for public disorder.

The Judiciary is supported in its role by the Police who are the gateway to the administration of justice system as well as the DPP that prosecutes suspected culprits with the Prisons at the end of the chain.

#### Uganda Prisons Service

The role of the Uganda Prisons Service (UPS) according to Mr Frank Baine , the Institution spokesperson has been to supplement the police in the enforcement of the law regarding public order. He explains “We join hands with the police in crowd control operations. We are also responsible for keeping in custody both the suspects and convicts who are culprits of public order management”.

#### Judicial Service Commission

The advisory and supervisory role of the Judicial Service Commission (JSC) contributes significantly, though indirectly to public order management. Through its functions of advising on appointment of specified officers of the judiciary as well as appointment of other judicial officers; provision of legal education for the public and judicial officers; and handling complaints involving the officers, the JSC facilitates and oils the administration of justice system to ensure it runs smoothly. This ultimately impacts on the effectiveness of the institutions that are directly engaged in administration of justice.

#### Uganda Human Rights Commission

The Uganda Human Rights Commission’s mandate is to protect and promote respect for human rights in public order management. In an effort to resolve the conflict between the law enforcement agencies and the public regarding gatherings and demonstrations, the Commission has developed guidelines based on minimum human rights standards spelling out the requirements in the realisation of the said rights and the attendant duties and responsibilities as well as the role and responsibilities of the law enforcers. UHRC has also played the role of an arbiter regarding cases and complaints from the public against law enforcement agencies in regard to management of public order.

#### The Directorate of Citizenship and Immigration

This proactively promotes public policing of order through facilitation of the legal and orderly movement of persons to and from the country. In this way criminals are kept at bay while bonafide travellers are facilitated to travel in a legal and orderly manner.

On the whole, public order management is not the responsibility of the police alone, but all JLOs institutions who continue to make important contributions despite some challenges along the way. For instance, even though the Public Order Management Bill 2009 was drafted by some of the JLOS institutions, it has attracted a debate from section of the Ugandan public and civil society that have challenged some of its provisions alleging non-compliance with human rights standards. It is very critical that all institutions of JLOS work effectively in consultation and in tandem if the objectives of public order management are to be achieved. The sector therefore needs to promote the holistic approach to public order management to enable each institution play its part.

*Justus Muhanguzi is the Public Affairs Officer, UHRC*



Various scenes of public demonstrations

# Human rights minimum standards on public demonstrations

Staging public demonstrations in Uganda in recent years has been filled with challenges for the organisers, the law enforcement officers and the participants leading to, in some instances, quite violent and undesirable occurrences. Stakeholders developed guidelines on freedom of assembly and public demonstrations based on the human rights minimum standards. The guidelines are outlined below.

People often exercise their rights to freedom of assembly and to demonstrate, but some of these assemblies and demonstrations have turned violent or riotous resulting into the destruction of property, injury to persons and loss of lives. This spate of demonstrations or assemblies-turned-violent prompted the Uganda Human Rights Commission to work together with various stakeholders to come up with some guidelines on public demonstrations in Uganda. The guidelines developed with support of the British High Commission represent the minimum human rights standards on freedom of assembly and public demonstrations and a consensus on the interpretation (meaning) and limitation of the right.

The freedom of peaceful assembly and the right to demonstrate are vital for a proper and functioning participatory democracy. It is a fundamental right guaranteed under Article 29(1)(d) of Uganda's Constitution and it is one of the ways in which members of the public or sections of it express themselves with regard to a particular issue of concern, so that it can be considered and addressed by those in authority. The freedom of peaceful assembly enables the citizens of any given State to take part in the conduct of public affairs as well as to influence the policies of government in a specific area of interest.

The stakeholders that were involved included members from civil society organisations, religious institutions, Parliament, media, Uganda Police Force, political parties, the donor community, academia, ministry of internal affairs and the

Justice, Law and Order Sector. The guidelines were drafted and validated through extensive consultation of all key players and stakeholders including the public via the media. The guidelines were meant to provide a basis for or to inform any policy and legislation-making processes regarding the freedom of assembly and the right to demonstrate. The guidelines clearly spell out the roles and responsibilities of the major players in assemblies and demonstrations, namely: the organisers, the participants and the police. They were expected to influence the legislative process of the proposed Public order management Bill 2009 and to preferably be issued as binding regulations.

The guidelines demonstrated that management of public demonstrations and assemblies, in order to ensure the respect and protection of the freedom of peaceful assembly and the right to demonstrate, could not be left to the police alone. It is also a responsibility of the organisers, the participants and all members of the public working hand in hand. UHRC embarked on the dissemination of these guidelines believing that if they are adhered to by all concerned, they will go a long way in promotion, respect and protection of the right to peacefully assemble and demonstrate.

## Challenges in the enjoyment of the right to assemble and demonstrate

- Abuse of police powers through refusing people to assemble and demonstrate.

- Perception by mainly the opposition groups and civil society that the police is not independent of political authority, and does not make fair decisions regarding notification of the desire to demonstrate.
- Lack of consensus on the interpretation (meaning) and limitation of the right to assemble and demonstrate.
- Mistrust between the police and those who wish to organize demonstrations – thus inhibiting co-operation in the organization and management of demonstrations.
- Poor or lack of communication between the Police and organizers.
- Adversarial approach to planning and management of demonstrations - both by the Police and organizers.
- Threat to safety of the demonstrators, security of property, as well as, law and order during demonstrations.

### Law Applicable to Public Demonstrations

The law applicable to public demonstrations is to be found in the Constitution, the Police Act, Common law and judicial decisions. The essence of the law is to ensure that every person has the right to demonstrate with others peacefully and unarmed.

The right is not absolute and can be limited but any limitation imposed should not prevent the enjoyment of the rights; if imposed should be in the public interest; be in the interest of law and order and if imposed should be such as is acceptable and demonstrably justifiable in a free and democratic society.

It is important to stress that this right is a positive right with the qualification that it must be exercised peacefully without participants being armed.

As a general rule police permission is not required to hold demonstrations. Police permission is however required for demonstrations and assemblies to be held in gazetted / restricted venues. Since police have powers to regulate or direct demonstrations, they should be given adequate notice.

Police powers to regulate and direct demonstrations must meet the following standards:-

- **legality:** Police action must be lawful and not arbitrary or based on unjustified orders.
- **Proportionality:** the nature and extent of Police actions must only be what is required to meet what it seeks to address.
- **Necessity:** Police action must be appropriate, reasonable and justifiable in each circumstance at hand.
- **Accountability:** Police must be responsible for their actions

**The exercise of public (police) power must recognise the need to facilitate rather than hinder demonstrations.**

### The Guidelines

Demonstrations refer to all events including demonstrations, rallies, charity walks and processions.

### The Role of the police

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

- a- receive notices of impending public demonstrations,
  - b. Issue and receive Statements of Intent,
  - c. 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,
    - a- Criminal behaviour,
    - b- Breach of peace,
    - c- Anticipated imminent violent situations,
    - d- Sight of any weapon/firearm and/or the use of any potentially dangerous weapon.

- Police powers of arrest will be exercised where deemed appropriate.

### **The 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 not 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.

### **The 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.

< A protestor attempts to assault a police officer in a riot protesting the bad state of a road in Kampala





# People speak out

on what public order management means to them.

Ugandans perceive public order or its management from different perspectives. The different interests of the stakeholders and players often determine how they view public order issues. Aside from what the duty bearers perceive it to be, Hilary Bainemigisha in a random street survey asked a cross-section of members of the public their views on the issue. Below are the peoples' voices responding to the questions: 1) What do you perceive public order to be? 2) Who are the key players in the management of public order? 3) How do you think the government is managing public order? and 4) What would you recommend to the government on improving public order management. People generally concur that public order requires respect for and compliance with existing laws and policies by both government and the public as well as exercising one's rights in a manner that does not infringe on the rights of others.

## **Eve Kirunda, Journalist**

Public order is when proper transport systems are in place, as in buses not taxis, with stages, no bodabodas disregarding traffic laws, disciplined citizens lining up patiently for services, proper signs in the city, respect for everyone and where everything is clear, reliable and systems work. This is the work of everybody. Government is failing because you cannot enforce laws which you yourself are quick to break or disregard. Ugandans are also failing Government with indiscipline; how do you expect a mayor to clean garbage outside your home? Government should employ technocrats with a track record of delivering. The whole system needs to be overhauled from the (very) top to the bottom and cleared of lazy, corrupt individuals, who have no ounce of patriotism.

## **Bob Kisiki, Pastor**

Public order is where every member of society conducts himself in such a way as not to inconvenience others. Key players are law enforcement officers, local leaders and the individual. Government is not really managing because it doesn't care when there is nothing for it to lose and so, people no longer fear the consequences. I recommend that people and their local leaders don't wait for police or law enforcement but sit and decide what they want, how to get it and the consequences of members not toeing the line

## **Ntegye Asimwe, Activist**

Public order is where you conduct your business, whether in the street, market, church and nobody interrupts you without a genuine concern. The key players are everybody beginning with Government and all its branches and the public. Government is not really managing well because it has its own bias. It has its selfish reasons just as the public does too. The opposition wants to take advantage of situations with a demonstration. I think government should remain tough or be tougher. Our opposition is not yet able to have the capacity to reign in on its people so they cannot guarantee that their demonstrators will not loot and spoil property. Government must stop all those risks of demonstration till we mature as a people

## **Ben Okiror, Government civil servant**

Public order is where the safety of people and property is guaranteed and there is peace and tranquility. Key players are the police and the citizens or residents of any particular place. Yes, Government is managing very well. If you look at the just concluded elections, people feared chaos but the very visible police presence helped us enjoy peace. I recommend that Government keeps the police on the streets to scare trouble causers and do enough intelligence on the planned problem causers

## **Joe Nam, Politician – lost last MP elections for Oyam South**

Public order is when there are no riots and traffic jams. It is the work of Police and the general public. Government has managed 50-50 because police and public are not motivated enough.

## **Fr Peter Kanyandago, Vice Chancellor, Uganda Martyrs University**

Public order includes all conditions that reign when people go about their business and are not inconvenienced. It is the work of security agents and all those responsible for maintenance of public services: roads, transport etc. Ugandans themselves need to be disciplined. I would give the government a success rate of 85% in rural areas and 30% in urban areas and the main reason of failure is fear to be demanding and alienate people politically. Government should promote sensitization programmes about use of roads, and waste disposal.

## **Juma Shaban, Manager, Best Bargaining Centre**



Public order is the absence of widespread criminal and political violence in society, such as kidnapping, murder and riots among others. Key players are the police, citizens and all leaders. Government has failed because of, first and foremost, corruption. Then people do not understand the laws in place or sometimes they

take the laws for granted. Modernity has also encouraged people to ignore culture because culture plays a major role in public order in society. Government must educate society on the importance of public order.

**Saad Mugoya, Accountant, *Kwiiri Associates***



Public order as the way society is organised. Government has to ensure that mechanisms are in place for society to exist without commotion. The key players are the general public and government itself through its security agencies. Government has tried but the problem is; it ends up politicising public order. In the end, innocent civilians get hurt or killed.

There are also so many regulations limiting public freedoms and the use of excessive force. Government must control the use of excessive force. Also issues that are not going to antagonise the public should be ignored sometimes. The state should have self confidence to do that.

**Dr Patrick Mulindwa, *A medical doctor***



Public order is a way that conforms to society's general ideas of normal behavior and moral values. Moral values are the commonly accepted standards of what is considered right and wrong. Without public order, crime rises and criminals get away. Citizens and leaders are the major key players. Government has tried but it is being let down by some unlawful citizens.

They should keep on sensitising people.

**Sula Katushabe, *30-year-old police officer***

Public order is the quiet and orderly behaviour of people in public. It involves sensible behaviour and respect of others. But one person's cheerfulness on the street may be another's annoyance making it hard to manage public order. The key players are the citizens and leaders. Government has not done enough may be because of rampant corruption. The solution is to educate people because most do not know what public order is or why it is important to society.

**Sebagala Kawesa, *An official of the Federation of Motor Sports Clubs of Uganda***



Public order is the same as law or social norms. That is why it should begin in homes. Basically its purpose is to keep order so that you do not have a chaotic society. If society is not orderly it will fail government in implementing law and order. Every citizen and law implementers like the police are key players. So far, government has failed to maintain public order

because it has not done enough sensitisation to the public. Sensitization should be prioritised starting from the grass roots and, in turn, these people should also be facilitated to educate others.

**Livingstone Ssekiziyivu, *A 37-year-old Boda-boda cyclist***



It is keeping law and order in society and people respecting others. It is the responsibility of citizens, parents, local leaders and police. Government has failed: look at the way people are behaving now days. In the past, every one in society was responsible and kept an eye on a neighbour's child. Today, government has insisted on people's rights and you can't even

reprimand your neighbour's child. People are forced to take laws in their hands because criminals also have human rights. Government should sensitise and ensure that those in public offices do best what they are supposed to do.

**Ruth Tomusange, *Teacher***



Public order is a crime free society. Police is the number one key player because they have a legal duty to keep law and order. The general public and government leaders should co-operate in protecting citizens. Government has failed as shown in rampant mob justice. Why would a leader steal government funds or drugs from hospital without fear? Government must always be strict on accountability because leaders should lead by example. Public policing in society should be emphasized.

**Ronnie Zziwa, *Saloon owner along Martin Road at Old Kampala***



Public order is the orderliness of society. Although it is an area of police or other policing agencies, we should understand that the system is chain-linked to all members of the general public. Government has failed; leaders are corrupt, crime rate is on the increase, courts take ages and if you know someone big, you become untouchable. I recommend government

to involve all the stake holders when handling issues of public order and not leave it to just a few elites. It should also not ignore the issue of community policing.

**Hilary Bainemigisha is a senior journalist with *The New Vision Group***



<Parliament in session. The public order bill is expected to be discussed by Parliament

## Salient issues in the Public Order Management Bill 2009

The Government has proposed a bill for the management of public order. The objective of the proposed Bill: The Public Order Management Bill 2009, is “to provide for the regulation of public meetings, duties and responsibilities of police, organisers and participants in relation to public meetings; to prescribe measures for safeguarding public ordered for related matters”.

The Bill which among others, defines the officers authorised to issue permits for holding public meetings of more than 25 people, provides for the power of the Inspector General of Police (IGP) to regulate the conduct of all public meetings. The Bill also defines public meetings as “a gathering, assembly, concourse, procession or demonstration of three or more persons in or on any public road... or other public place or premises wholly or partly open to the air”. The Bill further defines the purpose of the public meeting as to discuss the principles, policy, actions, or failure of any government, political party or political organisation whether or not that party or organisation is registered under any applicable law. The Bill gives the other purpose of a public meeting as held to form pressure groups to hand over petitions to any person or to mobilise or demonstrate support for or opposition to the views, principles, policy, actions or omissions of any person or body of persons or institution including any government administration or governmental institution.

It provides for what is not included in the definition of public meeting i.e. that of any public body held exclusively for a lawful purpose; of members of any registered organisation whether corporate or not convened in accordance with the constitution of the organisation and held exclusively for a lawful purpose of that organisation; and of members of a trade union. Other meetings not included are for a social, religious, cultural, charitable, educational, commercial or industrial purpose; of organs of a political party or organisation held exclusively to discuss the affairs of the party or organisation.

Anyone intending to hold a public meeting would be required to give a signed notice in writing to the IGP at least seven days before the proposed meeting. The notice according to the Bill must include the particulars of the organiser, the details of the meeting and site as well as a clearance letter from the proprietor of the venue.

The Bill provides for fines and sentences in case of breach.

The Bill also details the duties and responsibilities of the police, the organisers and participants. It also provides for a statutory instrument in which a minister should gazette areas where public meetings are not permitted without a permit. Other statutory instruments are for regulations for implementation of the law as well as to amend the schedule on the currency points.

### A critique of the public order Management Bill 2009

Human rights activists have expressed concern over the proposed Public order Management Bill 2009. They criticised the Bill as soon as it was published arguing that it posed serious challenges to Ugandans in their fundamental freedoms and human rights guaranteed by the 1995 Constitution and several international and regional instruments that Uganda is a party to. Specifically, the activists were concerned that the proposed law:

- Seeks to reintroduce the provisions of the Police Act, Cap 303 which were nullified by the Constitutional Court in the case of *Muwanga Kivumbi v. The Attorney General of Uganda* (Constitutional Petition No. 9/05);
- Is contrary to Article 92 of the 1995 Constitution of Uganda, which prohibits the enactment of legislation designed to defeat or overturn a judicial ruling;<sup>[4]</sup>
- Grants the Inspector General of Police (IGP) and the Minister of Internal Affairs wide discretionary and unjustifiable powers over the management of public meetings;
- Places numerous extensive and impractical obligations on the organizers of public meetings, which are impossible to satisfy, and
- Seeks not only to regulate the conduct of public meetings but extends to regulate the content of the discussion of issues at such meetings, in contravention of the right to freedom of speech.

Concerns were expressed that the Bill proposed to regulate only public meetings that focus on the effectiveness of government and its organs and political organs. They described this as contracting Paragraph II of the National Objectives and Directive Principles of State Policy of the Constitution, which provides that: *‘The state shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.’* The human rights activists were perturbed that the Bill ignored the guidelines on public demonstrations developed by the Uganda Human Rights Commission in conjunction with the Uganda Police and other key stakeholders, as well as existing international best practice in the area.

If passed in its current form the implications of this Bill for the ordinary Ugandan would be far reaching. Furthermore, the Bill would impact not only on the operation of political parties and organizations but also on Civil Society Organizations, human rights defenders, academic and professional institutions and on individuals.

On specific sections of the Bill, the human rights activists pointed out among the others, the following issues:

**Clause 2:** The definition of political organisation is much wider than that in the Political Parties and Organization Act 2005. It can be interpreted to covers anybody/everybody including any civil society and academic institution; the definition should be confined to that found in the PPOA 2005.

**Section 2:** The places that are designated as public places are very broad and sweeping; any place can be brought within the definition of the provision.

**Section 4** on powers of the IGP: Reproduces section 32(3) of the Police Act, declared unconstitutional in *Muwanga Kivumbi v. AG* (Constitutional Petition No.9/05). In effect it seeks to

re-instate a provision that has been nullified by the Courts of law, by restoring to the IGP the power to permit or disallow an assembly/rally.

**Section 5** on delegation of powers of the IGP: A person aggrieved by the decision of the delegated officer may appeal to the IGP, who in essence is the author of the decision made through the delegated officer.

**Section 6 (1)** on the delegation of public meeting: This provision is an undue restriction on the exercise of the rights guaranteed under this article 29 of the 1995 Constitution guaranteeing freedom of conscience, expression, movement, assembly and association. It aims at stifling public debate on government policies and practices contrary to National Objective and Directive Principle II, as it extends to the content of discussions of the public meetings.

**Section 6 (2) e:** Clause 6(1) (a) defines a public meeting as that at which the policy, actions or failure of any government is discussed and yet 6(2) (e) exempts the meetings of the organs of a party from the definition; the two provisions are inconsistent; the policy, principles, actions and failure of government are ordinarily the business of other political parties i.e. they should have unfettered freedom to discuss, criticize and analyze government actions, policies and principles. The section seeks to limit the space for the operation of political parties.

**Section 7 (1)** on the 7-day notice to the IGP: This is an undue restriction on the exercise of the provisions of Article 29 of the 1995 Constitution, which guarantees the freedom to assemble and demonstrate together with others. Article 43(2)(c) prohibits the imposition of limitations by the State of any restriction to human rights that is beyond what is acceptable and justifiable in a democratic society. The requirement for a 7 day notice could defeat the purpose of drawing urgent attention to an issue. The bill also has no provision for a waiver of this period.

**Section 7 (2) c** requiring the notice to include the estimated number of persons expected: The provisions introduce an onerous obligation on the organisers of public meetings; it is difficult to estimate the number of people who will attend any public meeting before the event, since a public event implies there are no restrictions imposed on the number of people who will come to the meeting/assembly. The provision places an unrealistic and disempowering provision on the organisers of public meetings and assemblies.

**Section 7 (2) d** requiring the notice to include a clearance letter from the proprietor of the venue: The provision may be used to identify persons who are thought to be sympathetic to the opposition, and can be a mechanism by which the owners of public venues are intimidated and harassed.

**Section 8 (1) c** on the police power to decide that it is not possible for a proposed public meeting to be held for **any reasonable cause** and to notify the organiser or his/her agent:

This re-introduces the requirement for police permission before a public meeting can be held, in violation of the Constitutional Court ruling on the matter. There is also no time limit within which the Police are required to respond to the notice of a public meeting, occasioning unwarranted delay. In the absence of or a delay in procuring a Police response; organisers may hold a public meeting and be held liable for a violation.

**Section 8 (5)** on appeal of IGP decision to the High Court: The Bill gives unduly wide discretionary powers to the IGP. The time required for giving of notice, filing an appeal to the IGP and then to the court may ultimately defeat the purpose of a public meeting.

**Section 9** on powers of the IGP to stop a public meeting: The provision is superfluous as the circumstances envisaged are already adequately addressed under sections 65-70 of the Penal Code Act, Cap 120.

**Section 11** on responsibilities of organizers and participants to ensure that all participants are unarmed; that the statements made by the media do not conflict with any laws of Uganda; and to undertake to compensate any person who may suffer loss or damage from the public meeting: The section places undue onerous responsibilities on organisers. The responsibility to maintain public order and security is a function of the police; organisers do not have the capacity to ensure that meeting participants are unarmed. Public meetings by their nature may be held with the intention of changing the laws of Uganda, this provision would therefore defeat its very purpose. Further, it is an undue restriction on the freedom of speech and thought; organisers cannot be held responsible for what each and any participant may say at a public meeting.

The destruction of property in the course of a public meeting is a criminal activity and criminal liability is personal therefore organisers cannot be held liable for the activities of spoilers and

all participants; police are mandated to maintain law and order during a public meeting.

On the use of a firearm by a police officer and the circumstances in which it may be used: International law stipulates the use of non-lethal force to maintain public order. The general rule governing the application of force in maintaining law and order is that *only necessary force* may be used. The use of fire-arms should not be included as an alternative in public order management. Where permitted, fire-arms may not be used against civilians except as a final resort when all other measures have failed. Section 2 of the Criminal Procedure Code Act provides for the apprehension of suspects; a police officer may use all necessary force to apprehend an offender but may not use greater force than reasonable in the particular circumstances. The section is not appropriate in an instrument on public order management and would be more suited to an amendment of the Police Act.

The circumstances under which a police officer may use a fire arm under the proposed section are so wide as to cover any possible circumstance in which the police may use force. It also contravenes the principle of proportionality in the use of force by law enforcement personnel.

**Section 12** on the use of public address system: Is redundant as it reproduces the provision of section 40 of the Police Act Cap 303.

**Section 14** on gazette areas: Gives the Police overly wide discretion in dispersing public meetings. Powers of the Minister to gazette a place for purposes of public tranquility are too wide; there is no procedure for an oversight mechanism to check the powers granted to the IGP and the Minister under the instrument.

**Section 14 (8)** on the evidence of the police officer who ordered the meeting to disperse being conclusive as to the number of persons present at the public meeting: When a dispute arises about the dispersal of the rally, the Police is the respondent and it is unconscionable to take the evidence of the Police as conclusive.

“ The general rule governing the application of force in maintaining law and order is that **only necessary force may be used**

The use of fire-arms should not be included as an alternative in public order management.”



Proactive public order management: The IGP, Gen. Kale Kayihura addresses secondary school students

## Justice Law and Order Sector Noticeboard

### April

#### JLOS holds a joint Government of Uganda and Development Partners Semi Annual Review

The JLOS Semi Annual Review was held at Protea Hotel in Kampala. His Worship Henry Adonyo, the Chairperson of the JLOS Technical Committee in his speech highlighted a number of milestones registered during the year under review.

#### NUTI hands over books to JLOS

The Northern Uganda Transitional Justice Initiative (NUTI) gave JLOS a set of law books valued at US dollars 49,201.07 to support the Community Justice Centres at Pader, Patongo, Otuke and Kiryadongo. Some of the books were to be distributed to courts, DPP offices and police stations and posts in Northern Uganda.

### May

#### The President assents to a bill increasing the number of Court of Appeal and Supreme Court Justices.

His Excellency the President of Uganda on May 1, 2011 assented to The Judicature (Amendment) Act of 2007 increasing the number of Supreme Court and Court of Appeal Justices. While the Supreme Court justices have increased from 7 to 11 including the chief Justice, the justices in the court of appeal have been increased from 9 to 15 including the Deputy Chief Justice.

#### Judiciary begins hearing of election petitions

At least 100 election petitions filed in the courts of judicature across the country, disputing the outcome of the recent parliamentary and local council elections, were set to be heard in May and June. A team of 24 honorabile judges had been designated to handle the petitions.

#### National registration and identification Programme launched

The President of Uganda His Excellency Yoweri Museveni launched the National registration and identification Programme which will establish biometric based identity management. Every Ugandan of and above the age of 18 will be issued with a national Identity Document.

### June

#### JLOS facilitates Training of Court Interpreters

JLOS with support from DANIDA contracted the Refugee Law Project (RLP) to facilitate the training of court interpreters. A total of 30 court clerks selected from various High Court circuits in the country participated.

#### Austrian Government supports training of Court of Appeal & Supreme Court Justices

JLOS in conjunction with the Institute for International Criminal Investigations, Public International Law and Policy Group and Judicial Studies Institute with funding from the Austrian Government organised a training for justices of the Supreme Court and Court of Appeal in transitional justice to prepare the two courts for hearing appeals that may arise from the International Criminal Division of the High Court, that was

scheduled to try perpetrators of war crimes and crimes against humanity arising out of the conflict in Northern Uganda.

#### Principal Judge creates Execution Division at the High Court

An execution Division at the High Court has been created to be solely responsible for handling executions from all the Divisions of the High Court and surrounding magisterial areas. It would standardise execution proceedings, improve execution of court orders and greatly reduce abuse of court process.

#### Introduction of Biometrics in Border Management

National border management has been improved from biographics to biometrics. All travelers using Entebbe International Airport, Busia, Malaba Mutukula and Katuna will be required to undergo finger print scanning.

### Ongoing activities

#### Developing the National Migration Policy

The process of developing a National Migration Policy for Uganda is ongoing to address the serious policy and operational challenges to the management of migration in the country. Through the policy, Government will enhance and strengthen its capacity to better manage migration. Consultations are ongoing.

#### Approximation of national immigration laws to enable implementation of the EAC Common Market Protocol.

Uganda has joined its regional neighbours in the effort to approximate her commercial and immigration laws to enable effective implementation of the rights and freedoms guaranteed by the EAC Common Market Protocol which came into force on 1<sup>st</sup> July 2010 Protocol.

#### One stop border initiatives

The EAC Partner States committed themselves to adopt integrated border management as a vehicle for facilitating the free movement of persons and strengthening national inter-agency and cross border/regional cooperation by bringing border services either under one roof or at least in proximity. In Uganda, the One stop border initiatives are being implemented at Malaba, Busia, Katuna, Mirama Hills and Mutukula.

#### Development of National immigration website, EAC immigration Portal and Immigration Client Charter

The national immigration website has been overhauled and redesigned and the development of an immigration client charter to improve service delivery and accountability to the Public is ongoing. The EAC Immigration Portal is also in the offing.

#### Developing a handbook on migration management aspects of the EAC Common Market

The Immigration Regional Advisory Committee is developing a handbook on migration management aspects of the EAC Common Market. The Handbook is to enable immigration practitioners have a better understanding of the EAC Common Market.

# LDC resumes publication of law reports

By Bakunzi Didas Mufasha

**The Law Development Centre (LDC) has resumed the publication of law reports. Law reporting in Uganda has not been on a firm ground in the past mainly due to lack of resources, both manpower and financial support.**

The Centre is charged under Law Development Centre Act, Cap 132 with the responsibility of among others, compiling, editing and publishing law reports for Uganda. These include the Uganda Law Reports (ULR) and the High Court Bulletins (HCB).

There has been a void in the availability of published law reports. This led to a situation where lawyers, law students and other stakeholders in the legal system were forced to depend on photocopies of judgments which they would request from the various court registries or law libraries.

The LDC has set up a fully functional law reporting department manned by full-time law reporters and is ultimately pursuing the JLOS overall objectives of improving the rule of law and administration of justice. This department has bridged the void with regard to HCBs up to the year 2009. HCBs for 2010 and 2011 are also in the pipeline. All published HCBs are available in the LDC

Publishers Bookshop located at LDC premises. The LDC was supported by the JLOS to purchase printing machinery to print the law reports, although there is still need for further assistance in this area.

The department has also embarked on publishing the Uganda Law Reports (ULR) in partnership with LawAfrica Publishing Limited. Currently, copies of the [2008]ULR, [2007] 1 ULR and [2007] 2 ULR are available at LawAfrica offices on Jinja Road in Kampala. Previous law reports dating from 1904 to 1974 are also being reprinted.

Law reports are published because Uganda applies the English Common Law whose sources are the decisions of judges in court cases. Judicial precedent which are the past decisions of judges are followed by judges in subsequent cases. This is why they have to be adequately documented. And availed to judicial officers. Lawyers, law students, law teachers and all stakeholders in the judicial system are therefore encouraged to make use of law reports which are a good source of court decisions.

*Didas Bakunzi is Head/Editor Law Reporting Department, LDC*

## A Brief about the Justice Law and Order Sector

Following almost two decades (1966-1986) of political, civil and economic regress in Uganda, there was an extensive breakdown of functions of the state including the maintenance of law and order. To address this challenge the Justice Law and Order Sector (JLOS) was born.

### What is JLOS?

It is a sector wide approach adopted by Government bringing together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision, policy framework, unified on objectives and plan over the medium term. It focuses on a holistic approach to improving access to and administration of justice through the sector wide approach to planning, budgeting, programme implementation, monitoring and evaluation.

### JLOS objectives

1. To promote the rule of law and due process
2. To foster a human rights culture across the JLOS institutions
3. To enhance access to justice for all especially the marginalized and the poor

4. To reduce incidence of crime and promote safety of the person and security of property
5. To enhance JLOS contribution to economic development

### JLOS institutions

The Ministry of Justice and Constitutional Affairs; Ministry of Internal Affairs; The Judiciary; Uganda Police Force; Uganda Prison Service; Directorate of Public Prosecutions (DPP); Judicial Service Commission; The Ministry of Local Government (Local Council Courts); The Ministry of Gender, Labor and Social Development (Probation and Juvenile Justice); The Uganda Law Reform Commission; The Uganda Human Rights Commission; The Law Development Centre; The Tax Appeals Tribunal; The Uganda Law Society; Centre for Arbitration and Dispute Resolution and The Uganda Registration Services Bureau.

### Priority areas of focus

- Land Justice,
- Family Justice,
- Criminal Justice,
- Commercial Justice

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