CENTRE FOR POLICY ANALYSIS

Certificate of Financial Implications: Is it Government's tool to frustrate private Bills?

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Abstract

It's impossible to table a bill in parliament without the relevant documentation, the Certificate of Financial Implication (CFI). Failure to acquire a CFI means the proposed Bill cannot proceed to the next stage, and it can't be tabled for First Reading and even when the House proceeds to consider the Bill, it cannot be passed. The absence of a CFI is a stumbling block during the Bill consideration process especially if the Bill has financial implications.

All Bills, whether government or privately sponsored must be accompanied by this certificate indicating the potential impact of the Bill on the economy. It is issued by the Minister of Finance according to the Public Finance Management Act, 2015 (PFMA 2015), and the Parliamentary Rules of Procedure. Where a CFI is not required, there are provisions under the guidelines for requesting and issuance of CFI by the Ministry of Finance.

However, there is contention over the timing and the procedure of issuance of these certificates. Concerns have been raised over the delay when it comes to certain bills, especially for privately sponsored Bills. It's been observed that government-sponsored Bills usually take an incredibly shorter time to be issued with the CFI while for privately sponsored Bills, the issuance is either delayed or never given.

Such delays are frustrating for the private members who aim to ensure that all Ugandans are served. A government that claims to be pro-people must be considerate of such concerns and follow the law on all proposed Bills: government or privately sponsored.

Introduction

While it took Bugiri Municipality MP, Asuman Basalirwa, a record two days to secure a Certificate of Financial Implications (CFI) from the Ministry of Finance, to table the Anti-Homosexuality Bill, 2023, before Parliament, his Kasanda North counterpart, Patrick Nsamba was only able to get a response declining his request for a CFI to introduce the Local Content Bill, 2017, after the mandatory 60 days within which the same is required, had elapsed.

According to Section 76 (1) and (2) of the Public Finance Management Act, 2015 and Rule 118 of the Parliament Rules of Procedure, both Government and private legislation must be accompanied by a CFI issued by the Ministry of Finance, Planning, and Economic Development (MoFPED) to evaluate the potential impact of the proposed Bill on the economy. The Certificate estimates revenue and expenditure over a period of not less than two years after the coming into force of the proposed law and reaffirms Government's commitment to financing its implementation once enacted.

Whereas the country's lawbooks restrict private members from proposing Bills that impose a charge on the Consolidated Fund or any other Public Fund in Uganda, critics have accused the Government of deliberately using the provision to stifle private legislation.

Evidence accrued overtime

In 2018, the then House Speaker, Rebecca Kadaga, threatened amendments to waive the mandatory requirement for lawmakers to secure a CFI before presenting private member Bills, arguing that Government was exploiting the provision to frustrate private Bills that are not in its interests. Consequently, in early 2019, Kadaga invoked Rule 117 of the Parliament Rules of Procedure to allow Nsamba to present the Local Content Bill, 2017, without the requisite CFI. The Local Content Bill, of 2017, sought to promote Ugandan goods, services, and industries by compelling the Government to use locally manufactured goods and services when implementing public projects.

The Rule deems CFI as having been issued after 60 days from the date of request. However, Nsamba said his pursuit for a CFI had hit a dead end when he wrote to the finance minister seeking a CFI only to receive a response in the negative after the mandatory 60 days had elapsed.

Similarly, in 2020, Ndorwa East MP, Wildred Niwagaba's efforts to introduce a raft of constitutional and electoral reforms collapsed when Government declined to offer him a CFI on grounds that his proposals had significant ramifications on the Consolidated Fund, far and above what the taxpayer could afford.

But a quick scrutiny of Niwagaba's constitutional and electoral reforms proposed a reduction of the size of the Cabinet to just 21 Ministers and 21 State Ministers who should not be chosen from elected Members of Parliament. Uganda's 2021-2026 Cabinet is considered one of the largest Cabinets in the world with 82 members. Neighboring Kenya has a total of 25 Cabinet Secretaries. Niwagaba argued that maintaining a lean Cabinet was crucial to kick-starting the long-held public outcry to trim the size of public administration to allow for more resources to spend on service delivery.

Just like Basalirwa's Anti-homosexuality bill, in 2017 the Ministry of Finance needed just two days to process the CFI for Igara West MP, Raphael Magyezi to introduce the Constitutional Amendment Bill, 2017, that scrapped the Presidential age limit capped at 75 years. The hotly contested Bill that amended Article 102 (b) of the Constitution garnered overwhelming support from the ruling National Resistance Movement (NRM) which political observers say was the green light for President Yoweri Museveni to seek reelection in 2021, after clocking 75 years.

Selective application of the CFI casts doubt on the Government's legislative priorities. Critics argue that the Government is quick to support regressive legislation while on the other hand, withholding support to Bills deemed to be in the public interest. This undermines the doctrines of good faith, estoppel, and equity as the benchmark for good legislation.

Proponents of the doctrine of separation of powers as a key tenant in democratic dispensation argue that selective application of the CFI sets the country's democratic gains on a downward trajectory. While several MPs have been granted leave by the House to introduce private member Bills, many are yet to table their proposals pending CFIs. Other private Bills pending CFIs include the Surrogacy and Assisted Reproductive Technology Bill, 2021, and the Alcohol Control Bill, 2022 proposed by Tororo Woman MP, Sarah Opendi; the Public Enterprise Reform and Divestiture (Repeal) Bill and the Constitution (Amendment) Bill by Michael Mawanda (Igara East MP); and the National Legal Aid Bill by Silas Aogon (Kumi Municipality MP).

In the 10th Parliament, Mukono Municipality MP, Betty Nambooze abandoned the Alcohol Control Bill, after the Government failed to harmonize her position with its interests and denied her a CFI. Similarly, the passing of the Minimum Wage Bill sponsored by Worker's representative, Arinaitwe Rwakajara followed a protracted struggle and delayed issuance of the CFI. Besides, the president publicly expressed discomfort against the Bill saying that it will deter foreign direct investment in the country, and Interestingly so, the Bill has never been assented to since its passing in 2019. But, Uganda's legal regime allows individual Members of Parliament the right to introduce private Bills with reasonable assistance from relevant Government departments and the Office of the Attorney General.

Issuance of CFIs

Where a CFI is not required; a clearance letter is usually issued by the Permanent Secretary and Secretary to the Treasury. This is in the case of Information Papers, National and Sectoral Policy Proposals and/or Principles for New Laws (Bills), and the Ratification of Protocols, Treaties, Conventions, and Agreements.

The Public Finance Management Act, of 2015, provides for clear roles and responsibilities in the preparation and issuance of CFIs including, ensuring the quality and timeliness of requests for CFIs from Sector Ministries with inadequate information, and minimizes delays in the issuance of CFIs.

Section 76 (4) of the PFMA 2015, provides that a CFI shall be deemed to have been issued after 60 days from the date of the request for the certificate which means, the finance minister is allowed 60 days to examine a Bill and issue the certificate once an official application has been made. This time is thought sufficient to allow for an assessment of the impact of the Bill on the economy. In other words, it is enough to allow for the determination of a "Theory of Change", which articulates how the Bill will promote social change. It should include the underlying beliefs and assumptions that guide a service delivery strategy within a given context linking the strategies to the actual outcomes. In this case, according to the guidelines from the Ministry of Finance, a detailed socio-economic and financial analysis should be done.

How is it done in other countries?

In countries that subscribe to the West Minster parliamentary system the procedure for processing proposed Bills depends on the nature of the Bill: whether it is a money or non-money legislative proposal. A money Bill in this context would be one that solely concerns taxation or government spending. Basically, a Bill with potential impact on the economy.

In Kenya for instance, for a non-money Bill proposed by a committee, the Speaker approves its publication into a Bill for processing. One sponsored by an individual member is referred to the relevant departmental committee for scrutiny which then makes recommendations to the Speaker as to whether the proposal should be published into a Bill or not. Upon the Speaker's approval, it is published into a Bill.

For a money-legislative proposal, the Speaker refers the Bill to the Budget and Appropriations committee. The committee analyzes the financial implication of the proposal on the present and future budgets and other financial aspects. After review from the Cabinet Secretary for Finance, the committee recommends whether it should be published into a Bill.

Recommendation and Conclusion

While it is logical that the issuing of a CFI requires ample time for adequate financial analysis, what is not clear is why in some cases Bills, especially those deemed to be favored by the Government take a shorter period to secure CFI as opposed to other Bills. For example, the National Legal Aid Bill, 2022 which seeks to regulate the provision of legal aid services in Uganda was first drafted in 2015 and underwent consideration in the 10th Parliament. But, owing to rule 235(1) of the Rules of the Procedure it lapsed when the 11th Parliament came into effect. It was reintroduced in the 11th Parliament in September 2022 and rejected at the committee stage pending a CFI. Months later, this Bill can't be passed even when the President promised to ensure its implementation.

The delaying of such a Bill means underprivileged Ugandans, who due to economic constraints, can't afford legal costs, are denied a chance to access justice. There is evident unfairness in the processing of some of these bills, yet according to section 76(4) of PFMA 2015, all bills regardless of who introduces them should be accorded the same treatment. All bills are meant to serve the citizens of Uganda and therefore the law must be followed.

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