

# The Public Order Act: A Controversial Law?

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**Abstract:** *Zambia embraced democracy after abandoning one party rule in 1990. Democracy thrives on the respect of the rights and freedoms of citizens. However, the country's record on human rights has come under criticism by local and international organizations and commentators. The state police has been labelled brutal and heavy handed in dealing with those who oppose government. The ruling parties have used the state police to enforce the Public Order Act which regulates the rights and freedoms of assembly of citizens to prevent rival parties from holding meetings. The citizens who have disobeyed police orders and went ahead to hold meetings have met the police muscle. This development has damaged the country's human rights record and undermined the internal security.*

**Keywords:** Assembly, Police, Public Order Act, Rights and Freedoms

Public order is the state of a community characterized by the absence of widespread criminal and political violence such as kidnapping, riots, arson, and intimidation against targeted groups or individuals. Public order is necessary for sustainable internal peace and social economic development of a nation. In Zambia the public order is regulated under the Public Order Act (POA) which is enforced by the Zambia Police Service. The present Act has its origins from the POA No.38 of 1955 established by the British colonial government and it is enshrined in the Constitution under Chapter 113 of the Laws of Zambia. The law was used as a tool for suppression of Africans who resisted the oppressive rule. The POA has been subjected to several amendments from 1959 to 1996. The latest attempt to amend the Act was made within the proposed parliament-rejected constitution amendment Bill 10 of 2019.

The POA was inherited at independence by the United Nation Independence Party (UNIP) government which strengthened its ruthlessness and suppressive powers on those who opposed the governing authority. The law became instrumental in dealing with public protests and riots that occasionally took place in 1980s and 1990s due to economic challenges the country experienced.

The coming of Movement for Multiparty Democracy (MMD) into power in 1991 was seen as an opportunity to restore freedoms of assembly and association as stipulated in the Constitution of Zambia under Article 21 of 1991 (rev.2016) and international protocols such as the International Covenant on Civil and Political Rights (ICCPR) under Article 21 which governs the right of peaceful assembly of citizens; Article 11 of African Charter on Human and Peoples' Rights (ACHPR) and Article 4 and 5 of the Southern Africa Development Community (SADC) Treaty which stipulates the respect of human rights, democracy and the rule of law and promotion of common political values, systems and shared value to which Zambia is a State Party. However, MMD government solidified the enforcement of POA against political opponents. The law became a contentious and divisive issue between government and other institutions such as the opposition and NGOs during the reign of all MMD Presidents; Fredrick Chiluba, Patrick Mwanawasa and Rupiah Banda.

The victory of Patriotic Front (PF) in 2011 was another hope for amendment of POA in line with human rights demands. To the shock of Zambians, the government embraced the POA in its form and President Michael Sata even branded it 'a good law'. The PF government continued using the POA to silence its opponents mainly the United Party for National Development UPND. Mr. Sata's successor President Edgar Lungu, a Lawyer came under pressure from civil society, Non-Government Organizations (NGOs), and political parties that called for the amendment of the POA in order to enhance the rule of law. However, an attempt to amend the law amidst criticism from stakeholders was done within the failed proposed constitution Bill 10 of 2019.

The POA became under serious scrutiny by citizens and the international community during the period running up to 2021 tripartite elections. The PF government took advantage of the COVID-19 restrictions and strengthened the POA enforcement on the opposition mainly the UPND party whilst the ruling party conducted its campaigns in defiance of the law and pandemic protocols. Attempts by the UPND to hold rallies were blocked and members teargassed, forcibly dispersed by armed police officers, in some cases resulting in arrests and injuries.

## The Problem at Hand

The application of POA in regard to certain clauses such as notifications, cancellation of gatherings and powers of the Minister still remains a contentious issue on the Zambia's political arena. The 1996 amended POA requires conveners to give 7 days prior notice to the Police for holding meetings, processions or demonstrations under section 5 (4). This has been erroneously and deliberately misinterpreted by the police as a requirement for Police permit. The POA in sections 5 (6) renders subsections (4) and (5) non-functional in the event that the President, the Vice-President, Minister, Junior Minister, Speaker or Deputy Speaker of the National Assembly is intends to address a public meeting in the same area other conveners wanted to be. The POA in Section 5 (8) also gives absolute powers to Police, Magistrate or District Messenger to stop any meeting deemed to have contravened the conditions. The law further empowers the Minister to handle POA matters under section 8.

The POA in its entirety has many loopholes for manipulation and interference. The police mandate to handle

notifications and policy the gatherings or processions is prone to abuse. The provision to cancel activities of other conveners due to the presence of the governing authority in the same area, conflicts with the Constitution under Article 21 of the Laws of Zambia. The involvement of the Minister in the administration of this law is an extended authority in the enforcement of POA.

### Is POA The Unsolvable Puzzle?

The controversies surrounding POA can be resolved especially on notifications, cancellation of intended meetings and authority by the Minister.

- 1) There should be separation of power in the administration of POA. The removal of Prosecutions Office from the Zambia Police can be cited as a great achievement in the delivery of fair justice system. The previous arrangement to have prosecutions under the Police undermined justice delivery as it was prone to abuse because of the dual roles of the Police. The Police was mandated to arrest and prosecute suspects and it was difficult for the same Police to offer impartial justice. The separation of the two institutions has given the National Prosecutions Authority (NPA) the independence in the delivery of justice to suspects.
- 2) Therefore the mandate to handle notifications should be transferred to the Judiciary under the magistrate court. The Police should be restricted to policing the gatherings or processions under the court's instruction. There are already similar existing arrangements where the Judiciary instructs the state police to execute duties on its behalf such as the execution of warrants, property seizures and demolition of illegal structures. The 7 days notification be maintained and the police should be informed within two days of court notification. This will give the police enough time to prepare.
- 3) Gatherings or processions of other conveners should be cancelled when the Republican President, Vice President or any government official is to be in the same district or constituency where others had intended to be. However both parties should be allowed if they are within the same province but in different districts or constituencies.
- 4) The Minister should not be party to the enforcement of POA but this mandate should be within the State Police and Judiciary.

The POA in its current form undermines democratic tenets and endangers the country's internal security because it is inimical to freedoms and rights of citizens. The cry and hope to restore inherent human rights for Zambians have been rejuvenated. Zambians believed in the change through UPND on 12<sup>th</sup> August, 2021. The UPND's victory is seen as another test and opportunity to address the POA matter. Zambians are hopeful that the New Dawn Government will drive the agenda for resolving the long standing divisive Law as already evidenced by its commitment to restoring freedoms of expression and media within the few months in power.