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ULS VIEWS ON THE PUBLIC ORDER MANAGEMENT BILL,

Bill No. 3 of 2011

Introduction

Police are agents of the State who come into direct contact with protest crowds as they place themselves between the targets of the protest and the protesters themselves. As such, their strategic objectives are to maintain public order, protect the target (along with public institutions); uphold the right to protest; ensure the safety of bystanders and crowd participants; and enforce the laws.

In democratic countries, it is the police, and not the military, who are charged with keeping the peace in the face of public protest.

THE PUBLIC ORDER MANAGEMENT BILL, No 3 of 2011

What is the spirit of this Bill?

Following the civil unrest in the country- dating back to the 2007 Mabira riots, Government proposed a bill for the management of public order.

The objective of the proposed Bill is to provide for the regulation of public meetings, duties and responsibilities of police, organizers and participants in relation to public meetings/gatherings; and to prescribe measures for safeguarding the public order without compromising the principles of democracy, freedom of association and freedom of speech.

What is the status of this Bill?

The Public Order Management Bill was gazetted in April this year and has recently been tabled before Parliament. It is important that the views, comments and contributions of stakeholders are taken into account by Parliament before the bill becomes law.

We have made a few comments as follows;

- The Bill has ambiguous definitions, procedures, and concepts that are open to differing interpretations and potential abuse for example under Clause 2 the places designated as public places are so broad that any place may be brought within the ambit of the bill. Similarly the definition of a political organisation is significantly wider than that in the Political Parties Organizations' Act 2005 and can be interpreted to mean others bodies like civil society.
- The legal fraternity and civil society are concerned that Clause 4 of the proposed law which gives the IGP powers to direct the conduct of all public meetings 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) among others;

- The above point leads to the inevitable conclusion that the Bill is contrary to Article 92 of the 1995 Constitution of Uganda, which prohibits the enactment of legislation designed to alter the decision or judgment of any court.
- Clause 5 gives the IGP powers to grant permission to hold a meeting and to hear appeals from a refusal to grant the permission. This is untenable since he exercises both the functions of a " trial " and "appellate " court.
- Further Clause 6(1) a that defines a public meeting to include a gathering, assembly, concourse, procession or demonstration of three or more persons in or on any public Road defined under the Road and Safety Act or other public place premise wholly or partly open to the air at which principles, policy actions or failures of any government are discussed. This clause which also regulates the contents of discussions at meetings is clearly aimed at stifling public debate and is a clear violation of Article 29 of the constitution.
- While Clause 6(2)(e) seeks to restrict and limit the permitted activities of political parties to meetings for the discussion of their affairs only such that a meeting for any other purpose is a public meeting and hence subject to the provisions of this bill. The policies, failures and actions or inaction of government are naturally and ordinarily the business of political parties and they should have the opportunity to discuss and analyse and criticize the same without the undue restrictions imposed by this provision.
- The Bill also puts undue restrictions on the exercise of the rights guaranteed under this article 29 of the 1995 Constitution in respect of 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 restricting the content of discussions of the public meetings.
- The Bill also imposes unwarranted restrictions on core freedoms guaranteed by the Ugandan Constitution. Particular areas of concern include requiring IGP approval for any "public meeting" of three people or more – Clause 7 and 8. The provisions under Clause 8(4) and (5) for appeals to the IGP and the High Court are unrealistic since the purpose of the meeting may well have become irrelevant by the time the appeals are concluded.
- In its current state, the Bill places numerous extensive and impractical obligations on the organizers of public meetings, which are impossible to satisfy. The time given of 48 hours to the police under Clause 8(1)c to reply to a notice to hold a meeting is not realistic given the bureaucratic tendencies and red tape associated with government bodies. A more realistic time should be set.
- Many countries in Europe have laws regulating the management of public order. These laws are designed to facilitate public meetings through the prevention or mitigation of threats to public order. ULS is concerned that the Bill places too much emphasis on the prevention of public meetings by limiting constitutionally mandated freedoms critical for a democratic society. If passed in its current form, this bill will constitute a serious setback for human rights by restricting the inherent civil and political rights of Ugandans, and impeding the operations of political parties, civil society, and progress of Uganda's democratic processes.

- Some of the provisions of the bill are redundant as they are reproductions of existing law- Clause 9 on the powers of the IGP to stop a meeting is adequately covered under S 65-70 of the Penal Code Act Cap 120 while Clause 13 on the use of public address systems is a reproduction of Section 40 of the Police Act Cap 303.
- Under Clause 11 the use of firearms is permitted in very many instances which give room for unwarranted use and abuse. The general rule governing the application of force in maintaining law and order is that only necessary and reasonable force should be used. The use of firearms should be restricted accordingly.
- Under Clause 12 many unreasonable and onerous obligations are imposed upon the organizers of the meeting which in effect seek to restrict the right to free speech and thought.
- Finally, the Bill fails in its stated objective to regulate public meetings, and fails to incorporate international best practices in the area. Its provisions are more geared to giving the police prohibitive rather than regulatory powers. The various clauses of the bill offend and are contrary to a number of articles in the constitution (20 (1), 29 (1), 43 (3)) which guarantee fundamental rights and freedoms.

RECOMMENDATIONS

- a) The Bill should be drafted in compliance with Human rights as stipulated in the Constitution and other international instruments that Uganda is a signatory to;
- b) The views obtained from stakeholders should be extensively considered, as these are the stakeholders that form the backbone of the country, and who will be affected by the Bill;
- c) The powers of the IGP and the line Minister should be regulated to avoid abuse of the said powers.
- d) Comprehensive guidelines on the Management of Public order in Uganda should be developed after an inclusive process with the participation of key stakeholders;
- e) We should learn from past mistakes - the pragmatic approach to public order policing means that when something didn't work well there is a need to return to the drawing board within the framework of a set of principles.
- f) Focus on legitimacy – it has been emphasized internationally that it is important for the Police to maintain a sense of legitimacy in the eyes of the public. This is why restraint in the use of violence is stressed and should be emphasized in this bill.
- g) We recommend that the bill is shelved and appropriate amendments are made to the Police Act to bring it in line with the constitutional court judgment in *Muwanga Kivumbi vs AG*.
- h) The Police should be trained in public order management if the mischief which this law was intended to remedy is to be done away with. Passing this law shall not guarantee public order but will only make the situation worse than it already is.

i) Professionalization of the Police force should also be given priority if public order vis avis the principles of democratic governance are to be achieved.

j) The Police should only be present at the public meeting to ensure security and to fulfill its constitutional mandate.

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