

DISTRIBUTED BY VERITAS

**Tel: [263] [4] 794478 Fax & Messages [263] [4] 793592
E-mail: veritas@yoafrica.com**

**Veritas makes every effort to ensure the provision of reliable information,
but cannot take legal responsibility for information supplied.**

H.B. 11, 2009

Gazetted Friday 11th December 2009

PRIVATE MEMBER'S BILL PRESENTED BY HONOURABLE GONESE

PUBLIC ORDER AND SECURITY AMENDMENT BILL, 2009

MEMORANDUM

This Bill will amend the Public Order and Security Act [*Chapter 11:17*] to ensure that the public gatherings are regulated in a manner that will allow Zimbabweans to fully exercise their fundamental democratic right to express themselves through the medium of peaceful assembly and association. The Bill will also clarify some of the existing provisions in the current Act.

The clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause will replace two of the definitions in section 2 of the Public Order and Security Act.

The definition of "public demonstration" will be restricted to cover only demonstrations that are sufficiently large to make it a reasonable possibility that public disorder, a serious breach of the peace or substantial obstruction of streets will occur. The new definition of "public meeting" will make it clear that domestic meetings of organisations such as political parties and trade unions will not normally fall within the Act's provisions, and that political parties may hold meetings in venues that are not open to the public and in public places that are indoors (e.g. in public halls).

Clause 3

This clause notes the need for the regulating authorities to accord everyone, immaterial of party political affiliation, the constitutional right of freedom of peaceful assembly and association, which right may only be restricted by the regulating authority on application to a magistrates court. It also requires officers in the law enforcement agencies to undergo appropriate training on the proper application of the Public Order and Security Act and the democratic right of all Zimbabweans to engage in peaceful assembly and association.

H.B. 11, 2009

Clause 4

Section 14 of the Public Order and Security Act empowers a “regulating authority” (i.e. a senior police officer) to ban for up to three months the carrying of catapults, axes, knives or daggers or traditional weapons if he or she believes that carrying them is likely to cause public disorder or a breach of the peace. Even trivial breaches of the peace would justify such a ban. This clause will amend the section so that only serious breaches will afford justification for a ban.

Clause 5

Section 25 of the Public Order and Security Act requires organisers of public gatherings to give the police at least seven days’ notice of the holding of a procession or public demonstration and five days’ notice of the holding of a public meeting, and makes failure to do so an offence.

This clause will amend the section to provide that organisers should give four days’ notice of the holding of a procession or public demonstration or the holding of a public meeting.

However, organisers will only have to try to give the requisite notice, and there will be no penal sanction for failing to give it. The notice can be given to any police station near the venue of the meeting. The new subsection (5) will make it clear that the police have no power to refuse permission for the holding of a public gathering (this is so under the present law), and that a failure to give notice to the police will not render a public gathering unlawful.

Clause 6

Section 26 of the Public Order and Security Act empowers a regulating authority (i.e. a senior police officer) to impose conditions on the holding of public gatherings and to prohibit a particular public gathering if he or she believes on reasonable grounds that it will cause public disorder.

This clause will introduce a number of changes to restrict the powers of the regulating authority.

Where the regulating authority imposes conditions on the holding of a public gathering, the convenor will have the right to appeal to the magistrates court against the imposition of those conditions and the magistrate must deal with this appeal on an urgent basis before the holding of the gathering.

The regulating authority will no longer have power to prohibit a public gathering; the authority will instead have to bring an application in the magistrates court for an order prohibiting the public gathering in question. Whenever it is practicable to do so, before granting an order the magistrate must afford the organiser of the public gathering concerned a reasonable opportunity to make representations in the matter.

If the magistrate grants or refuses to grant the order, there will be a right of appeal to the High Court and the High Court will have to deal with the appeal on an urgent basis.

Clause 7

Section 27 of the Public Order and Security Act allows a regulating authority to prohibit temporarily public demonstrations in an area.

This will be changed so that this power will vest in a magistrate on application by a regulating authority. Any person aggrieved by an order by a magistrate banning public demonstrations will be entitled to appeal to the High Court against the order.

Clause 8

This clause will repeal section 27A of the Public Order and Security Act, which prohibits the holding of public gatherings near Parliament or the courts, or in the vicinity of protected areas. Such gatherings will be dealt with in the same way as all other gatherings under the Act.

Clause 9

Under section 28 of the Public Order and Security Act, an organiser of a public gathering who fails to notify the police of the gathering, or who fails to comply with any direction or order given by the police in relation to the gathering, or who encourages disorder at the gathering, is civilly liable for any loss, damage, injury or death that may be caused by disorder at the gathering. This clause will amend the section to make it a defence for the organiser to prove that the disorder would probably have occurred even if he had given the requisite notice to the police, or if he had obeyed the direction or order concerned. The clause will also repeal subsection (5) of the section, which obliges a court to award damages to injured persons upon convicting the organiser of a public gathering of contravening section 24, 25, 26 or 27 of the Act. The effect of the repeal is that such an award will be discretionary, not obligatory.

Clause 10

This clause will repeal section 32 of the Public Order and Security Act, which requires everyone to carry their identity documents when in public, and empowers the Police to stop people at random and require them to produce their identity documents. The section is unconstitutional.

PRESENTED BY HONOURABLE GONESE

BILL

To amend the Public Order and Security Act [*Chapter 11:17*]

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Public Order and Security Amendment Act, 2009.

2 Amendment of section 2 of Cap. 11:17

Section 2 (“Interpretation”) of the Public Order and Security Act [*Chapter 11:17*] (hereinafter called “the principal Act”) is amended by the repeal of the definitions of “public demonstration” and “public meeting” and the substitution of—

““public demonstration” means a procession, gathering or assembly in a public place of persons and additionally, or alternatively, of vehicles, where—

- (a) the gathering is in pursuit of a common purpose of demonstrating support for, or opposition to, any person, matter or thing; and
- (b) the gathering takes place in such circumstances, and the persons or vehicles are in such numbers, as to make it reasonably possible that—
 - (i) public disorder; or
 - (ii) a serious breach of the peace; or
 - (iii) a substantial obstruction of any thoroughfare that cannot be avoided by the police providing an escort to ensure that disruption of traffic is minimised;

will be occasioned;

whether or not the gathering is spontaneous or is confined to persons who are members of a particular organisation or to persons who have been invited to attend;

“public meeting” means a meeting of more than fifteen persons in—

- (a) a public place; or
- (b) a private place, if the public or any section of the public are permitted to attend, whether on payment or otherwise;

but does not include—

- (i) a meeting which is—
 - A. attended wholly or mainly by members of one or more organisations; and
 - B. convened to discuss or determine matters relating to the management, administration, strategy or policy of that organisation or those organisations, as the case may be;

or

- (ii) a meeting of an organ or structure of a political organisation which is held in—
 - A. a public place that is not wholly in the open air; or
 - B. a private place, whether or not it is in the open air;”.

3. New section inserted in Cap. 11:17

The principal Act is amended by the insertion after section 2 of the following section—

3 Protection of freedom of assembly and association

“(1) Regulating authorities and all other persons concerned with carrying out or giving effect to this Act shall bear in mind when doing so that—

- (a) Zimbabweans, irrespective of their political or social affiliation or persuasion, have a constitutional right to express themselves by engaging in peaceful assembly and association; and
- (b) public gatherings may not be prohibited except by order of a magistrate in terms of section *twenty-six* or *twenty-seven*;

and shall interpret and apply the provisions of this Act in such a manner as to give full effect to that constitutional right.

(2) The Commissioner-General of Police and the commanders, directors or officers in charge of all other forces, services and agencies responsible for maintaining and enforcing the law shall ensure that the members of their forces, services and agencies who may be concerned in the administration or enforcement of this Act undergo appropriate training so as to uphold the democratic right of all Zimbabweans to engage in peaceful assembly and association.”.

4 Amendment of section 14 of Cap. 11:17

Section 14 of the principal Act is amended in subsection (1) by the deletion of “breach” and the substitution of “serious breach”.

5 Amendment of section 25 of Cap. 11:17

Section 25 of the principal Act is amended—

(a) by the repeal of subsection (1) and the substitution of—

“(1) Subject to subsection (5), the organiser of a public gathering shall endeavour to give at least four clear days’ written notice of the holding of the gathering to either—

- (a) the regulating authority for the area in which the public gathering is to be held; or
- (b) the police officer in charge of a police station near the place where the public gathering will be held:

Provided that the regulating authority or the police officer concerned, as the case may be, may permit shorter notice to be given.”;

(b) by the repeal of subsection (5) and the substitution

“(5) For the avoidance of doubt it is declared that—

- (a) the requirement to give notice under subsection (1) does not empower a regulating authority or police officer to refuse permission for the holding of the public gathering concerned; and
- (b) a failure by the organiser of a public gathering to give notice under subsection (1) does not render the public gathering unlawful.”.

6 Amendment of section 26 of Cap. 11:17

Section 26 of the principal Act is amended by repeal of subsections (9), (10) and (11) and the substitution of the following subsections—

“(9) A convener who is aggrieved by any condition specified in a convening notice in terms of subsection (6) may appeal against it to a magistrate of the province within which the gathering is proposed to be held, and the magistrate may confirm, vary or set aside the condition and give such order or direction in the matter as he or she thinks just.

(10) A magistrate to whom an appeal is made in terms of subsection (9) shall ensure that the appeal is determined urgently and in any case before the date of the proposed gathering unless, due to the fault of the convener, the appeal was not lodged timeously.

(11) After considering representations made in the course of a meeting held in terms of subsection (3), if any, the regulating authority may, if he or she on reasonable grounds is convinced that no condition contemplated in subsection (6) would prevent the occurrence of any of the circumstances contemplated in subsection (3), apply to a magistrate for the province in which the public gathering is to take place for a direction prohibiting the public gathering.

(12) Whenever it is practicable to do so, a regulating authority shall give notice of an application in terms of subsection (11) to the organiser of the public gathering concerned.

(13) Subject to this section, if a magistrate, on application by a regulating authority in terms of subsection (11) and having regard to all the circumstances in which the public gathering concerned is taking or is likely to take place, is satisfied on reasonable grounds

that the gathering is likely to occasion serious public disorder, he or she may give directions—

- (a) prohibiting the holding of the gathering or, if the gathering is being held, ordering the persons present thereat to disperse; or
- (b) providing for any matter referred to in subsection (6), if he or she considers that compliance with the directions will enable the public gathering to be held without occasioning serious public disorder.

(14) Whenever it is practicable to do so, before acting in terms of subsection (13), a magistrate shall afford the organiser of the public gathering concerned a reasonable opportunity to make representations in the matter.

(15) A direction given under subsection (13) shall have effect immediately it is issued and the regulating authority shall cause it to be published in whichever of the following ways will bring it to the notice of persons who might attend the public gathering concerned—

- (a) in a newspaper circulating in the area to which the direction applies;
- (b) by notices distributed among the public or affixed to public buildings in the area to which the prohibition or direction applies;
- (c) by announcement of a police officer that is broadcast or made orally;

and, where practicable, the regulating authority shall ensure that the direction is reduced to writing and served on the organiser of the public gathering to which it relates.

(16) Any person who is aggrieved by a direction given under subsection (13), or by a magistrate's refusal to give such a direction, may appeal against the direction or refusal, as the case may be, to the High Court within the time and in the manner prescribed in rules of court, and the High Court may confirm, vary or set aside the direction or give such order or direction in the matter as it thinks just:

Provided that—

- (i) the noting of an appeal in terms of this subsection shall not have the effect of suspending the decision appealed against;
- (ii) the High Court shall deal with the appeal as expeditiously as possible and, in any event, shall ensure that the appeal is determined before the date on which the proposed gathering is to be held.

(17) Any person who knowingly contravenes or fails to comply with a direction given under subsection (13) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

7 New section substituted for section 27 of Cap. 11:17

Section 27 of the principal Act is repealed and the following is substituted—

27 Temporary prohibition of holding of public demonstrations within police district

“(1) If a magistrate, on application by the regulating authority for any area, is satisfied on reasonable grounds that the powers conferred by sections 25 and 26 will not be sufficient to prevent serious public disorder being occasioned by the holding of public

demonstrations or any class thereof in the area or any part thereof, the magistrate may issue an order prohibiting, for a specified period not exceeding one month, the holding of all public demonstrations or any class of public demonstrations in the area or part thereof concerned.

(2) Whenever it is practicable to do so, before issuing an order under this section a magistrate shall—

- (a) cause notice of the regulating authority's application to be published in the *Gazette* and in a newspaper circulating in the area concerned and to be given to any person whom the magistrate believes is likely to want to organise a demonstration that will be prohibited by the proposed order; and
- (b) afford all interested persons a reasonable opportunity to make representations in the matter.

(3) A magistrate may at any time for good cause amend or revoke an order issued by him under subsection (1).

(4) The regulating authority for the area in respect of which an order has been issued under subsection (1) shall ensure that the order and any amendment or revocation thereof is published—

- (a) in the *Gazette*; and
- (b) in a newspaper circulating in the area; and
- (c) in such other manner as, in his opinion, will ensure that the order or its revocation, as the case may be, is brought to the attention of persons affected by it.

(5) Any person who is aggrieved by an order issued under subsection (1), or by a magistrate's refusal to issue such an order, may appeal to the High Court against the order or refusal, as the case may be, within the time and in the manner prescribed in rules of court, and the High Court may confirm, vary or set aside the order or give such other order in the matter as it thinks just:

Provided that—

- (i) the noting of an appeal in terms of this subsection shall not have the effect of suspending any order appealed against;
- (ii) the High Court shall deal with the appeal as expeditiously as possible.

(6) Any person who organises or assists in organising or takes part in or attends any public demonstration held in contravention of an order under subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.

8 Repeal of section 27A of Cap. 11:17

Section 27A of the principal Act is repealed.

9 Amendment of section 28 of Cap. 11:17

Section 28 of the principal Act is amended—

- (a) by the repeal of subsection (3) and the substitution of—

“(3) In any proceedings in which it is alleged that an organiser of a public gathering is liable, on a ground referred to in paragraph (a) or (b) of subsection (1), for any loss, damage, injury or death—

(a) the organiser shall bear the onus of proving, on a balance of probabilities, that he or she—

(i) gave notice of the holding of the gathering in terms of section *twenty-four*; or

(ii) complied to the best of his ability with any direction or order that is proved to have been made in relation to the gathering;

as the case may be;

(b) it shall be a defence for the organiser to show that he or she took what measures he or she could to prevent the public disorder or breach of the peace that occasioned the loss, damage, injury or death, and that the public disorder or breach of the peace would probably have occurred even if he or she had—

(i) given notice of the holding of the gathering in terms of section *twenty-four*; or

(ii) complied with any direction or order that is proved to have been made in relation to the gathering;

as the case may be.”;

(b) by the repeal of subsection (5).

10 Repeal of section 32 of Cap. 11:17

Section 32 of the principal Act is repealed.