

PUBLIC ORDER MANAGEMENT BILL

THE PUBLIC ORDER MANAGEMENT BILL, 2011 (BILL No. 3 of 2011)

1. INTRODUCTION

The Public Order Management Bill, 2011 was passed by Parliament on 6th August, 2013. The Bill will become an Act of Parliament when the President gives his assent to it.

2. BACKGROUND

On 27th May 2008, the Constitutional Court made a ruling in Constitutional Petition No. 9/06, *Muwanga Kivumbi vs Attorney General*, annulling section 32 (2) of the Police Act.

Section 32 (2) empowered the Inspector General of Police to prohibit public assemblies or demonstrations where the assemblies or demonstrations posed a likelihood of breach of peace.

According to the Constitutional Court, section 32 (2) of the Police Act authorized the police to prohibit assemblies, rallies or demonstrations and this was inconsistent with article 29 (1) (d) of the Constitution which guarantees the enjoyment of the freedom to assemble and demonstrate. The impugned section provided as follows;

32(2) If it comes to the knowledge of the Inspector General that it is intended to convene any assembly or form any procession on any public road or street or at any place or public resort, and the Inspector General has reasonable grounds for believing that the assembly or procession is likely to cause a breach of

the peace, the Inspector General may, by notice in writing to the person responsible for convening the assembly or forming of the procession, prohibit the convening of the assembly or forming of the procession.

The Court found that the powers given to the police were discretionary, prohibitive and not regulatory.

As a result of the annulment of section 32 (2) of the Police Act, the Police no longer has the power to prohibit a procession or assembly. The Court further ruled that if the Police entertained reasonable belief that some disturbance might occur during the assembly, then police should provide security and supervision in anticipation of the disturbances.

It is also important to note that whereas court annulled section 32 (2), section 32 (1) was retained and it gives power to police to regulate and direct the conduct of assemblies and processions in public places.

3. THE RIGHT TO ASSEMBLE

The right to assemble and to demonstrate is enshrined in Article 29(1)(d) of the Constitution. This right is not absolute. It is qualified. This right must be enjoyed “peacefully and unarmed”, which means that this right to be enjoyed the above provision of demonstrating peacefully and unarmed should be observed. For example if a group of people wanted to use a playing ground of a Primary School for demonstration when a scheduled football match is already underway, this may cause conflict of interest and subsequently chaos may ensue. That is why Police must be alerted and available to regulate such conflicting freedoms and rights.

In order to fulfill the regulatory role of Police, Government introduced the Public Order Management Bill, 2011.

4. CONSTITUTIONAL MANDATE OF THE UGANDA POLICE FORCE

The functions of the Uganda Police are provided for in article 212 of the Constitution of Uganda. Article 212 of the Constitution gives the Uganda Police Force, among other things, the following mandate;-

- a) to protect life and property;
- b) to preserve law and order;
- c) to prevent and detect crime; and
- d) to co-operate with civilian authority and other security organs established under the Constitution and with the population generally.

Therefore, from the Constitution, it is the duty of the police to protect:

- a. all persons (organizers, participants) exercising their rights and freedoms to assemble or associate under article 29 of the Constitution;
- b. all persons exercising their rights and freedoms NOT to assemble or associate under article 29 of the Constitution;
- c. all persons (general public) affected by the actions of the persons exercising their rights and freedoms to assemble or associate under article 29 of the Constitution;
- d. all other persons who are either exercising their other rights and freedoms or not.

Regarding assemblies, processions, demonstrations and meetings in places that are accessible or used commonly by every member of the public, the cooperation of the organizers, the local authorities, the owners or operators of venues is necessary to make arrangements for the safe passage and conduct of the assemblies, processions, demonstrations or meetings.

5. PURPOSE OF THE BILL

The object of the Bill is to regulate public meetings, to provide for the duties and responsibilities of the Police, organizers of public meetings and participants. Regulate is defined in the Bill to mean ensuring that conduct or behavior conforms to the requirements of the Constitution and the law.

The Bill also lays out measures aimed at safeguarding public order without compromising the principles of democracy, freedom of association or assembly and freedom of speech.

It is the constitutional duty of the Police to ensure that any person exercising that freedom does so peacefully and unarmed.

Some critics have been saying that the Bill limits the rights of the ordinary citizen to assemble or demonstrate. This is not true. The Bill strictly is in conformity with the Constitution, and the law.

Article 43 of the Constitution provides a general limitation on the fundamental and other human rights and freedoms in the Constitution. It provides as follows:

Article 43. General limitation on fundamental and other human rights and freedoms.

(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

(2) Public interest under this article shall not permit;-

a) political persecution;

b) detention without trial;

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

The Constitution therefore requires a balance between the enjoyment of one's rights and freedoms and not prejudicing the rights and freedoms of others and the general public interest.

In many respects there may be competing interests to use or occupy the same facilities on the same day or even at the same time, this requires that a person who is enjoying his or her right in a public place should enjoy the same protection and guarantee from the Police as the person who wishes to demonstrate or hold a meeting in the same place.

The Bill emphasizes that the standard of peaceful enjoyment of rights and freedoms set by the Constitution should be upheld at all times.

The Bill further provides for the police to protect the persons and the property of the persons engaged in demonstrations, processions, assemblies or public meetings and other members of the public affected by the meeting.

6. HIGHLIGHTS OF SOME SECTIONS OF THE BILL

Some populist politicians are using this Bill to make unfounded allegations and misrepresentations about the meaning of the Bill. In Parliament, the debate on the Bill was exhaustive and whenever there appeared to be an impasse, consultations were made between the Government and the backbenchers both in the Ruling Party and the Opposition.

The evidence for this is the Addendum Report, which was a result of those consultations. For example; on the question of the meaning of the word “regulation”, the Speaker halted the debate, tasked the members of the Legal and Parliamentary Affairs Committee, the Minister of Internal Affairs and the Attorney General to sit and agree on the meaning. This is what led to the Addendum which reflected the consensus position of all the parties.

Most of the people who are complaining about the Bill are still referring to the provisions in the old version of the Bill. It is important to note that the Bill that was passed was substantially altered taking into account the contributions of various stakeholders. These included: The Uganda Law Reform Commission, The Uganda Law Society, UN Human Rights Commission, different political parties, Uganda Human Rights Commission etc. All the above had their inputs and as a result, over 80% of the original Bill was amended to accommodate most of their concerns.

It is also important to emphasize that the Committee on Legal and Parliamentary Affairs which has both members of the Ruling party and of the Opposition produced a unanimous report. Normally when there is dissent in the Committee, under the Parliamentary rules, the dissent is expressed by a minority report even if it was only one member dissenting. This time there was no minority report.

The report which Parliament debated which formed the basis of the Bill that was passed was informed and indeed reflected the many views expressed by all interested stakeholders in the Bill.

The following clauses attracted most debate;-

(a) Notice of public meeting (clauses, 2 and 7)

In order to regulate public meetings, the Bill provides for an organizer of a public meeting to notify the IGP or an authorized officer of the intention to hold a meeting at least 3 days before the proposed date of the meeting. The debate on notification was between 7 days proposed by the Government side and 0 days i.e. instant notification proposed by the Opposition. After debate both sides agreed to 3 days notice as a compromise position.

The notice to the police is necessary since the police has to:

- i. prepare for the protection of the organizers and the participants,
- ii. to carry out risk assessment on all factors before the public meeting;
- iii. to identify and appropriate traffic plan to allow the flow of both vehicles and human traffic;

- iv. to direct traffic and the routes to and from the event to prevent obstruction of pedestrians, traffic or lawful business

An organizer of a meeting means any person or his or her agent in charge of calling the public meeting.

A public meeting is defined as a gathering, assembly, procession or demonstration of persons in or on any public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest.

The public interest includes anything in which the public or a section of the public has a stake or is concerned.

The essential elements in regulating public meetings are the place which should be public and the purpose for which the meeting is being held. The Bill therefore exempts social, cultural and religious gatherings and meetings of members of regulated bodies.

The following meetings are also exempt from the requirements of giving notice:

- meetings of organs of a political party or organization convened in accordance with the Constitution of the party or organization and held exclusively to discuss the affairs of the party or organization;
- meetings convened by a group, body or leader of a group or body at the ordinary place of business of that body, group or leader or any other place which is not a public place in the course of the lawful business of the group, body or leader.

The notice required to be given by an organizer should include:

- i. the name and address of the organizer
- ii. the proposed date and time of the public meeting which should be after 7.00 a.m and not beyond 6.00 p.m.
- iii. the proposed site (venue) of the meeting,
- iv. the estimated number of persons expected at the meeting,
- v. the purpose of the meeting,
- vi. indication of the consent of the owner of the venue, where applicable,
- vii. and any other relevant information.

(b) Notification by authorized officer (clause 8)

The Opposition complained that clause 8 as amended was a re-enactment of s. 32(2) of the Police Act which was annulled by the Constitutional Court. That in effect this gave power of prohibition to the Police. During debate Government conceded that clauses 8(1)(c) and 9(1)(b) gave discretionary powers to the Police. They were, therefore, deleted. Clause 10(f) was also amended to remove discretionary power to the Police to determine "reasonable grounds for likely breach of peace". What remains in clause 8 of the approved bill is a) notice and b) suitability of venue.

Clause 8 provides:

i. Notice

The Bill requires the organizer of the meeting/demonstration to give notice to Police specifying the dates, the time and venue of the public meeting. The Police has no authority to reject the notice. If, however, the Police has received previous notice from another body indicating that they would hold another meeting in the same place, date and time, then the law imposes a duty on Police to notify the later organizer that the place is already booked so that, in the interest of peace and security, the later organizer can reschedule his or her event to a later time or identify an alternative venue or to reschedule the meeting to another day at the same venue.

ii. Unsuitability of the venue:

Where the venue is considered unsuitable for the meeting because either it will interfere with other lawful businesses for example a market place, business centre, hospital, school, etc, or because of crowd or traffic control, then Police is required to inform the organizer to find an alternative place. This is like a traffic police officer who re-routes traffic to a different direction after noting that the other direction is not suitable due to things like accident ahead or road works. It does not mean that the traffic officer is curtailing the rights to road users to move but he is creating order in the flow of traffic.

Authorized officer means the Inspector General of Police (IGP) or an officer acting on his or her behalf.

The Bill provides an appeal mechanism for a person aggrieved by the notification of the authorized officer. The appeal may be made against the notification to a Magistrate in the area where the meeting was scheduled.

(c) Spontaneous meetings (clause 9)

The Bill also provides that spontaneous public meetings may be held without the requirement of notifying the authorized officer.

A spontaneous meeting is defined as an unplanned, unscheduled or unintended public meeting. (**Example:** *A public figure or a leader arriving in his or her constituency or area of origin or operation and is unexpectedly met by a group of supporters or followers*).

While it is not possible to require these meetings to conform to the notice requirements since there may not be an organizer and the meetings are unscheduled, the Bill provides for the authorized officer to ask the meeting to end if:

- i. the authorized officer has received notice of another public meeting on the same date, time and venue;
- ii. the venue is considered unsuitable because of crowd and traffic control or the holding of the public meeting is interfering with other lawful business like trade.

(d) Responsibilities of organizers (clause 12)

Since Police requires the cooperation of the organizers, the local authorities, the owners or operators of venues to make the necessary arrangements for the safe passage and conduct of public assemblies, processions, demonstrations or meetings, the Bill places specific duties on organizers of public meetings. These include;-

- i. adhering to the required notification criteria for holding public meetings;
- ii. informing all participants of the traffic or assembly plan and providing a sufficient number of stewards

- proportionate to the number of participants in a public meeting who shall be clearly identified with name tags;
- iii. co-operating with the police to ensure that all participants are unarmed and peaceful;
 - iv. ensuring that the public meeting is concluded peacefully between 7.00 a.m. and 6.00 p.m; and
 - v. being present at the public meeting and co-operating with the police to maintain peace and order.

(e) Duties of the Police (clause 10)

In order to protect the persons exercising their rights or freedoms to assemble or associate and the general public, the Bill places the following duties on the police:

- i. to provide security and safety for both the participants and other members of the public affected by the meeting;
- ii. to ensure fairness and equal treatment of all parties by giving consistent responses to organizers of public meetings;
- iii. to carry out risk assessment on all factors before the public meeting;
- iv. to identify an appropriate traffic plan to allow the flow of both vehicles and human traffic;
- v. to direct traffic and the routes to and from the event to prevent obstruction of pedestrians, traffic or lawful business;
- vi. to disperse defiant or unruly persons in order to prevent violence, restore order and preserve peace.

CONCLUSION-SUMMARY

1. The Public Order Management Bill as passed by Parliament on 6th August 2013 guarantees the right to

assemble and demonstrate peacefully and unarmed as granted by the Constitution and the law.

2. The Bill as passed emphasizes the responsibility for security and public safety in exercising these fundamental rights and the freedoms.
3. The Bill also enjoins us to observe the fundamental rights and the freedoms of others who may not be participating in such public meetings and demonstrations in exercise of their rights not to participate.
4. It is not correct to suggest that all the rights and/ or freedoms in the Constitution are absolute. The exercise and the freedoms is relative to the extent that it does not infringe on the rights and freedoms of others or the public interest.
5. The Public Order Management Bill when enacted aims at ensuring that holding assemblies and demonstrations does not compromise security, law and order. It is also meant to ensure that there is minimum disruption to business as well as smooth flow of human and vehicle traffic throughout the country.

11th August 2013