

BILL WATCH 39/2019

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Maintenance of Peace and Order Bill **Adverse Report by Parliamentary Legal Committee**

On the 24th July the Deputy Speaker of Parliament announced that the Parliamentary Legal Committee had issued an adverse report on the Maintenance of Peace and Order Bill, meaning that the Committee had found some provisions of the Bill to be unconstitutional. The report can be seen on the Veritas website [\[link\]](#) as can the Bill itself [\[link\]](#).

To understand the report one needs to refer to the Bill and the Constitution, which readers may not have readily available; so in this bulletin we shall summarise and clarify the report's findings. Before doing so however we should point out that the Bill is virtually identical to the Public Order and Security Act, so the Committee's criticisms of the Bill apply equally to the Act, which is currently relied on by the security services to control demonstrations and protests.

Analysis of the PLC Report

The Committee found that no fewer than 11 clauses of the Bill were unconstitutional. We shall deal with each of them in turn.

Clause 3 (Regulating authorities)

This clause declares that the senior police officer of every police district is the "regulating authority" for that district – i.e. the official who will fix conditions under which public gatherings (i.e. meetings, demonstrations and processions) can be held within the district.

The Committee considered the clause "gives regulating authorities the power to limit the freedom of assembly and association" in violation of section 58 of the Constitution. With respect to the Committee, this criticism should not be directed at clause 3, which does no more than appoint regulating authorities, but rather at those clauses which give regulating authorities excessive powers – and, as we shall see, the Committee does attack those clauses later in the report.

Clause 4 (Prohibition of carrying of weapons in public)

This clause gives regulating authorities power to prohibit for up to three months the carrying of weapons, and items capable of being used as weapons, in public places if the regulating authorities think they are likely to cause public disorder. Prohibition orders under the clause will be published in newspapers or posted up on public buildings or broadcast by radio. Anyone aggrieved by an order will have a right to appeal against it to the Minister of Home Affairs,

and anyone contravening an order will be liable to imprisonment for up to six months.

The Committee pointed out that people in rural areas might not be able to learn about prohibition orders, not having access to newspapers or public buildings; it also considered that the right of appeal to the Minister, rather than to a court, went against the tenets of justice and violated section 69(3) of the Constitution which guarantees right of access to the courts for the resolution of disputes.

The Committee's view is right. There seems no justification for having the Minister decide appeals: a court will be more likely to give a fair and impartial decision than the Minister. A further point about the clause, which the Committee did not mention, is that it makes it a crime for a person to carry weapons in breach of an order, no matter what reason or excuse the person may have for carrying them and regardless of whether the person is brandishing them or, for example, carrying a just-purchased kitchen knife in a packet. The clause is far too widely phrased.

Clauses 5 to 8 (gatherings in public places)

These clauses require organisers of public gatherings to notify regulating authorities before the gatherings are held (five days' notice in the case of public meetings, seven days in the case of demonstrations and processions). Organisers will also be obliged to negotiate with regulating authorities about arrangements for the gatherings and to comply with directives the regulating authorities may give them. If a regulating authority believes that a gathering will cause serious disruption, injuries or property damage the authority will be able to prohibit the gathering. An organiser who fails to give the requisite notice of a gathering will be guilty of a crime and liable to a year's imprisonment.

In the Committee's view these clauses will unduly limit freedom of assembly and association guaranteed by section 58 of the Constitution and will debar citizens from holding spontaneous gatherings. The Committee also objected to clause 7 making it a crime, punishable by imprisonment, not to give notice of a gathering. The intention of this provision, the Committee said, was clearly to curtail freedom of expression and conscience. A fine would serve the required purpose.

In support of its views the Committee referred to a decision of our Constitutional Court, *DARE & Others v Saunyama & Others* [\[link\]](#). The Committee might have gone further if it had referred to a South African constitutional court judgment [\[link\]](#) which emphasised how important it is for citizens to have the right to demonstrate spontaneously and declared that failure to give notice of a demonstration could not be made a crime, no matter what penalty was prescribed.

Clause 10 (Gatherings in vicinity of Parliament)

This clause will prohibit public gatherings in the vicinity of Parliament, courts or places declared to be protected places under the Protected Places and Areas Act.

The Committee pointed out that Parliament is a public institution open to members of the public and that the clause would unreasonably limit their right to petition Parliament which is guaranteed by section 149 of the Constitution. The Committee is undoubtedly correct. Even though the clause will allow demonstrations near Parliament if the Speaker gives written permission for them, the constitutional right to petition Parliament cannot be made dependent on permission from the Speaker or a police officer.

Clause 12 (Civil liability of organisers of gatherings)

Under this clause organisers of gatherings who fail to notify regulating authorities of their gatherings or to follow directives issued by regulating authorities will be liable to compensate persons who suffer injury or loss from public violence or breaches of the peace caused by or arising out of or occurring at the gatherings.

The Committee said this clause was too broad and an invasion of freedom of assembly and association guaranteed by section 58 of the Constitution. Again the Committee was quite right: organisers will be liable regardless of whether they incite or permit the violence or disturbance which causes injury or loss, and regardless of any measures they may have taken to prevent it.

Clause 14 (Carrying of identity documents)

This clause requires every adult to carry an identity document whenever he or she is in a public place. The Committee considered the clause was “a remnant from the oppressive colonial laws” and should not be in the Bill since it contravened section 66(2)(a) of the Constitution which guarantees freedom of movement.

Again the Committee is perfectly right: indeed more than 20 years ago our Supreme Court declared a similar provision in the old Law and Order (Maintenance) Act – an oppressive colonial law – to be unconstitutional for precisely the same reason

Clause 21 (Special jurisdiction of magistrates)

This clause will give magistrates special powers to sentence people convicted of crimes under the Bill “on summary trial”. The Committee considered that summary trials went against the principles of natural justice and violated section 69 of the Constitution, which provides for fair trials.

Here, with respect, the Committee seems to have misunderstood the meaning of “summary trial”. In the context of magistrates courts it is a technical term and means a trial which takes place without there having been a previous hearing of the evidence before a magistrate other than the trial magistrate. It does not mean a kangaroo trial or a rushed trial such as those that were

conducted in the aftermath of the violent demonstrations in January this year. Virtually all trials in magistrates courts are “summary trials”. *[Comment: The clause would make perfect sense if the references to summary trials were omitted; perhaps they should be omitted to avoid misconstruction.]*

Despite the misunderstanding, the Committee was right to draw attention to clause 21 because the sentencing powers it gives magistrates are excessive – eye-wateringly so. A magistrate other than the most junior will be able to impose sentences of up to ten years’ imprisonment and regional magistrates up to twenty years. These are sentences that should be imposed only by judges of the High Court and only in the most serious of cases.

Conclusion

The PLC is to be commended for a report which points out the main respects in which the Bill is in conflict with the Constitution. It is gratifying for Veritas, because many of the Committee’s objections to the Bill are the same as those we pointed out in our Bill Watch 24/2019 of 2nd May 2019 [\[link\]](#).

It is to be hoped that the Government will pay proper attention to the report and revise the Bill to take account of the Committee’s valid objections. If the Bill is not revised extensively it will have a chilling effect on freedom of expression, freedom of assembly and the right to demonstrate, all vital to a democratic society and all guaranteed by the Constitution. Also, if the Bill is not revised it will prompt a great number of court cases challenging its constitutionality.

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