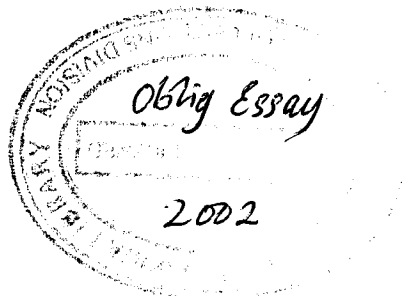
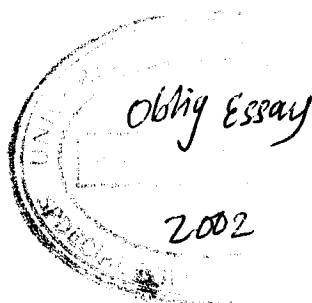


THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



**TITLE : THE IMPACT OF THE PUBLIC ORDER ACT
ON THE FREEDOMS OF SPEECH,
ASSEMBLY AND ASSOCIATION**

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DEDICATION

To my late Father

Thomas Kamusaki

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I wish to acknowledge with gratitude the unfailing and immeasurable support of my family and friends who have encouraged me all along to finish my law studies.

Special thanks goes to my Supervisor, Dr. Alfred Chanda for his illuminating ideas and suggestions on the improvement of this work.

Finally, I thank Mrs. C. Ngwira for typing this work.

PREFACE

The existence of the Public Order Act (POA) has been seen by a broad section of the Zambia populace as an obstacle to the enjoyment of political rights such as the freedom of speech, assembly and association and the deepening of the democratic process in Zambia.

The Public Order Act, inherited from the colonial government, has been widely seen as a mere tool by the government in power to suppress political dissent and discourage civil society from actively participating in matters of national interests.

The Police Force has been used by the Government in power to deny permits to the opposition and civil society to hold meetings and many citizens have been arrested in the past on trumped up charges in connection with the Public Order Act.

What has been the impact of the POA on constitutional rights in Zambia since independence? Can the POA be reformed? Can the Zambian legal system alone be counted on to offer solutions to this problem? What must be done to maintain the balance between upholding law and order on the one hand, and upholding the constitutional right of freedom of speech, assembly and association on the other?

This work will attempt to address these issues. This work will argue that it is not enough to amend the POA. What is required is to call for the complete abolition of the POA and the strengthening of other branches of law such as criminal law. The POA is inherently anti-democratic and anti-constitutional.

In order to achieve this, there is need to mobilise public opinion against the negative impact of the POA on freedom of expression assembly and association and the democratic process. Only a broad coalition of all forces in Zambia will lead to the abolition of POA and strengthening of the democratic process and in turn contribute to the overall development of mother Zambia.

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CHAPTER ONE

1.0 INTRODUCTION

This chapter is a general introduction to this work and will therefore try to define the major concepts with which this work is concerned.

The major concepts are: public order; Public Order Act; Freedom of speech, assembly and association.

It is important to note that this work seeks to show the impact of the Public Order Act on the freedoms of speech, assembly and association in Zambia.

1.1 PUBLIC ORDER

Public Order has been defined as “the state of peaceful co-existence among members of the public generally in which there is an absence of breach of the peace, fighting, rioting, disturbance or conduct which causes unreasonable interference or disturbance to quiet living.”¹

The main component of the above definition of public order have been defined by specific statutes, notably:

- ❑ The Public Order Act
- ❑ The Penal Code
- ❑ The Societies Act.

1.2 PUBLIC ORDER ACT

This work is concerned with the impact of the Public Order Act on the freedoms of speech, assembly and association.

The Public order Act (POA) regulates public meetings and processions. Anyone who participates in a meeting or procession for which a permit has not been issued may be arrested without warrant and charged with unauthorised assembly. The powers given to the police are vast and not amenable to any effective check. They can be considered to be unconstitutional as they violate the rights of expression, assembly and association.

The powers are not reasonably necessary for the preservation of public order and not justifiable in a democratic state.

1.3 FREEDOM OF EXPRESSION

Article 20(1) of the Zambian Constitution provides that:

“Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.”

Article 20(1) of the Zambian Constitution reflects Article 19 of the International Covenant on Civil and Political Rights, 1966 and the Universal Declaration of Human Rights, 1948, as well as Article 10 of the European convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

The guarantee afforded by Article 20(1) of the Zambian Constitution is very broad. Freedom of expression includes the right to hold opinions without interference, the right to receive ideas and information without interference and freedom from interference with one's correspondence.¹

However, freedom of expression is not absolute. Article 20(3) of the Constitution places restrictions on the freedom of expression by stating:

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or*
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in the legal proceedings, preventing the disclosure of information in confidence....;*
- (c) that imposes restrictions upon public officers;*

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society."

The legal system as can be seen imposed restrictions on the freedoms of expression and most of these laws were enacted during the colonial days in order to suppress the independence struggle. At independence, however, these repressive laws were not repealed and instead were carried over by the new post independence government. The democratic dispensation of 1991 has had no effect on these laws. This has been entrenched in the derogation clauses of the Constitution.