THE JESUIT CENTRE FOR THEOLOGICAL REFLECTION

THE PUBLIC ORDER ACT:

GAPS AND RECOMMENDATIONS

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Freedom Of Assembly, Freedom of Expression and The Public Order Act:
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1.0 INTRODUCTION

In a modern democratic society like Zambia, there is need to guarantee political and civil rights for the democratic participation in the governance of the country. Democratic governance can only be enhanced if the country’s legislation empowers people to enjoy freedoms to assemble and to express themselves as envisaged under Art. 20 and 21 of the Zambian Constitution. It is therefore essential to afford every person an opportunity to assemble and express their views as long as it is within the confines of the law and does not cause public disorder. The Public Order Act has been one of the most contentious pieces of legislation both in its content and in its implementation for a very long time in Zambia. This therefore makes it a topic very worthy of discussing. Therefore, this analysis seeks to find the gaps that the Public Order Act causes in democratic governance of Zambia in relation to other governance laws. Recommendations will also be given on how those gaps can be cured.

It should be mentioned from the onset that the problem caused by the Public Order Act is that of hindering the enjoyment of the fundamental freedoms of assembly and expression. Thus the gaps that this legislation presents are in this regard.
2.0 FREEDOMS OF ASSEMBLY AND EXPRESSION

In a motion moved in the National Assembly with an aim of urging government to reform the Public Order Act, Hon. Cornelius Mweetwa neatly outlined the rights to freedom of assembly as they related to those of expression and association. He stated that the freedom of people to assemble in public and to express their views on political matters is generally regarded as an essential element in a free and open society, and are recognised in international human rights instruments like the United Nations’ (UN’s) 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People’s Rights (ACHPR). Zambia is a State Party to all of these treaties and as such is bound by their provisions.

Hon. Mweetwa argued that freedom of expression serves many purposes; inter alia, helping individuals to attain self-fulfilment. He argued that rational individuals need information and an opportunity to express themselves so that they can grow into responsible citizens who fully understand and participate in civic matters. It also assists in the discovery of truth. According to him, freedom of expression also enhances the capacity of individuals to participate in a democratic society. He was of the view that, freedom of expression provides the mechanism for establishing a reasonable balance between stability, on one hand, and social change, on the other. It was his view that freedom of assembly is an essential element in a democratic government.

2.1 International Law

Zambia is a party to the International Covenant on Civil and Political Rights (ICCPR) under which it is required to periodically report to the treaty monitoring body, Human Rights Committee, on progress being made with regards implementation of the treaty provisions. In that treaty, to which Zambia is subscribed to, lies a provision that seeks to protect a person’s human right to assemble. This is to be found in Article 21 of the treaty and provides as follows:

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*

2 Ibid
2.2 The Constitution of Zambia

In line with Zambia's commitments under the ICCPR, the Republican Constitution does protect the right to freedom of assembly and association. This protection is found in Article 21(1) of the Constitution which provides as follows:

Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

However, that right is not without limitation. According to Article 21 (2), freedom of assembly and association is limited by considerations that are necessary in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights of other persons or in the registration of political parties or trade unions.3

In practice, citizens and non-citizens resident in Zambia are free to associate in different forms, which include, political parties, trade unions, religious gatherings of different faiths, social clubs and associations, fora advocating particular issues of public interests, cooperatives and student unions.4

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3 Zambia’s State Party Report to the Human Rights Committee of the ICCPR dated 16th January, 2006 (CCPR/C/ZMB/3) at page 76
4 Ibid
The Public Order Act, Chapter 113, Volume 9 of the laws of Zambia was first passed into law on the 19th of August, 1955. This law makes it an offence for any person to wear any uniform or display any flag signifying his association with any political organisation in any public place or at any public meeting. The law defines public meetings and public places as follows:

3.1 Regulation of Public Meetings and Processions

The Act regulates assemblies, public meetings and processions by providing that every person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days’ notice of that person’s intention to assemble or convene such a meeting, procession or demonstration. Conditions that may be imposed with regards the regulation of assemblies, public meetings and processions, as being those related to:

a) the date, place and time at which the assembly, public meeting or procession is authorised to take place;

b) the maximum duration of the assembly, public meeting or procession;

c) in the case of an assembly or public meeting the persons who may or may not be permitted to address such assembly or public meeting and the matters which may not be discussed at such assembly or public meeting;

d) the granting of adequate facilities for the recording of the proceedings of such assembly or public meeting in such manner and by such person or class of person as the regulating officer may specify:

e) any other matter designed to preserve public peace and order.

It is law under the Act for the official national anthem to be played or sung at the commencement of the business of every public meeting.

3.2 Offences and Penalties

The Public Order Act provides against what it refers to as ‘unauthorised assemblies’ in that any assembly, meeting or procession for which a permit is required under subsection (4) of section 5 and which takes place without the issue of such permit or in which three or more persons taking part neglect or refuse to obey any direction or order given under subsection (3) or (7) of section five shall be deemed to be an unauthorised assembly. The Act also imposes a penalty for disobeying a direction or violating conditions of permit issued under section 5 in that any person who knowingly opposes or disobeys any direction issued under sub-section (3) of section five or violates any condition of a permit issued under subsection (4) of section five shall be guilty of an offence and may be arrested without warrant.

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5 Preamble and Section 1 of the Public Order Act, Chapter 113 of the Laws of Zambia
6 Section 3 of the Public Order Act
7 Section 2 of the Public Order Act
8 Section 5(4) of the Public Order Act
9 Section 5(5) of the Public Order Act
10 Section 9 of the Public Order Act
11 Section 7 of the Public Order Act
12 Section 6 of the Public Order Act
Of further importance, the Act prohibits *weapons at public meetings and processions* in that any person who, while present at any public meeting or on the occasion of any public procession, has with him any lethal weapon, otherwise than in pursuance of lawful authority, shall be guilty of an offence. Engaging in offensive conduct conducive to breaches of peace is also prohibited in that any person who in any public place or at any public meeting uses threatening, abusive or insulting words with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence.

The law imports into the Act an offence similar to that contained in the Industrial and Labour Relations Act, Chapter 269, Volume 15 of the Laws of Zambia by providing for a *penalty for inciting to strike in certain circumstances* any person who wilfully and maliciously advises, encourages, incites, commands, aids or procures any other person to break any contract of a kind specified in section fifty-two or fifty-three of the Industrial and Labour Relations Act when the probable consequences of the breach would be of a nature specified in those sections, shall be guilty of an offence.

The law provides for its enforcement in that any person who commits an offence against section 4 shall be liable on summary conviction to imprisonment for six months or to a fine of three thousand penalty units or to both such imprisonment and fine, or, on conviction by the High Court, to imprisonment for two years or to a fine of fifteen thousand penalty units, or to both.

### 3.3 Powers of the Minister of Home Affairs

The Act empowers the Minister ‘in charge of the administration’ of the Act to in his discretion *exempt* by order in writing any religious organisation from all or any of the provisions of sections five, seven and nine of the Act. The exemption is valid in respect of meetings and assemblies of a purely religious nature. As of 1968, the following religious organisations had received written exemption by the Minister:

- African Evangelical Fellowship;
- African Reformed Church;
- Anglican Diocese of Zambia;
- The Apostolic Church in Zambia;
- Apostolic Faith Born Again Church;
- Christian Missions in Many Lands;
- The Evangelical Church in Zambia;
- The Full Gospel Church of God in the Republic of Zambia;
- Pilgrim Holiness Church;
- The United Church of Zambia;
- Pentecostal Assemblies of God Church; and
- The Roman Catholic Church.

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13 Section 10 of the Public Order Act
14 Section 11 of the Public Order Act
15 Section 14 of the Public Order Act
16 Section 15 of the Public Order Act
17 Section 8 of the Public Order Act
18 Regulation 2 of the Public Order – Religious Organisations (Exemptions) Order
19 Schedule to the Public Order Act
The Minister is further empowered *with the power for preservation of public order* in respect of public meetings and processions in that if at any time the Minister is of opinion that, the powers conferred by any other written law will not be sufficient to enable the police to prevent serious public disorder being occasioned by the holding of public processions or public meetings in Zambia or any part thereof, he may, by statutory order published in the *Gazette* and in such other manner as he may deem sufficient to bring the order to the knowledge of the general public in the area to which it relates, prohibit the holding within Zambia or any part thereof of all public processions or public meetings, or of any class of public processions or public meetings specified in the order, for such period not exceeding three months as may be so specified.20

### 3.4 The Position of the Courts on the Public Order Act: Provisions and Administration

Following numerous complaints, mainly from players within the political circles of the Zambian Society, the Law Association of Zambia (LAZ) sought judicial interpretation of the provisions of the Public Order Act in as far as they related to a person’s rights to assembly and association as guaranteed in the Constitution. Details of this can be found in the Judgment of the Supreme Court in the case of *Law Association of Zambia V the Attorney General Appeal No. 8 of 2014*.

In that judgment, the Court was called upon to decide on an appeal by LAZ from the High Court. LAZ being dissatisfied with the decision of the High Court appealed to the Supreme Court seeking, among other reliefs, declarations of the Court that Sections 5 and 6 of the Public Order Act were in violation of Articles 20 and 21 of the Constitution and to that extent unconstitutional.

According to the Supreme Court, as the law stands, a convener of a public meeting, procession or demonstrations is no longer required to obtain a permit from the Police, but simply to give the Police notice, Dispensing with Section 5(4) of the Act would make it difficult for the Police to maintain public peace and order.21 To that end, the Court held that the requirement to give notice to the Police was necessary as this was the only way that the Police could maintain law and order.22

In that same judgment, the Supreme Court did have some strong words to give regarding the conduct of the Police in administering the Public Order Act. The Court stated that it dispelled the notion that Police are at liberty to refuse a proposed public meeting, procession or demonstration without suggesting a reasonable alternative date in the very near future even though Section 6(6) of the Act does not set a time limit.23

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20 Section 12 of the Public Order Act  
21 Supreme Court Judgment in the case of Law Association of Zambia V the Attorney General Appeal No. 8 of 2014 at page 18  
22 Ibid at pages 18 and 19  
23 Supreme Court Judgment in the case of Law Association of Zambia V the Attorney General Appeal No. 8 of 2014 at page 21
4.0 FURTHER VIEWS ON THE PUBLIC ORDER ACT

The Zambia Police Service is about the single most important institution under the law responsible for administration of the Public Order Act. According to the Government, police officers are under an obligation to adhere to the Public Order Act when granting conveners of assembly’s permits, under the Public Order Act. In addition the Zambia Police Service Instructions provide rules on how to police assemblies considering the need to maintain peace and safety for both assemblers and the general public. Police officers are not allowed to use firearms, but to employ other restraining methods in case of violence, such as the use of teargas. In practice, although instructions are given to police officers, it is difficult to determine the attitude of police officers towards assemblies. Although assemblies have been generally peaceful in Zambia there have been circumstances where violence was used against demonstrators by overzealous police officers.24

In its submission to the Director of the Zambia Law Development Commission (ZLDC), the Media Institute for Southern Africa (MISA) Zambia Chapter, on behalf of other like-minded organisations stated that the Public Order Act has always been a contentious piece of legislation that has been challenged by many people and organisations. According to MISA Zambia, the fear for this Act is that it does not only affect journalists but other people who believe in freedom to express themselves in different ways. It was submitted that the requirement to notify police seven (7) days before assembly is open/subject to abuse because the police could deny the permit on political grounds. It was MISA’s submission that this law is also inconsistent with people's right including journalists to demonstrate whenever they feel aggrieved about something.25

In suggesting a solution, MISA Zambia recommended that there should be express provision that applicants should not wait for police to respond. It was MISA's submission that the police response should only boarder on facilitating and not stopping the event. As such only 48 hours' notice should be provided for in the amended law.26

Zambian law has in place other pieces of legislation that seek to provide some control over one's right to freedom of assembly and association. These laws can be found in the Societies Act, Chapter 119, Volume 9 of the laws of Zambia and also the Penal Code Act, Chapter 87, Volume 7 of the laws of Zambia. The Societies Act regulates the registration of political parties (Although these will soon be under the Political Parties Act once the bill is enacted), nongovernmental organisations, clubs and other forms of associations, through the Registrar of Societies.27 Section 74 of the Penal Code prohibits lawful assemblers from engaging in activities that are likely to breach the peace.28

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24 Zambia’s State Party Report to the Human Rights Committee of the ICCPR dated 16th January, 2006 (CCPR/C/ZMB/3) at page 79
26 Ibid
27 Zambia’s State Party Report to the Human Rights Committee of the ICCPR dated 16th January, 2006 (CCPR/C/ZMB/3) at page 76
28 Ibid
<table>
<thead>
<tr>
<th>Gap No. 1</th>
<th>Lack of clarity on whether it is Notification or Permit in the Act</th>
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<tr>
<td>Recommendation</td>
<td>The notion of ‘notification’ and ‘permit’ under the Act needs to be properly spelt out so that both the Zambia Police Service and affected stakeholders are properly guided on the proper application of the Act.</td>
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<th>Gap No. 2</th>
<th>No time frame provided for responding to notification thereby subjecting the Act to abuse</th>
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<td>Recommendation</td>
<td>There is need to provide a timeframe within which the Zambia Police Service can respond to a notification of the holding of a public gathering. The law should provide that the Zambia Police Service shall provide feedback to those notifying it within four (4) days of receipt of such notification.</td>
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<th>Gap No. 3</th>
<th>The Act has no provision requiring the police to give reasons for refusal to hold a meeting and there is no requirement for the police to propose an alternative date for the holding of the said meeting.</th>
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<tr>
<td>Recommendation</td>
<td>The Act needs to provide that the Zambia Police Service must give reasons for refusal to allow a meeting or procession to take place. Secondly, a prescribed timeline should be stated in the Act within which the Zambia Police Service must provide an alternative date/venue to those seeking to hold such a public gathering. Such time line should be within 10 working days or any other later date proposed by the party notifying the Police.</td>
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<th>Gap No. 4</th>
<th>The Act provides that appeals of decisions denying the holding of public gatherings lie with the Minister of Home Affairs.</th>
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<td>Recommendation</td>
<td>The Act should set up a commission responsible for the hearing of such appeals to ensure fairness and reduce possibility of abuse</td>
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<th>Gap No. 5</th>
<th>The exemption from giving notice extended to Ministers is subject to abuse</th>
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<td>Recommendation</td>
<td>If the exemption is to remain in the Act, a clear distinction must be sought between the Minister’s performance of government functions or where a minister is discharging his employment duties and partisan/political functions so as to require notification in the case that the Minister will be performing partisan or political functions.</td>
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**Further Recommendations**

- The Police Public Complaints Commission (PPCC) should be strengthened so as to ensure that those Police Officers found wanting in the application of the Public Order Act
- During periods of election, there is need for the Public Order Act not to be misapplied in such manner as to usurp the provisions under others laws like the Electoral Process Act and such regulations as the Electoral Code of Conduct
5.0 CONCLUSION

It is clear that the Public Order Act has been a cause of concern for some time now. This analysis has identified gaps presented by this piece of legislation as being the general hindrance to the enjoyment of the fundamental freedoms of assembly, association and expression in Zambia. Specifically, that the Act has presented a challenge for citizens to enjoy these freedoms by allowing for the police to either deny the rights altogether or restrict them in such a manner that renders them useless, that is ‘Notification/Permission’ and restrictions that may be imposed as a condition under which such permission to assembly and/or expression. The Act provides inadequate measures to ensure that its administration is fair and reasonable to all, for example, appeal of a decision by the police to the minister is a very poor safety net for the ensuring of fairness in the application of this Act.

This analysis has also provided some recommendations which may possibly help as a filler in the identified gaps with hope that the Act may be used as a tool to help further the freedoms of expression and assembly while at the time ensuring that public order is maintained.
REFERENCES

Laws Referred to

- International Covenant on Civil and Political Rights
- Penal Code Act, Chapter 87 of the Laws of Zambia
- The Public Order Act
- The Public Order – Religious Organisations (Exemptions) Order
- Societies Act, Chapter 119 of the Laws of Zambia
- Zambian Republican Constitution

Cases Referred to

- Christine Mulundika and 7 Others v. The People S.C.Z. No. 25 of 1995
- Law Association of Zambia v. the Attorney General Appeal No. 8 of 2014 SCZ

Other works referred to

- Submission by MISA Zambia to the Director of the Zambia Law Development Commission (ZLDC) Review of the Penal Code Act in relation to issues bordering on Freedom of Expression and Freedom of the Press dated 22nd July, 2015 at pages 7 to 8
- Civil Society Submission on Review of Public Order Act by SACCORD
- Zambia’s State Party Report to the Human Rights Committee of the ICCPR dated 16th January, 2006 (CCPR/C/ZMB/3)
Vision:

“A just Zambian society guided by faith, where everyone enjoys fullness of life”.

Mission Statement:

“From a faith inspired perspective the JCTR promotes justice for all in Zambia, especially for the poor, through research, education, advocacy and consultations”.

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