

CSO'S PERSPECTIVES ON THE PUBLIC ORDER MANAGEMENT BILL

PRESS RELEASE

1. INTRODUCTION

Following the public demonstrations that have rocked the country in the past years most notably the Mabiira Forest anti-give away demonstrations of 2007, the September riots of 11th 2009 that followed Government's refusal to allow the Kabaka visit Kayunga and the Walk-to-Work demonstrations which claimed more than 40 lives and destruction of property worth billions of shillings, the agitation for a law governing demonstrations and public assemblies reached the epitome. Consequently, the Ministry of Internal Affairs and the Uganda Police Force proposed a Public Order Management law (currently a bill). The Bill seeks to make provision for the 'regulation of public meetings; duties and responsibilities of police, organizers and participants in relation to public meetings; to prescribe measures for safeguarding public order and for related matters.'

As the CSO Fraternity, we take cognizance of the efforts that the Uganda Government and more particularly the Uganda Police Force have undertaken to protect the Citizens of Uganda and their property as well as their unwavering commitment to the prevention and detection of crime of any kind and does salute the government on these achievements. The above notwithstanding, while we all strive for a safer world to live in, the means of combating and prevention of crime and more specifically public (dis)order should be in consonance with the human rights standards universally acceptable, binding and domestically provided for under the Uganda Constitution of 1995. Anything less than that is seen as an affront

to human rights of all citizens enshrined under Chapter 4 of Uganda's celebrated Constitution.

We also recognize the fact that under Article 43 of the Constitution of the Republic of Uganda, there is a general limitation on the exercise of the fundamental rights and freedoms provided for by the Constitution of Uganda but even then, this should be within what is acceptable and demonstrably justifiable in a free and democratic society or what is provided for in the Constitution. So whatever provision that is propounded in the name of Article 43 of the Constitution has to pass the test of 'acceptability' and 'justifiability' in a free and democratic society.

The POM Bill purportedly seeks to establish a more detailed legal framework for ensuring Public Order Management in Uganda. Whereas the measure is laudable, the Bill in its current form has raised a lot of concerns across the divide with different sections of the public interpreting the move as reactionary meant to crack down and limit the space for demonstrations and public assemblies which are protected freedoms and rights in the Constitution of the Republic of Uganda of 1995. As CSO in Uganda, we are concerned that the POM Bill in its current form infringes greatly on a number of human rights and freedoms of Uganda including the following:

2. THE POTENTIAL CHALLENGES ARE DISCUSSED BELOW;

1. Constitutionality of the bill in relation to the right to freedom of speech and expression; thought and belief; assembly, association and demonstration; By legislating to control as opposed to democratic regulation of public assemblies/ meetings that focus on the efficacy of government and its agencies and political organs, the Bill infringes on Article 29 (1) (a) (b) (c) (d)

and (e) of the Constitution of Uganda which provides for the freedom of speech and expression; freedom of thought, conscience and belief; freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations respectively. The Bill subjects the exercising of the above rights to the discretion of the Inspector General of Police who can prohibit or allow the holding of a public meeting.

2. Undermining the Rule of law and Constitutionalism in Uganda; The Bill undermines the rule of law, constitutionalism and independence of the judiciary by seeking to revive section 32 of the Police Act which was held unconstitutional by the Constitutional Court in *Muwanga Kivumbi v. Attorney General (Constitutional Petition No. 9/05)*. Court noted that the section which required Ugandans to seek permission from the Inspector General of Police before exercising their right to demonstrate and assemble was unconstitutional. It held that these powers to the IGP to determine the holding of an assembly were "*prohibitive*" rather than "*regulatory*." The annulled section 32 is revived in sections 4, 5 & 7 of the POM Bill.

3. Introduction of Retrospective Legislation; the Bill introduces retrospective legislation when it grants the Inspector General of Police (IGP) immense discretionary powers of refusing or accepting the holding of assembly/public meeting. Section 32 of the Police Act which provided these powers were annulled in *Muwanga Kivumbi v. Ag (Constitutional Petition No. 9/05)*. Even in light of that glaring Constitutional Court judgment, sections 4, 5, 7 and 8 of the POM Bill resurrect the above unconstitutional section. This results into a contradiction with Article 92 of the Constitution of Uganda which provides that 'Parliament shall not pass any law to alter the decision or judgment of any court as between the parties to the decision or

judgment.'

4. Immense discretionary powers of the Inspector General of Police hence susceptible to abuse

Section 4, 5 and 7 of the POM Bill provides the Inspector General of Police (or an authorized officer) with enormous powers to '*direct the conduct of all public meetings....*' There under, there is no established mechanism that can or should be followed by the IGP in exercising his power of 'regulation, or 'directing'. It's all upon the IGP's will! The lack of precision in the grant of these powers of regulation gives room for exercise of unlimited, unsafe guarded discretion with serious ramifications for the rule of law and human rights and ultimately the right to assembly and demonstration. The process or/ and procedures or/and grounds of this 'regulation/direction' should not be left to the whims of the IGP's discretion but should be made clear with guidelines upon which the IGP can base execution of this power of regulation.

5. Intimidating, deterrent, burdensome and fear prone legislation: threatening and shrinking the public space

The Bill is largely covered with deterrent, impractical, burdensome provisions branded 'responsibilities' placed upon the organizers and participants of public meetings which are unattainable. Among them include Section 12 which provides for the responsibilities of the participants and organizers. They include among others ensuring that all the participants are unarmed and peaceful; ensure that statements made to the media and public do not conflict with any existing laws of Uganda and undertake to compensate any party or person that may suffer loss or damage from any fall out of the public meeting. There are already existing laws that can deal decisively with the spoilers of public meetings without burdening the organizers with duties beyond their capacity to handle. The organizers of public meetings are not trained in security, or

intelligence related skills in order to identify and disarm an assailant. This is the work of the Uganda Police Force and the organizers can only offer at most, co-operation and not take on duties they have no mandate and skills to execute.

6. The Bill is an infringement on the right to political participation

It seeks to not only control the public gatherings but also what the participants discuss therein. The Bill further provides under section 6 (1) that a public meeting means 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 at which principles, policy, actions or failure of any government; political party or political organization, whether or not-that party of organization is registered under of any applicable law, are discussed.'* By this, it defeats National Objectives and Directive principles of State policy II 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. When one harasses members of the populace convened lawfully to discuss the principles, policy, actions or failure of any government, political party or political organization yet these notions are central to the governance of the country, participation is denied hence infringing on their constitutional right.

7. The Bill is marred with broad interpretation and non-precision in definition of various terms used hence susceptible to abuse

In particular, the definitions of *'public place'*, *'public meeting'* are so wide in application that they are subject to abuse yet they are central to the determination of a lawful public assembly. The latter is defined as a *'gathering...of three persons...'* (Section 6). Other terms include *'Reasonable Cause'* under section 8 (1) (c) The Bill

provides that where the authorized officer has “reasonable cause” as to why the proposed meeting cannot take place, then it cannot take place. How reasonable is reasonable? There may be risks that what is reasonable to the authorized officer may be actually a blatant violation of the right to assembly and demonstration and therefore unjustified before the Courts of the law.

- The practicality of monitoring any possible ‘three persons’ discussing actions or failure of government is questionable.
- The provision may be abused by law enforcement officers hiding under its ambiguity.
- The fact that this offers notions of wide spread interpretation, means that the authorized office can/may read into this law or provisions anything that suits the interests of the Executive or higher authorities above him/her or him/herself. This may have grave ramifications for human rights the ultimate being the total banning of demonstrations/or public gatherings hiding under the convenient legal phrases of ‘reasonable cause.’

8. Time Factor and Delay tactics in the Process; How facilitative of upholding the rights?

Under section 8 (4), one can only appeal the decision of the authorized officer to the IGP within 14 days. Under section 8 (5), a person aggrieved by the decision of the IGP may within 30 days appeal to the High Court. In total, the time an aggrieved party can take is 44 days until his or her appeal is accorded a listening ear. The above provisions are defeatist in nature aimed at suppressing further the rights and freedoms of Ugandans to demonstrate and assemble. The nature of demonstrations/assembling is prompted by immediate concerns to which people have to express their stand/view point on the matter and as thus for maximum impact, time is of the essence.

9. Superfluous discretionary powers of the Minister

Under section 15 (1) of the POM Bill, the Minister as a lone individual is empowered to declare that in any particular area in Uganda, it is unlawful for any person to convene a public meeting. The Minister is supposed to reach this decision guided by his 'opinion that it is desirable in the interests of public tranquility', to restrict the people of Uganda from exercising the right to assembly! 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. This can further be abused when and if left to the will of an individual or the executive without any supervision for checks and balances.

10. The inclusion of use of fire arms without strict safeguards during public assemblies is unwarranted

Section 11 of the POM Bill provides for the use of fire arms by the Police Force. The provision encompasses various cases or circumstances warranting the use of fire arms but does not provide safeguards or guidelines on when one should resort to this force. Indeed, the provision is generally below the standards set in the Police Act which introduces safeguards such as imploring the officer to only resort to fire arms only after exhaustion of other possible ways of fulfilling calming a situation. Indeed, this should be the last resort when all avenues of calming the situations have been exhausted. Arguably the Criminal Procedure Code and the Police Act already provide for the circumstances envisaged by the bill and as thus render the section redundant.

11. Erroneous provision for criminal liability to organizers for criminal acts committed by the participants attending the public meeting

Section 12 (1) (d)-(h) of the proposed law provides for the responsibilities of the organizers and among them including

undertaking to 'compensate any party or person that may suffer loss or damage from any fall out of the public meeting; ensuring that statements made to the media and public do not conflict with any existing laws of Uganda.' The damage to property during a public meeting can only be adjudged to be a criminal act and as thus requiring personal responsibility by the perpetrator hence organizers cannot be held liable for the actions or omissions of the participants especially when they are of a criminal nature. The section is misconceived, proposed in bad faith, redundant and defeats legal maxims upon which a functional legal framework is constructed.

3.0 A CALL TO ADHERE TO NORMS OF CONSTITUTIONALISM AMIDST CHALLENGING TIMES

The foundations of the right to participation are shaped by the possibility of any individual to be involved in decision-making, which affects her/his, interests. This can be through exercising the freedom to vote representatives and stand for an electoral office. Additionally are the freedoms of association, assembly and demonstrations as conduits of expression and political participation. These rights form the bases for any representative, democratic process, active civil society, and ensure that public affairs are truly public.

For that matter, any law that seeks to ensure public order should not only be reflective of the ideals above but should also protect them. Unfortunately, the POM Bill as it stands now, though laudable in some aspects such as emphasizing the shared responsibility of security and public safety with the public and the police (section 3), it is still wanting in a number of issues as discussed above. In its current form, the bill cannot be an enabling

piece of legislation as Uganda strives to achieve its democratization aspirations of liberty, equality, rule of law and constitutionalism. Passing it into law as it stands currently would be a mockery of the Constitution of the Republic of Uganda, Uganda's obligations under international human rights law and the Judicial arm of government, which is the custodian of justice in this country. The action would set Uganda on bad footing in relation to its obligations under international human rights law instruments to which it is bound.

Consequently, CSO fraternity calls upon the government of Uganda:

- Whereas the law is good to set the standards of dealing with public order management, it should not and cannot be the only solution to this challenge. Indeed, the approach to the management of public order in Uganda should be multi-faceted involving all the stakeholders (the organizers-political parties, civil society organizations, the participants and the law enforcement agencies) so as whatever the solution that is proposed is owned by all and implemented as a whole.
- The law seems to be dealing with symptomatic offshoots of gatherings gone wrong but does not address the underlying causes. Rather, the government should concentrate efforts towards provision of social services, the lack of which has been a spark in the past for such demonstrations. Legislation against discontent can deliver a semblance of stability but only for a short time. Long-lasting citizenry-oriented stability is hinged on provision of functional social and public amenities.
- There is need to develop the capacity of event self-policing by helping establish and train event facilitators (crowd marshals or stewards) in crowd management and to act as a link between the police and the crowd/assembly leadership.
- The main focus should be targeted towards the building of an independent monitoring, review and evaluation of public

assemblies' mechanism. The evaluation is vital to undertake in the aftermath of a public gathering. This should be aimed at evaluating the standards used by the police in the policing of demonstrations with the sole aim of informing the transformation process of the police.

- The Parliament should debate the POM Bill thoroughly before enactment to ensure that it is not prohibitive rather facilitative of the enjoyment of human rights and freedoms of Ugandans.