

**CRITICAL ANALYSIS OF THE PUBLIC ORDER
MANAGEMENT ACT 2013
LAW OF UGANDA**

**BY
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**A DISSERTATION SUBMITTED TO THE SCHOOL
OF LAW IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE AWARD OF
A BACHELOR OF LAWS AT KAMPALA
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UNIVERSITY**

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DECLARATION

I declare that this thesis is the original work of **OBADIA ISMAIL**, alone, except, where due acknowledgement is made in the text, it does not include materials for which any other university degree or diploma has been awarded, and has not been submitted for any Bachelors or Masters or PHD or Diploma in any University.

Dated and signed at Kampala International University.

Signed.....

Date.....03rd/September/2017.

APPROVAL

This research report by **OBADIA ISMAIL** has been under my supervision and is ready for submission, to be submitted to The School of Law in partial fulfillment of the award of a Bachelor of Laws at Kampala International University.

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DEDICATION

Special dedication to the almighty God for having enabled me completes this course successfully. To my beloved Parents Mr. OTIM PETER OBOK and Mrs. EUNICE ENOKA DUNGUPAI, the Loving family of my brother Dr. OTIM PATRICK COSSY and his loving wife Mrs. ESTHER TITIA KENYI, and to all my sisters and brothers, plus the entire family.

To the Great Intellectual family ,Forum for Ideas (FFI) and my friends, members of the legal bulls, for their support, love and encouragement in the entire period of my study.

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LIST OF ACRONYMS

POM Act/POMA	-	Public Order Management Act 2013
NCHRD-U	-	National Coalition for Human Rights Defenders Uganda
EHAHRDP	-	East and Horn and Africa Human Right Defenders Project
HRCU	-	Human Rights Center Uganda
UPR	-	Universal Periodic Review
HRD	-	Human Rights Defenders
UN	-	United Nations
Ss.	-	Section
FIDH	-	International Federation for Human Rights
UDHR	-	Universal Declaration on Human Rights 1948
ICESCR	-	International Covenant on Economic Social and Cultural Rights
IGP	-	Inspector General of Police
CCEDU	-	Citizen's Coalition for Electoral Democracy in Uganda
NRM	-	National Resistance Movement

LIST OF LEGISLATIONS

1. The 1995 Constitution of the Republic of Uganda (As Amended)
2. The Public Order Management Act 2013
3. The Judicature Act Chapter 13
4. The Penal code Act, Chapter 120
5. The Traffic and Road Safety Act
6. Political Parties and Organizations Act
7. The Press and Journalist Act, Chapter 105
- 8.** The public order Act 1986 (Laws of United Kingdom)
9. The Public Order Act, 2 Cap. P. 42 Laws of the Federal Republic of Nigeria, 2004.
10. Criminal Justice and Public Order Act of 1994,

LIST OF CASES

1. Muwanga Kivumbi v. Attorney General (Constitutional Petition No. 9 of 2005)
[2008] UGCC 4 (27 May 2008)
2. Speaker of the National Assembly v. De Luke (1999) 4 S.A (SCA)
3. Onyango Obbo and Anor v. Attorney General Constitutional Appeal No. 2 of 2002
4. Chukwuma & Ors Vs. Commissioner of Police
5. ANPP v. Inspector-General of Police September 22, 2003

ABSTRACT

The Public order Management Act Came into force on 2nd October 2013, ever since, it has been followed by a lot of protests and criticisms, Some groups of people declared that they would exercise their right to freedom of assembly and demonstration unhindered while the Police state on the other hand that their fundamental duty is to maintain law and Order as per the constitution and the POM Act. This study is to critically analyze the Public Order Management Act and draw a correlation therein with the various human rights violations, if any, that are accrued to it and examine, whether the relevant law enforcers such as;

- a) The police, the organizers or the participants in public assemblies, are responsible for the negative effects that arise from the public assemblies, meetings and gatherings,
- b) Are the challenges of the POM Act as a result of Implementation, the law or its interpretation?
- c) Identify the possible solutions of how to improve Public Order Management and protection of those that would like to assemble orderly

This research was based on a cross sectional descriptive and analytical survey designed to show the extent to which public order Management Act faces challenges, and its impact on human rights as far as the provision of the 1995 Constitution of Uganda and international human rights laws are concerned. The data collection method included primary and secondary sources; secondary sources include relevant documents and reports, primary data collection methods include revision of the POM Act, similar laws in other jurisdictions, available textbooks, law journals and publications relating to the topic.

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

The right to peaceful assembly and association is one of the traditional civil and political rights an individual has. They are classified among the rights designated as first generation rights, which emphasizes the great importance placed on this right; the right is an extension of the right to personal liberty. The uneven handling of the 'Walk-to-work' campaigns and agitation for improved living and trading conditions brought to the fore the need to handle public order situations in a professional manner, and to enact a comprehensive law on public order management in Uganda, which professes to the need of an open and democratic country. There have been accusations and counter accusations on the use of public order situations. Those who want to use public order to advance their cause have accused the police and other security agencies of brutality and indiscriminate violence¹

The legal sector in Uganda comprises of various institutions concerned with the provision of legal services and maintenance of order, the administration of Justice and the enforcement of legal instruments or orders. The main institutions as established by the 1995 Constitution of the Republic of Uganda include the Ministry of Justice and Constitutional Affairs, the Judiciary, the Parliament, the Uganda Police Force, the Uganda Law Reform Commission, the Uganda Human Rights Commission. The following institutions and departments are key players in the implementation of legal provisions and administration of Justice;

- Uganda Police Force
- Uganda Prison Service
- The office of the Director public prosecution
- Inspector General of Government
- Parliamentary Commission
- Ministry of Local Government
- Ministry of Ethics and Integrity and
- Ministry of Justice and Constitutional Affairs.

¹the jlos bulletin issue 002, 2013 published by Justice, Law and Order Sector Secretariat ,at "article about Word from His Lordship the Chief Justice of Uganda"

1.1 Background to the Study

Uganda is a landlocked country located in the East African region with a population according to the recent census of 34.9 million, which grows at annual rate of 3.03%.² though current worldometer puts it at 41,283,720³, it is bordered by five countries, with Kenya to the East, Tanzania to the south, Rwanda to the South West, Democratic Republic of Congo to the West and South Sudan to the North⁴. Given that Uganda was a British colony, the English legal system and law are predominant in Uganda; its legal system is based on English Common Law and customary law. However, customary law is in effect only when it does not conflict with statutory law⁵. The laws applicable in Uganda are statutory law, common law; doctrines of equity and customary law⁶

The Constitution is the supreme law in Uganda and any law or custom that is contrary to it is null and void to the extent of the inconsistency⁷. Uganda has adopted 4 constitutions since her independence. The first was the 1962 constitution; the 1966 pigeon hole Constitution, which was replaced by the 1967 Constitution and in 1995, a new Constitution was adopted and promulgated on October 8, 1995. The other written laws comprises of statutes, Acts of Parliament and Statutory Instruments; these are published in the National Gazette

1.1.1 What is Public Order?

Public order is the domain of police or other policing agencies, courts, prosecution services, and prison, all of which make up the criminal justice system. Understand that this system is chain-linked, all elements need to work together in order to achieve the day today peaceful state of our surrounding with normal course of business as standardized in a democratic society.

² The National Population and Housing census, 2014 provision report, p.15. Available on line at <http://www.ubos.org/onlinefiles/uploads/ubos/NPHC/NPHC%202014%20PROVISIONAL%20RESULTS%20REPORT.pdf>. Accessed on 23rd June 2017

³ As of Monday, March 27, 2017, based on the latest United Nations estimates.

⁴ Ministry of Lands, Housing and Urban Development, The Uganda National Land Policy, 2013

⁵ Section 15(1) of the Judicature Act Cap 13

⁶ Supra note 5 (Section 14 and 15)

⁷ Art 2 of the 1995 Constitution of the Republic of Uganda

1.2 Statement of Problem

There is no doubt that Public Order is a necessary condition of both Safe and Secure Environment and Rule of Law⁸, and so in order to achieve the same, it was necessary for a law⁹ to be enacted to that effect to safe guard and protect the citizens of Uganda since Protests and demonstrations are considered an avenue for people to be heard by their governments, regulation of the same was inevitable. In Uganda protests occur quite often perhaps indicating that citizens make frequent demands. There is considerable agitation for the safety of lives and properties during protests. Therefore, to ensure that protests are peaceful The Public Order Management Act was enacted to enable the police to step in to deter or control what would seem to cause public disorder. Sadly, during the so-called peaceful protests, lives are often lost and properties destroyed. This research is triggered by the need to understand and critically analyze the provisions of the Act (supra) visa avis the rights enshrined under the constitution. The essence of this is to answer the question as to whether there are interventions that need to be in place so as to curtail the high rate of casualties during protests as a result of polices enforcement of the POM Act. This study was qualitative adopting a documentary analysis approach. The study found among others that there is a need to review public order policing in order to eliminate the destruction of property and other negative results that arise from protests or public meetings. Some recommendations and key findings are also discussed.

To enable public order, the mission may need a very broad spectrum of capabilities that goes beyond establishing institutional capacity to include disrupting and dismantling spoiler networks that subvert the rule of law¹⁰, in Uganda most of the target area has been Kampala (the capital city)

⁸The United States Institute of Peace (USIP) Article at USIP blog, In the print edition, it resides within Section 7: Rule of Law

⁹Public Order Management Act

¹⁰ Ibid see [Section 6.5.10](#); for a discussion on economic-based threats, see [Section 9.6](#).

1.3 General Objective

The Research Critically analyses the Public Order Management Act, in relation to fundamental Human rights

1.3.1 Specific Objectives

Specifically, it will:

- a) Examine how the law enforcers most especially, the police, the organizers and participants, contribute positively or negatively to public order
- b) Is the Public Order Management Act a law that is reasonably justifiable in a democratic society?
- c) Identify the possible solutions of how to improve Public Order Management and protection of those that would like to assemble orderly

1.4 Research Questions

- a) Is it the Provision of the Public Order Management Act that leads to the various human Rights violations by the law enforcers such as police, or the organizers and participants who cause the same?
- b) Are the challenges of the Public Order Management Act as a result of Implementation, the law, or interpretation?
- c) What are the possible solutions of how to improve the legal frame work, its interpretation and implementation?

1.5 Scope of the Study

The study was carried out from Kampala International University Library (The Eid Basajabalaba Memorial Library Law school Department) was used as a source of information to the study; the target will mainly focus on Uganda, though there will be an analysis on The United Kingdom, and Nigeria.

1.6 Data Collection Method

The data collection method included primary and secondary sources; secondary sources include relevant documents and reports, primary data collection methods

include revision of the Public Order Management Act, similar laws in other jurisdictions, available textbooks, law journals and publications relating to the topic. Due to technology advancement, internet information also proved to be a very important source.

1.7 Justification of the study

Although protecting public order is a legitimate concern recognized by international instruments, the scope and nature of the restrictions provided by the POM Act go well beyond the restrictions permitted under international and regional human rights law and therefore contradict Uganda's international and regional commitments.

*"Whereas it is important to ensure law and order during protests, the POM Act seems to be intended to stifle freedoms of association and expression and thereby to undermine civil society working space by setting very difficult conditions to hold public meetings, demonstrations and any form of gathering in public places"*¹¹, a time has therefore come when the POM Act needs to be critically analyzed. As a country, we should be adequately prepared to come up with acceptable recommendations that will reduce the human rights limitation caused by this Act. Such a study is necessary therefore, because a sound policy and review is vital to provide a framework for safe implementation and interpretation as well as necessary amendments of this Act in Uganda to ensure that all the interests of Ugandans are met.

1.8 Review of literature

For the purpose of this study several articles and laws shall be relied upon; the most important issue at the heart of this study is the critical analysis of the Public Order Management Act. Prior to the enactment of the POM Act, the topic on public order Management in Uganda had received very little attention from academic scholars. This topic has been subject to prolonged public debate, with not so much literature accompanying the debate. One of the prominent issues that have arisen since the onset of the law's enactment is its effect on other fundamental human rights

¹¹Stated Gerald Staberock, Secretary General of the World Organization Against Torture (OMCT)

guaranteed under the constitution¹² and other international instruments. From the process of its enactment to the aftermath, the POMA has faced a lot of protest from both politicians and civil activists alike, Yet the subject of Public Order has not yet been extensively researched, and therefore not much has been written about it, At the same time, Whatever that might have been written about it is of a more general nature, very few writers have attempted to treat Public Order as an independent branch of public law relating to human rights yet it is an area which requires an in depth treatment most especially in present political circumstances which specifically look at The Public Order Management Act , this study unlike the existing literature, treats the POM Act in a broader manner and gives its readers a clear picture of what the Act is all about citing its shortcomings, criticisms as well as necessary recommendations.

Article 19, Legal Analysis; Uganda: Public Order Management Act¹³

This article discusses that despite some positive amendments, the Act remains seriously flawed from a freedom of expression perspective hence calls on the Ugandan Parliament to reform the Act in line with international human rights standards to ensure that the rights to freedom of expression and of peaceful assembly are protected. It further states that many of the problems with the Act could have been avoided if the drafting process had been more transparent, and had more effectively engaged stakeholders including civil society organizations .it also calls on the Minister of the Interior to ensure that any implementing regulation taken under section 14 of the Act should comply with international standards. Absent reforms to the Act itself, the implementing regulations should seek to address the shortcomings of the Act as far as possible.

NCHRD-U submission to the Universal Periodic Review (UPR) on Uganda

This report suggested that Uganda should be reviewed by the UPR mechanism of the UN Nations Human Rights Council, that. During its previous review in October 2011, the Republic of Uganda accepted 110 recommendations out of 171, including

¹² 1995 constitution of the Republic of Uganda (As Amended)

¹³ ARTICLE 19 legal analysis, "Uganda: Public Order Management Bill", 13 August 2013, available at: <http://www.article19.org/resources.php/resource/37201/en/uganda:-public-order-management-bill>

three recommendations on issues specific to the operating environment of HRDs: thus the same should be implemented with regards to the Public Order Management Act

1. Investigate and hold accountable police and security officers who attacked human rights defenders, journalists and civilians during the post-election period;
2. Investigate and prosecute all persons found guilty of extrajudicial killings and attacks on human rights defenders;
3. 3. Ensure that human rights defenders can perform their legitimate duties free from any harassment and intimidation in line with international standards including the UN Declaration on Human Rights Defenders.

Although Uganda accepted to investigate and hold accountable police and security officers who attacked human rights defenders, journalists and civilians during the post-election period, those responsible were never prosecuted and impunity for the violations prevails. The 2016 elections, like the 2011 polls, were deeply flawed with increased infringements on the rights to freedom of expression, association and peaceful assembly, especially for human rights defenders, journalists and political opponents. Uganda's obligation under Article 12 of the UN Declaration on Human Rights Defenders holds the government responsible of taking necessary measures to protect human rights defenders. In this document NCHRD-U, EHAHRDP and HRCU acknowledge the positive steps taken by the government of Uganda to address issues concerning HRDs and outline a series of urgent concerns relating to the operating environment in which civil society and journalists have been systemically targeted by the government of the Republic of Uganda since 2011.

This report illustrates several concerning examples, which are indicative of a pattern of systemic threats faced by HRDs in the exercise of the rights to freedom of expression, association and peaceful assemblies when relying on The POM Act.

Reforming the Law and Order Sector as a Key Element of the Public Service Transformation: Lessons learned from the South African Police Service by MOHAMED LATIFF WAHAB, Director South African Police

Police reform in South Africa must be understood within the unique political environment of South Africa's transition to democracy. This was shaped by a negotiated settlement, which saw the liberation movement agreeing to retain all Apartheid civil servants (including police officials) in their previous positions hence reducing public demonstrations, the creation of a power-sharing Government of National Unity for the initial post-democracy period; and the establishment of a Truth and Reconciliation Commission which dealt with some Apartheid police abuses also played a large part in south Africa's public order .The recognition of the fact that people have rights to assemble and association is nonnegotiable, the role of the police is to only guide and direct where necessary to ensure that such assembly is a peaceful one, the police can only step in only and only when it has become unlawful gathering owing to violence or the destruction of public property.

Gbit.com, know books in the article Law and Order in Our Community

This article defines Law as the rules of conduct established and enforced by superiors (authority, legislation or custom of a given community, state or group). When the people in a community abide by the laws made for them by their superiors, orderliness comes to that community. This article, tackles why law and order is needed in the community, how law and order is maintained in the home, school and community and some characteristics of a good law.

Law and order is needed in every community, any community where the laws are not effective or followed, results in confusion, Law brings order.

Law and order is important because it acts as a guideline as to what is accepted in society.

- I) Law and order is necessary in order for a society to maintain peace and remain problem-free
- II) Law and order is important in resolving disputes over limited resources e.g. land litigation

- III) Law and order encourages people to do the right thing for a common good.
- IV) Law and order also helps to protect lives and property
- V) When laws are made, they must be enforced that is, they must be put to use or applied.

I) Law and order is maintained when people obey and comply with the law. Obedience and compliance helps promote peace and stability.

II) Law and order can also be maintained when people have moral values, thus they have conscience, integrity, are honest, responsible and are determined to live upright lives.

III) Respecting one another. Respecting people's views is another way law and order is maintained in the community, school or home.

IV) The fear of being caught and punished when one violates the law helps to maintain law and order. The fear of being sanctioned deters people from breaking the law

Law and order is needed in every community.

Any community where the laws are not effective or followed results in confusion.

Law brings order

The 1995 Constitution of the Republic of Uganda (As Amended)

This is the grand norm of the country from which all other laws derive their validity, it guarantees fundamental human rights under the 4th chapter and calls upon all bodies, institutions and persons to be bound by it in equal measure and capacity.

The public order Act 1986, An Act to abolish the common law offences of riot, rout, unlawful assembly and affray and certain statutory offences relating to public order; to create new offences relating to public order, The Public Order Act 1986 is an Act of the Parliament of the United Kingdom. It creates a number of public order offences. They replace similar common law offences and parts of the Public Order Act 1936. It implements recommendations of the Law Commission

1.9 Research methodology

This study is largely theoretical. This is because the public order management Act is still in its infant stages, as independent and relevant law which has just been recently enacted.

Information has been collected from individuals working with relevant institutions including the Uganda Police Force, Uganda civil society and the Ugandan Parliament. The internet has also provided a lot of information from sites dealing with public order management

Primary documents to be used is the, Public Order Management Act 2013 (Laws of Uganda). There are also international legislations and similar laws from other jurisdictions on public order management which include The Public Order Management Act 1986 (laws of United Kingdom)

My study is descriptive, analytical and prescriptive. It is descriptive because it defines the current laws relating to public order management; it is analytical as it examines the POM Act 2013 in line with other similar laws from other jurisdictions and the international standard as expected. It is also prescriptive as it gives recommendations in the areas where change is necessary to improve on the public order loop holes.

CHAPTER TWO

A CRITICAL ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAME WORK AND THE PROVISIONS OF THE PUBLIC ORDER MANAGEMENT ACT

2.0 Introduction

On October 2, 2013, President Yoweri .K. Museveni signed into law the Public Order Management Act (POM Act), which was passed by Parliament in August of the same year. It aims to “provide for the regulation of public meetings; duties and responsibilities of police, organizers and participants in relation to public meetings; [and] to prescribe measures for safeguarding public order”, instead of giving powers to the police to protect the enjoyment of freedoms. The Public Order Management Act has 4 parts and 15 sections and a schedule.

Section 2 of the Act provides for the “**principles of managing public order**”, and thus provides that “the underlying principle of managing public order is to regulate the exercise of the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition in accordance with articles 29(1) d and 43 of the constitution

Subsection 2 of the same provides to the effect that, the word “regulate” means to ensure that conduct or behavior conforms to the requirement of the constitution.

2.1 Regulation of Public Meeting

The Regulation of Public Meeting under the POM Act is provided for under Part 2, section 4 defines public meeting to mean “a gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest. ”

Section 4(2) excludes the following from amounting to a public meeting:

- A meeting convened and held exclusively for a lawful purpose of any public body;
- A meeting of members of any registered organisation, whether corporate or not, convened in accordance with the constitution of the organisation and held exclusively for a lawful purpose of the organisation;
- A meeting of members of a trade union;

A meeting of a social, religious, cultural, charitable, educational, commercial or industrial purpose; and

A meeting of the organs of a political party or organisation, convened in accordance with the constitution of the party or organisation, and held exclusively to discuss the affairs of the party or organisation.

The right to freedom of peaceful assembly is an essential component of democracy that provides individuals with amongst other things the opportunity to express political opinion or protest government action. Article 29 of the Constitution guarantees this freedom. As such, it is the duty of the state to respect and fully protect the rights of all individuals to assemble peacefully and associate freely. This includes protecting the rights of persons espousing dissenting views or beliefs, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with applicable international human rights law, and their responsibilities¹⁴.

This is not to say that the freedom comes with no restrictions. In democratic Societies, the exercise of the right to peaceful freedom of assembly carries with it certain responsibilities for individuals and groups. It cannot be used for the propaganda of war or any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence as well as ideas or theories of superiority of one group of persons of color or ethnic origin. However, the definition at s.4 is too restrictive it singles out those public meetings which are held to discuss policy actions or government failures and groups trying to form pressure groups to protest government action, moreso, even the gatherings which are excluded from being public gatherings are still being limited or stopped by police from assembling¹⁵. In a democracy where the Constitution guarantees the right to peaceful assembly, the right should exist with as few restrictions as possible and it is not permissible to target a particular group or kind of group for special restrictions, nor should it be necessary to specify a particular number of participants. Any

¹⁴Commonwealth Human Rights Initiative (CHRI)
www.humanrightsinitiative.org

¹⁵ statement by President of the Democratic Party Norbert Mao on NBS Frontline Archive september 2017

definition in this Act should take care to conform to the requirements of Article 21 of the International Covenant on Civil and Political Rights, to which Uganda has acceded:

"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 (or republic), the protection of public health or morals or the protection of the rights and freedoms of others." From the Definition under the POM Act, a gathering can be construed to the effect to mean that 3 people or more can constitute a public meeting, if those groups of people are discussing political matters. This is a significant violation of the Constitution of Uganda and international human rights law. This section, as drafted, means that a group of friends that happen to discuss politics whilst walking to a cafe could constitute a public meeting, and, in accordance with this Bill, be acting illegally if they do not have permission to meet. This is a blatant breach of the basic human rights.

Although the Act allows an exception for people meeting for social reasons under ss (2), it is possible that the police could say it was a meeting for political purposes instead of social reasons. Various sections of this Act, including section 6 are repugnant to the constitution, the constitutional Court has previously unanimously held that a section of the Police Act, that attempted to provide the Inspector General of Police with broad powers to prohibit demonstrations, was a breach of the Constitution and hence the section was declared null and void.¹⁶

The government should be reminded that any limitations placed on the rights enshrined in the Constitution must those that are in accordance with what is acceptable in a free and democratic society (Article 43 Constitution):

¹⁶ Muwanga Kivumbi v Attorney General (Constitutional Petition No. 9 of 2005) [2008] UGCC 4 (27 May 2008)

The right to freedom of assembly and to demonstrate together with others peacefully is a fundamental right guaranteed under Article 29(1) (d) of the Constitution of this country....While I agree that such a right is not absolute, any limitation placed on the enjoyment of such a fundamental right like this one, must fall within the limit of Article 43 (2) (c) of the Constitution of this Country which prohibits:-

"Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in this Constitution." [GM Okello JA, stated in *Muwanga Kivumbi v Attorney General* (Constitutional Petition No. 9 of 2005) [2008] UGCC 4 (27 May 2008)],

"It is highly likely that a law that requires gatherings of 3 or more people to have permission of the police before they discuss political matters would be judged as unacceptable in a free and democratic society and hence unconstitutional."

Section 5, Notice of public meeting, and Section 6, Notification by authorized officer

As outlined above, the right to peaceful assembly is protected at both a national level in the Constitution of Uganda and international level in the International Covenant on Civil and Political Rights and other human Rights Conventions such as UDHR AND ICESCR. The requirements of these sections are that an organizer must give detailed notice of a meeting, and moreover provisions for prosecution and penalty where this is not done, is a violation of that fundamental right. Such requirements are not necessary restrictions, but rather unfair and unlawful burdens placed on citizens. The State that has an obligation to protect the rights of all citizens, and citizens are not to be required to give notice that they will, quite simply, be exercising their rights. The scheme outlined in these two sections of the Act is not permissible under international law, nor does it protect the rights guaranteed by the Constitution. Rather, if the State seeks to co-operate with the public, what can be lawfully requested is that persons inform the police if a public event or meeting is planned. This cannot be a mandatory requirement and, further, in the event that the police are informed of a planned event, then it is their obligation under the law to

make any arrangements necessary. They cannot prevent people from meeting or assembling; they do not have the option to either allow or disallow the assembly, nor otherwise seek to restrict such peaceful and lawful activities. This is not to say that police cannot discuss arrangements with organizers, for example, in the event that they are informed about a planned event, they are not to put any pressure on those persons, or take any other actions, to cancel or restrict a peaceful gathering in any way.

It's worth noting that the Constitutional Court declared s.32(2) of the current Police Act "null and void" in *Muwanga Kivumbi v Attorney General*¹⁷ that section reads as follows: "Power to regulate assemblies and processions.....32(2), If it comes to the knowledge of the inspector general that.....is intended to convene any assembly or form any procession on any public road or street or at any place of public resort, and the inspector general has reasonable grounds for believing that the assembly or procession is likely to cause a breach of the peace, the inspector general may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession....."

It can reasonably be expected that any attempt to make a law that purports to include similar, or even more restrictive, provisions would be similarly found to be unconstitutional and hence struck down as null and void.

Finally, in regards to s.5 (5) specifically, the way in which it is currently drafted does not make sense within the section. The notice referred to must be the notice to be given in writing by the person intending to hold a public meeting in any event, there should be no need for a certified document under the hand of the IGP when the notice itself is kept and would be available as direct evidence in any proceedings.

This provision seriously on punishment jeopardizes the exercise of the right to peaceful assembly, as organizers should not be subject to criminal sanctions or administrative sanctions resulting in fines or imprisonment and is withstanding

¹⁷ibid

section 2 subsections 2 which provide to the effect that the regulation should conform to the requirements of the constitution¹⁸.

2.2 Duties and Responsibilities of Police, Organizers and Participants

The POM Act grants powers to the Inspector General of Police (IGP) or an authorized officer "to regulate the conduct of all public meetings in accordance with the law" under section 3. section 8 of the POM Act provides to the effect that; "subject to the directions of the inspector General of Police, an authorized officer or an authorized officer or any other police officer of or above the rank of inspector, may stop or prevent the holding of a public meeting where the public meeting is held contrary to this Act" ,this provision reintroduces Section 32 of the Police Act, which was found unconstitutional by the Constitutional Court in the case of **Muwanga Kivumbi vs. Attorney General (Constitutional Petition No.9/2005)**. The Court noted that Section 32 of the Police Act required Ugandans to seek permission from the IGP before exercising the right to demonstrate and assemble, which contradicts Article 29 of the Constitution. The POM Act therefore contradicts Article 92 of the Constitution of Uganda, which provides that "Parliament shall not pass any law to alter the decision or judgment of any court as between the parties to the decision or judgment".

The application of the law would be giving the Uganda Police Force power to impose terms and conditions not in tandem with the provisions of Article 29(1) (d) of the Constitution. An Act of Parliament cannot supersede the Constitution¹⁹. The Constitution is supreme and any law that is not in conformity with its provisions is null and void²⁰. The right and freedom to assemble is the aggregate of the individual liberty of speech which is one of the essential foundations of a democratic society, many human rights Advocates including Nicholas Opiyo of Chapter 4 Uganda have numerously opined that the police has highly become political by censoring the political activities of the Opposition and those perceived to be competing against the ruling National Resistance Movement party, thus discriminatory towards the

¹⁸ Public Order Management Act 2013

¹⁹ Article 2 of the 1995 constitution of the Republic of Uganda

²⁰ Article 2 of the constitution (supra note 1)

enjoyment of rights which violates the rule of law and thus repugnant to article 21,²¹ which calls for equality before the law of every person or organisation.

Subsection 8(3) refers to the authorized officer having regard to “the rights and freedoms” of persons in issuing orders, including orders for dispersal of a public meeting, this section is too brief and vague to be properly effective in protecting the rights of persons under both Ugandan law and international law. The section should be drafted more firmly, and state that the officer must have regard to the rights and freedoms. This would include stating explicitly that the police only have the right to order the dispersal of unlawful and/or violent assemblies, and not otherwise. Further, the law should specify which rights and freedoms are being referred to. For the purposes of this legislation, it should at least specify the rights and freedoms granted under Ugandan law, as well as the human rights of all persons concerned.

Section 9 provides for the Duties of Police

Given the co-operative spirit ostensibly promoted by this Act, ss.10(c) may be better drafted to include the idea that the Police shall work together with the organizers and participants of public meetings to preserve law and order. Otherwise, the duties of the Police in this context are to maintain public safety by keeping the peace, and to protect certain fundamental rights, in particular:

- People’s right to life, liberty and security of the person; and
- A person’s right to peaceful assembly.

However, the section does not make this clear. Furthermore, including a duty to disperse a public meeting where the “police officer has reasonable grounds to believe that a breach of peace is likely to occur” means that a police officer has to take caution.

Responsibilities of organizers and Participants as per section 10

The responsibilities enumerated in Section 10 (1) (a) to (f) place unfair burdens on organizers. Depending on the nature of the event or meeting, they could not possibly completely ensure that all participants are unarmed and peaceful or control all statements made to the media, for example. It is unfair and unduly restrictive to

²¹ supra

attempt to make the organizers responsible for the actions of individuals that are outside of their control and all such provisions that attempt to do so should be removed.

In particular, s.10 (1) (d) is problematic in the sense that it interferes with freedom of speech and expression, and in any event is too vague. For example, what would happen in the case of a person or group of persons who want to protest a particular law? For these reasons, it should be deleted. Also, in s.10 (1) (e), the time limit of 7pm should be removed.

If the legislation still seeks to encourage organizers to take some such actions, then it should be re-drafted to make the provisions more reasonable and not mandatory obligations. For example, ss.10(1)(c) could instead provide: "make all reasonable attempts to advise all participants, as far as possible, that they should not carry arms and should conduct themselves peacefully". In relation to all the obligations placed on organizers, the legislation should contain a standard that, rather than expecting organizers to be able to control all participants, requests them to make reasonable attempts to advise participants of their own obligations. Further, there should be no penalties attached to organizers in regard to these provisions at all.

Finally, it is submitted that ss.10 (3) and (4) should be removed completely. As already stated, it is unfair and unreasonable to hold organizers responsible for the actions of individual participants. This provision would hold them financially responsible for actions or events that are potentially completely out of their control or foresight. Rather, it is the persons who cause any loss or damage that should be held responsible, unless the organizers themselves can be held to account as encouraging or otherwise directly contributing to the loss or damage.

2.3 Gazetted and Restricted Areas

Section 12 the POM Act grants the Interior Minister the power, subject to Parliamentary approval, to declare any area as "gazetted" where public meetings are absolutely prohibited, the POM Act prohibits public meetings at and around public

institutions by designing them as “restricted areas”, where entry is prohibited with punishment of two years’ imprisonment and/or a fine of 960,000 Uganda shillings or both (Article 13(3)). These areas notably include Parliament and Courts. It is also worrying that wide-ranging and discretionary powers are given to the law enforcement authorities to disperse spontaneous assemblies under certain vaguely defined circumstances (section 7(2)) and public meetings “in order to prevent violence, restore order, and preserve the peace” (section 9(2)(f)).

The POM Act may lead to a further deterioration of the civic space in Uganda, and may hamper civil society actions that involve discussions related to governance and accountability, rule of law and more generally human rights, or anything within the spectrum of “public interest” if public discussion’s or meetings are only to be held provided police permission and supervision is granted, Defenders of human rights have critiqued the POM Act on grounds that;

“The law clearly contravenes international and regional standards, including Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 9, 10 and 11 of the African Charter on Human and Peoples’ Rights, and also violates Article 29 of the Ugandan Constitution that promotes and protects the rights to freedom of expression and association. Indeed, instead of giving powers to the police to protect the enjoyment of freedoms, this new law empowers the police to restrict the enjoyment of rights”²²

The United Nations Declaration on Human Rights under concerning the recognition of the right of all persons “individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms” under (Article 12.(1) as well as the right of all individuals to meet or assemble peacefully (Article 5) ensures the protection of this fundamental human Rights and thus according to Article 12(2), States Parties are called upon to/should take “all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary

²²said Karim Lahidji, President of the International Federation for Human Rights (FIDH)

action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”.

Accordingly, the Ugandan Government should comply with its obligations under international and regional law to respect and protect the right of everyone in Uganda to exercise their rights to freedom of expression and peaceful assembly by conforming provisions of the POM Act that are contrary to the effective exercise and enjoyment of these fundamental rights, which in turn also affect the important role of human rights organizations and defenders in the country.

Section 12 has the potential to be misused. There is no provision for oversight of, or appeal against, the Minister’s decision to declare a particular area unsuitable for public meetings. This draft Bill is entirely unsatisfactory in this section, especially in the following areas:

- The Bill does not outline the factors to be considered in making such a decision. Further, the reasons for making such a decision should have to, at least, be put down in writing. Both of those steps lead to at least some transparency in the decision making process it is not enough to merely declare an area a gazetted area.
- The Minister is given complete discretion to declare an area unfit for public meetings by statutory instrument. The Minister’s discretion should, at the very least, be able to be subject to challenge in the public interest or by persons who might be directly affected by such a decision.
- The Bill provides for a statutory instrument that declares an area unfit to be in force for one year, and thereafter renewed by another statutory instrument. Again, the Bill does not outline the factors or criteria to be considered in the renewal process. Further, the procedure outlined would seem to place the instrument before the parliament for approval and resolution and presumably review only after a period of one year. It is not satisfactory that such parliamentary or legislative oversight is only envisaged after one year; rather,

the Minister's decision should be exposed to that kind of oversight in the initial instance of making the decision.

It should be noted, at this point, that the fact that an area might continue to remain unfit is itself an indication that governance, regular policing, maintenance of law and order and safety and security in that area has completely failed, the section is drafted in such a way as to seem predisposed to a decision against persons wishing to hold a public meeting in a declared place. The section should be redrafted to give full expression to judicial discretion, and to state that the Magistrate will hear from both parties and will simply decide whether or not a public meeting should be allowed to proceed in the place.

CHAPTER THREE

THE PUBLIC ORDER MANAGEMENT ACT VIS AVIS HUMAN RIGHTS AND DEMOCRACY

3.0 Introduction

The dividing line between law and order and public order is very thin. Any violation of law is a law and order issue although not all such violation of law is an issue of Public order. Maintenance of public order is without doubt a function of governance, Public order is largely associated with the way people conduct themselves during public gatherings, demonstrations or a procession that determines or qualifies the situation to be referred to as public order or disorder²³.

Importance of public order Peace and public order are critical for any economic development aspirations. Therefore efficient and effective management of public order can facilitate economic development as well as survival of a vibrant democracy. Needless to say, it is impossible to seriously pursue development goals in a situation of public disorder. Maintaining public order safeguards the weaker sections of society who almost always suffer in any situation of public disorder.

A host of proactive measures are in place to pre-empt public disorder, these go beyond the ordinary police mandate, and every institution of government exists to proactively contribute to public order through its respective mandate. When such mandate is effectively implemented, it creates a situation of public order; and the reverse is true. In a way, each agency in its own way participates in public order management. The failure of the proactive measures to bring about or maintain public order may result into reactive and often forceful enforcement of public order, sometimes with disastrous consequences. Nevertheless, any regulation of public order situations should be for the objective of facilitating the exercise of the rights and freedoms in such a situation than to completely prevent and prohibit it. The core

²³Reforming the Law and Order Sector as a Key Element of the Public Service Transformation: Lessons learned from the South African Police Service written by MOHAMED LATIFF WAHAB, Director South African Police, at page 22

of public order management should be informed by the need for pro-active policing of order rather than reactive policing of disorder.

Appropriate response is critical so the actions of police should always be aimed at a de-escalation of the violence. Experience has shown that the use of force often negatively amplifies situations that would have otherwise been resolved in a non-violent manner or fizzled out altogether even when situations get out of hand as they have done²⁴, the inevitable use of reasonable force should be based on fine judgment by well-trained and well facilitated commanders who know that it would help public order much more than not using it at all.

Understanding the complexity of the situation, including the politics therein, the crowd dynamics and psychology and responding appropriately is the key to successful public order management according to experts²⁵.

Although protecting public order is a legitimate concern recognized by international instruments, critics have argued that the scope and nature of the restrictions provided by the POM Act go well beyond the restrictions permitted under international and regional human rights law and therefore contradict Uganda's international and regional commitments.

Public order is a significant component of the public interest; alongside public security, public health and public morality. It is one of the factors for which most human rights are legitimately limited²⁶. The major factor though is that human rights are limited in order to safeguard the rights of others. Such human rights include the freedom to assemble and demonstrate with others peacefully and unarmed that is guaranteed under the Ugandan Constitution²⁷

²⁴ Michael Kemal's South Africa superintendant of Police(as he then was in his Book Public Order Management at page 49 1995

²⁵ Supra note 1 at page 67 Para 4

²⁶ Article 43 of the 1995 Constitution of The Republic of Uganda (As Amended)

²⁷Article 29(1)(d)(supra)

3.1 Whether or not, the POMA is repugnant to the constitution as far as limitation or deprivation of other rights stipulated therein are concerned

Article 92 of the Constitution²⁸ provides that Parliament shall not pass any law to alter the decision or judgment of any court as between the parties to the decision, On May 27, 2008, the Constitutional Court in **Muwanga Kivumbi versus Attorney General**²⁹, declared Section 32(2) of the Police Act unconstitutional and inconsistent with the provisions of Article 29(1) (d) of the Constitution. Despite the existence of the binding judgment of the Constitutional Court, Parliament went ahead and enacted the Public Order Management Act, 2013, with a provision under Section 8(1) similar to the annulled Section 32(2) of the Police Act. This was a deliberate decision by government to re-introduce the same law that court had declared unconstitutional. The Attorney General as the principal legal adviser of government³⁰ should have offered guidance to the ministry responsible and Parliament as an institution when that Bill was tabled in Parliament, When the Constitution sets out parameters, those parameters must be complied with.

The Constitution specifically bars Parliament from legislating laws intended to apply retrospectively to defeat and alter the decision of any court as it is the case with the Public Order Management Act, 2013³¹. The Constitution is the ultimate source of all lawful authority as the supreme law in the country. All persons and organs of the State are bound by the Constitution³². The decision of the Supreme Court of South Africa in the case of **speaker of the National Assembly versus De Luke**³³ is very instructive on the subject as follows;

"The constitution is the ultimate source of all lawful authority in the country. No Parliament, however bona fide or eminent its leadership, no president, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the

²⁸ 1995 constitution of the Republic of Uganda (As Amended)

²⁹ Muwanga Kivumbi versus Attorney General Constitutional Court in constitutional petition No. 9 of 2005,

³⁰ Article 119(4)(a) of The 1995 Constitution of the Republic of Uganda (As Amended)

³¹ As stated By Prof George W. Kanyeihamba a retired Supreme Court judge (gwkany@yahoo.com) in his article *the constitutionality of the Public Order Management Act*. July 26 2015

³² Article 2 (supra note 1)

³³ speaker of the National Assembly versus De Luke 1999 (4) S.A (SCA)

constitution. Any citizen adversely affected by any decree, order or action of any office or body, which is not properly authorized by the constitution is entitled to the protection of law.”

3.2 Concerns on the Effects of POM Act on democracy

In every democratic society, the rights of citizens are fundamental. Public order management is part of a conflict management culture which is a result of a democratization process. The conflict requires striking a balance between the enjoyment and practice of one’s basic human and constitutional rights without infringing on the human and constitutional rights of others. The issue is that one person’s exuberance on the street according to the law and order enforcement agencies should not constitute an annoyance to another. It is a cardinal duty therefore, of whoever is exercising their rights to duly respect the rights of others. Public order management has of necessity to do with ensuring the balance between enjoyment of human rights and freedoms on the one hand, and fulfillment of attendant duties and responsibilities on the other, Every democratic society adheres to the rule of law .The Constitution provides for the standard limitations on the enjoyment of fundamental rights and freedoms under Article 43(2) (C). This is a settled position of the law by the Supreme Court of Uganda in the case of **Onyango Obbo and Anor versus Attorney General**³⁴, any country claiming to practice multiparty dispensation, such as Uganda, must adhere to the universal democratic values and principles. Any limitation on the enjoyment of rights and freedoms guaranteed by the Constitution has to be legally justified. Human rights are inherent and not granted by the State. It is the duty of all government agencies, including the police, to respect, promote and uphold them. It is the fundamental rights which are fundamental and not the restrictions.

The Constitution strictly prohibits any violation of any of its provisions or those of any legitimate law of Uganda. It is the solemn and bounden duty of every citizen to ensure that the sanctity and sovereignty of the Constitution and the legitimacy of its laws are respected and complied with unconditionally.

³⁴Onyango Obbo and Anor versus Attorney General Constitutional Appeal No. 2 of 2002

3.3 Provisions to restrain, the freedom to assemble and demonstrate

The 1995 Constitution permits peaceful demonstrations and assemblies; it empowers police to keep law and order to safeguard the rights of others. The provision of Section 8 of the Public Order Management Act that the police has been invoking to stop political gatherings and rallies is unconstitutional in so far as it contravenes Article 29(1) (d) of the Constitution which guarantees the enjoyment of the freedom to assemble and demonstrate. The actions of the police to prohibit, instead of regulating public rallies and demonstrations of those seeking to consult their members and supporters is unconstitutional. Relying on limitation of rights under article 43 in isolation of the rest of the articles is unconstitutional; the application of the law would be giving the Uganda Police Force power to impose terms and conditions not in tandem with the provisions of Article 29(1) (d) of the Constitution. An Act of Parliament cannot supersede the Constitution³⁵. The Constitution is supreme and any law that is not in conformity with its provisions is null and void³⁶. The right and freedom to assemble is the aggregate of the individual liberty of speech which is one of the essential foundations of a democratic society, many human rights Advocates including Nicholas Opiyo have numerously opined that the police has highly become political by censoring the political activities of the Opposition and those perceived to be competing against the ruling National Resistance Movement party, thus discriminatory towards the enjoyment of rights and the rule of law since it stands against the equality principle under article 21³⁷

3.4 Concerns over restrictions on the right to freedom of association

Uganda is signatory to human rights treaties that guarantee the right to freedom of association. Article 22 of the International Covenant on Civil and Political Rights (ICCPR) prohibits restrictions on this right, except those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order and protection of public health. At national level, Article 29 of the 1995 Constitution of the Republic of Uganda protects the right to "freedom of association

³⁵ 1995 constitution of the Republic of Uganda

³⁶ Article 2 of the constitution (supra)

³⁷ Supra

which shall include the freedom to form and join associations including trade unions and political and other civic organizations.”³⁸

The President of Uganda signed the Non-Governmental Organizations Act (2016) into law on 30 January 2016, and there are growing concerns that it may be selectively applied to target civil society³⁹. Some clauses of the law may be used to restrict the operating environment of NGOs by outlawing activities interpreted as being prejudicial to the security, dignity, and interest of Uganda. These provisions could potentially be used to prevent organizations from conducting sensitive work or expressing criticism of the government. Section 30 of the law limits the registration of organizations whose Objectives are in contravention of the laws of Uganda⁴⁰. Section 145 of the Penal Code Act prohibits same sex relations and the courts of Uganda have enforced these provisions, which could therefore allow the law to be used to prevent LGBTI organizations from carrying out activities⁴¹.

Since 2011, a number of NGOs’ offices were been broken into and the Police has not provided any conclusive reports on who the attackers were. On 29 June 2015, the offices of Human Rights Network for Journalists (HRNJ-Uganda) were raided by unidentified people who broke one of the windows to gain access to the building. The organisation lost vital information and equipment. Although the matter was reported to Rubaga Police Post, no further investigations and arrests have since been made⁴².

In May 2014, unidentified men broke into the offices of Human Rights Network Uganda (HURINET-U) after disabling the security system⁴³. Equipment stolen included: the server, computers and surveillance cameras. The safes were also

³⁸http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf, Accessed 1 June 2017

³⁹“Uganda: Stranglehold on Independent Groups”, Human Rights Watch, 2 July 2015, <https://www.hrw.org/news/2015/07/02/uganda-stranglehold-independent-groups>, Accessed 1 June 2017

⁴⁰“NGOs State Position On Repressive NGO Bill, 2015”, Chapter Four: Uganda, 18 May 2015, <http://chapterfouruganda.com/articles/2015/06/04/uganda-ngos-state-position-repressive-ngo-bill-2015>, Accessed 1 June 2017

⁴¹Ugandan Penal Code Act, Section 145

⁴²“Status of HRNJ-Uganda After Office Break-in”, Human Rights Network Uganda, 6 July 2015, https://hrnjuganda.org/?wpfb_dl=47, Accessed 5 June 2017

⁴³Civil Society Organisations Office Break-Ins In Uganda: The Unanswered Questions”, Human Rights Network Uganda, 5 May 2014, <https://www.hurinet.or.ug/latest%20Press%20Release.pdf>, Accessed 4 June 2017

broken into and some files were reported missing. Other human rights organizations have had their offices raided under similar circumstances, including the Foundation for Human Rights Initiative (FHRI), the East and Horn of Africa Human Rights Defenders Project (EHAHRPD) and the Anti-Corruption Coalition Uganda (ACCU).

Civil society organizations monitoring the electoral process were targeted in the process and often labeled partisan. On 27 November 2015, the Electoral Commission ordered the Citizen's Coalition for Electoral Democracy in Uganda (CCEDU) to stop airing its Topowa, Honour Your Vote campaign message, which they accused of supporting the opposition⁴⁴. The campaign was later re-aired after negotiations between the Electoral Commission and CCEDU on the content of the campaign.

In 2012, two NGOs were faced with de-registration after publishing a report implicating members of the first family in land grabbing acts⁴⁵.

Oxfam International Uganda and Uganda Land Alliance were threatened with closure after making allegations over those responsible for the land grabbing in Uganda. In 2013, the Minister of Internal Affairs threatened to close NGOs working in the Albertine region that reported on the injustices surrounding the oil extraction and relocation of citizens⁴⁶. Several activists were also threatened with arrests as they carried out work around that region. Prior to the coming into force of the POM Act restrictions on human right activists or defenders were escalating, many have argued that the coming into force of the Act(supra) was a strategy of giving a legal face to the already planned method(s) of suppressing assemblies, associations, meetings and demonstrations, to sight a few of the prior suppressions;

On 18 June 2012, the Uganda Police Force raided a workshop organized for human rights defenders working on sexual orientation and gender identity issues, in a campaign clear infringement of the right to freedom of association and peaceful

⁴⁴“EC Bans Topowa Campaign,” The Independent, 7 December 2015, <http://www.independent.co.ug/column/insight/10833-ec-bans-topowa-campaign>, Accessed 4 June 2017

⁴⁵“Museveni Angry Over NGO Report on Land Grabbing”, The Independent, 6 May 2012, <http://www.independent.co.ug/cover-story/5726-museveni-angry-over-ngo-report-on-land-grabbing>, Accessed 4 June 2017

⁴⁶“NGOS Working In Oil Governance Face Closure”, Action Aid, Black Monday Newsletter, 12 November 2013, http://www.actionaid.org/sites/files/actionaid/bm_nov_2013_oil.pdf, Accessed 4 June 2017

assembly⁴⁷. The participants of the workshop were held briefly and prevented from continuing with the planned activities. A similar workshop had been closed four months earlier in the same circumstances.

On 19 May 2012, a group of human rights defenders, including a journalist and researchers from a local organisation, were unlawfully arrested and detained while they attempted to administer a questionnaire to local communities in Buliisa district on the relationship between land rights and oil. They were informed that they required a letter from the Ministry of Energy and Mineral Resources granting permission to administer the questionnaire⁴⁸. This directive gives overarching powers to the Permanent Secretary of the same Ministry and can be selectively applied to disallow critical research from taking place.

Throughout 2012, a coalition of around fifty (50) civil society groups organized an anti-corruption campaign known as the Black Monday Movement. The members wore black every Monday to 'mourn' the embezzlement of public resources. They also published and distributed monthly newsletters. Several Black Monday activists were arrested for "spreading harmful propaganda", inciting violence and possession of prohibited publications. On 12 February 2013, Ugandan Police arrested 3 activists for taking part in the Black Monday campaign in Lira town⁴⁹. While none faced trial, they were required to report to the police on a weekly basis and sometimes on Mondays, Preventing them from carrying out their peaceful protest activities.

⁴⁷"Police Raid on LGBTI Activists Workshop in Kampala Condemned", East and Horn of Africa Human Rights Defenders Project, 19 June 2012, <https://www.defenddefenders.org/2012/06/uganda-police-raid-on-lgbti-activists-workshop-in-kampala-condemned/>, Accessed 4 June 2017

⁴⁸"Only the Brave Talk About Oil: Human Rights Defenders and the Resource Extraction Industries in Uganda and Tanzania, published December 2012", East and Horn of Africa Human Rights Defenders Project, December 2012, https://www.defenddefenders.org/wp-content/uploads/2013/01/only_the_brave_WEB.pdf, Accessed June 4 2017

⁴⁹"Black Monday Activists Arrested", The Daily Monitor, 12 February 2013, <http://www.monitor.co.ug/News/National/Black-Monday-activists-arrested/-/688334/1691514/-/uxavtdz/-/index.html>, Accessed 4 June 2017

3.5 Concerns regarding restrictions on the right to freedom of expression and attacks on journalists

Uganda is party to a range of regional and international treaties and Covenants, which enshrine the right to freedom of expression and its obligations to promote and protect free speech. Article 19 of International Covenant on Civil and Political Rights and Article 9 of the African Charter on Human and Peoples' Rights both protect and promote the right to freedom of expression.

Article 29 (10) of the Constitution of Uganda states that, "every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media"⁵⁰, "Despite media pluralism in the country, opposition groups, civil society organizations and government critics are given restrictive and selective access to the media. Restricted access to all forms of public media has been used to target opposition parties especially during the 2016 electoral period"⁵¹. During the presidential election, there was a clear imbalance in the media coverage enjoyed by the ruling NRM party and the access to media given to opposition parties⁵². Despite the government's commitment to amend and repeal laws that infringe on the right to freedom of expression, there has been little registered progress, amendments proposed to the Press and Journalists Act (2000) in 2010 was never tabled before Parliament⁵³. The Act requires journalists to register with the National Institute of Journalists of Uganda (NIJU), which is affiliated to the government, and obtain a license from the Media Council. In February 2014, the Ministry of Information and National Guidance issued a Statutory Instrument (SI), the Press and Journalists (fees) Regulations (2014), which requires journalists to pay US \$80 for a practicing

⁵⁰ Constitution of the Republic of Uganda, 1995, <http://ugandajournalistsresourcecentre.com/wp-content/uploads/2015/04/Constitution-of-the-Republic-of-Uganda-1995.pdf>, accessed on 9 February 2016

⁵¹ January 2016 media coverage of elections report", ACME, 12 February 2016, <http://acme-ug.org/2016/02/12/monitoring-media-coverage-of-the-2016-elections-january-2016-report/>, accessed on 5 June, 2017

⁵² "Keep the People Uninformed', Pre-election Threats to Free Expression and Association in Uganda", Human Rights Watch, 11 January 2016, <https://www.hrw.org/report/2016/01/11/keep-people-uninformed/pre-election-threats-free-expression-and-association-uganda>, accessed on 5 June 2017

⁵³ The Press And Journalist Act, Chapter 105

<http://www.opm.go.ug/assets/media/resources/306/PRESS%20%26JOURNALISTS%20ACT.pdf> Accessed on 5 June 2016

certificate, which is to be renewed annually at a fee of US\$40⁵⁴. Forcing journalists to pay compulsory fees and requiring them to obtain a license to work are undue restrictions on the right to freedom of the press, and can easily be used to stifle critical journalists. The Penal Code under Section 179 creates the offence of libel, defined as a person who “unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits the misdemeanor termed libel”, which can be used to stifle legitimate criticism of the government, and is inconsistent with Articles 29 and 43 of the Constitution and regional and international standards⁵⁵. On 13 August 2015, Nahabwe Ronald and Tugumisiirize Benon, two journalists from the Red Pepper newspaper, and Madina Nalwanga and Patrick Tumwesigye from the New Vision newspaper were charged with criminal defamation for “defamatory statements against two Kampala businessmen, Ntaganda Ephraim and Francis Drake Lubega.” The New Vision journalists were released on 14 August after posting bail but the Red Pepper journalists were held until 19 August⁵⁶. On 15 May 2015, Alex Bukhumune, a journalist with the Red Pepper was charged with ‘criminal defamation’ for investigating a land dispute involving Ronald James Du’janga, the State Minister of Energy. He was later arrested and detained on 19 May 2015 and charged with ‘threatening violence’⁵⁷. Finally, the government tabled the Uganda Communications Amendment bill (2016) on 9 March 2016, seeking to amend Section 93(1) of the Uganda Communications Act (2013), and remove the requirement for Parliament approval of regulations made by the Minister under the Act⁵⁸, this would give overarching powers to the executive branch to impose regulations on communications services and technologies. The amendments were proposed soon after the social media shutdown that took place over the course of the February 2016 presidential elections, fuelling well-founded fears that these overarching powers would be abused. According to the Uganda

⁵⁴“How recently enacted Laws undermine Ugandan Citizen’s Rights”, CIPESA ICT Policy Briefing Series, April 2014, http://www.cipesa.org/?wpfb_dl=158, Accessed on 5 June 2016

⁵⁵Penal Code Act cap 120 Laws of Uganda, Section 179

⁵⁶“Journalists charged with criminal defamation released from prison after six days”, Human Rights Network for Journalists – Uganda, 20 August 2015

⁵⁷“HRNJ-Uganda alert, journalist detained over minister”, Human Rights Network for Journalists – Uganda, 19 May 2015, [storyhttps://hrnjuganda.wordpress.com/2015/05/19/hrnj-uganda-alert-journalist-detained-over-minister-story/](https://hrnjuganda.wordpress.com/2015/05/19/hrnj-uganda-alert-journalist-detained-over-minister-story/), Accessed on 5 June 2017

⁵⁸“Uganda Communications Amendment Bill 2016, Parliament Watch, <http://parliamentwatch.ug/bills/the-uganda-communications-amendment-bill-2016/>, accessed on 5 June 2017

Communications Commission (UCC), the Electoral Commission ordered the social media shutdown for security reasons. The shutdown coincided with voting for the Presidential election on 18 February, and remained in place until the afternoon of 21 February⁵⁹. Over the course of the last four years, and particularly during the 2016 election cycle, undue restrictions have been placed on journalists' access to information in Uganda⁶⁰. This practice has been common for journalists covering political rallies, public assemblies, and election related events. Journalists have been repeatedly assaulted, arrested and in extreme cases shot⁶¹. On 22 February 2016, four days after the presidential and parliamentary elections, Isaac Kasamani, a photojournalist with associated Free Press was pepper-sprayed by the Police Forces while taking pictures of the police arresting Dr. Kizza Besigye at his residence in Wakiso District. Journalists were barred from accessing the home of Dr. Besigye after his house arrest on 20 February 2016⁶².

Between 27 February and 1 March 2016, 13 journalists were arrested while covering the house arrest of opposition candidate Dr. Kizza Besigye and detained for several hours. Arrested journalists were accused of trespassing and inciting violence although they were not presented with any arrest warrant and no official charges were brought against them⁶³. Overall, government has not prosecuted errant officers who abuse and violate the rights of journalists. In January 2015, Wavah Broadcasting Service (WBS) journalist Andrew Lwanga was allegedly assaulted by the Old Kampala Division Police Commander Joram Tumwesigye, while covering a demonstration by a group of unemployed youth's⁶⁴. Lwanga has since been disabled

⁵⁹“UGANDA: Joint letter on internet shutdown during election period”, Defend Defenders, 26 February 2016, <https://www.defenddefenders.org/2016/02/3606/>, accessed on 5 June 2017

⁶⁰“Another journalist arrested covering Besigye”, Daily Monitor, 1 March 2016, <http://www.monitor.co.ug/News/National/Another-journalist-arrested-covering-Besigye/-/688334/3098466/-/d877tc/-/index.html>, accessed on 5 June 2017

⁶¹“UGANDA: Targeting of Journalists During Election Period Must End”, Defend Defenders, 10 March 2016, <https://www.defenddefenders.org/2016/03/uganda-targeting-journalists-election-period-must-end/>, accessed on 5 June 2017

⁶²“State attacks on journalists must stop”, The Observer, 7 March 2016, <http://observer.ug/viewpoint/42972-state-attacks-on-media-must-stop>, accessed on 5 June 2017

⁶³“See HRNJ, 1 March 2016, Female journalist covering opposition leader arrested by police, <https://hrnjuganda.org/?p=2857> last checked 5 June, 2017

⁶⁴“Uganda: Senior Police Officer Assaults Journalists On Duty in Uganda”, Human Rights Network for Journalists - Uganda, 12 January 2015, <http://hrnjuganda.blogspot.ug/2015/01/hrnj-uganda-senior-police-officer.html>, Accessed on 5 June 2017

and unable to work. Although Tumwesigye is under suspension, the court case has seen extremely slow progress. Since 2011, media outlets have been subjected to a range of threats. Many TV and radio stations have been targeted through intimidation, raids and at times forced closure⁶⁵.

Journalists have been individually targeted for providing a platform to the opposition. In July 2015, 3 journalists of Baba FM Jinja were laid off for hosting opposition candidate Dr. Kiiza Besigye and Karundi Sserumagga of Radio One, without authorisation of their management⁶⁶.

The radio is owned by a Member of Parliament who is also a representative of the ruling NRM party in Jinja. In December 2013, Basajja Mivule of Akaboozi FM was forced to take leave and was accused of "tarnishing the image of the government" after hosting a critical politician⁶⁷. All these actions are in the name of Public order and in most times, police evokes the POM Act to stop such gatherings, regardless of the unjustifiable circumstances.

3.6 Concerns over restrictions on the right to freedom of peaceful assembly

The right to freedom of peaceful assembly is guaranteed at national, regional, and international levels in Article 29(1)(d) of Uganda's Constitution (1995), Article 11 of the African Charter on Human and Peoples' Rights (1986), Article 21 of the International Covenant on Civil and Political Rights (1966), and Article 20 of the Universal Declaration of Human Rights (1948). Despite these guarantees, freedom of assembly is regularly restricted in Uganda and excessive force is used to disperse peaceful demonstrations. The Public Order Management Act (2013) (POMA) was signed into law on 2 October 2013 to regulate public gatherings. Section 5 of the Act stipulates that organizers of public gatherings must give at least three days' notice

⁶⁵ "Keep the People Uninformed", Pre-election Threats to Free Expression and Association in Uganda, Human Rights Watch, 11 January 2016, <https://www.hrw.org/report/2016/01/11/keep-people-uninformed/pre-election-threats-free-expression-and-association-uganda>, Accessed on 5 June 2017

⁶⁶ "Ruling party boss fires journalists over hosting opposition presidential hopeful", Human Rights Network for Journalists - Uganda, 23 July 2015, <https://hrnjuganda.org/?p=1438>, Accessed on 5 June 2017

⁶⁷ "Radio One's Basajja Mivule on forced 'leave'", The Observer, 22 December 2013, <http://www.observer.ug/component/content/article?id=29271:radio-ones-basajja-mivule-on-forced-leave>, Accessed 5 June 2017

with onerous levels of details or can be shut down and held liable if they fail to give sufficient notice or adhere to conditions of the Act. Additionally, the Act gives broad powers to Police to authorize or end public meetings. These provisions were used repeatedly in the run up to the 18 February 2016 presidential elections to prevent public gatherings from taking place and violently disperse those underway. Between July and February 2016, presidential opposition candidates Amama Mbabazi and Dr. Kizza Besiegye and their supporters were repeatedly arrested for attending and organizing public gatherings, which Ugandan authorities attempted to justify under POMA⁶⁸. Besiegye was kept under house arrest for at least one month, and was detained at least 9 times since the election on 18 February 2016 when attempting to leave his residence. According to the authorities, he was attempting to attend events that were in violation of POMA since ample notice had not been provided and the Demonstrations had not been approved⁶⁹. There were at least four cases between July and December 2015 where police used POMA to arrest activists and used excessive force to disperse crowds in Kampala on 10 July, Soroti on 9 September, and Jinja on 10 September, and near Kanyaryeru on the Mbarara –Lyantonde road on 10 October⁷⁰. As the elections neared the arrest of activists and the use of tear gas and rubber bullets to break up public demonstrations were increasingly documented, in 2014 and 2015, activists campaigning against unemployment were repeatedly arrested during public gatherings. On 4 August 2014, two members of the Unemployed Brotherhood were arrested during a protest against corruption and unemployment at the Independence Monument outside of Parliament⁷¹, On 9 and 10 September 2014, nine activists with the National Association of the Unemployed (NAU) were arrested when registering the unemployed in Kampala⁷².

⁶⁸“Uganda: We Come in and Disperse Them: Violations of the Rights to Freedom of Assembly by the Ugandan Police”, Amnesty International, 7 December 2015,

<https://www.amnesty.org/en/documents/afr59/2983/2015/en/>, Accessed 5 June 2017

⁶⁹“Uganda Opposition Leader Marks 1 Month Under House Arrest”, Voice of America, 21 March 2016, <http://www.voanews.com/content/uganda-opposition-leader-marks-1-month-under-house-arrest/3247008.html>, Accessed 5 June 2017

⁷⁰ Ibid

⁷¹“Employed Ugandans to Mobilize Against 2016 General Elections”, Daily Monitor, 28 August 2014, <http://www.monitor.co.ug/News/National/Unemployed-Ugandans-to-mobilize-against-2016-general-elections/-/688334/2433454/-/xh88m8z/-/index.html> Accessed 5 June 2017

⁷²“Police Arrests Other Members of the National Association of the Unemployed”, Ugandan News, 10 September 2014, <http://news.ugo.co.ug/police-arrests-members-national-association-unemployed/> Accessed 5 June 2017

On 27 October 2015, four members of the NAU were arrested as they walked to the Ministry of Gender, Labour, and Social Development offices to submit a report of their campaign to register unemployed workers, even though they had notified the police of their planned procession to the Ministry 10 days in advance⁷³. On 12 January 2015, youth from the NAU were arrested when attempting to bring a letter to the Inspector General of Police and two journalists, Joseph Ssettimba and Andrew Lwanga, were beaten while covering the arrest⁷⁴. In March 2014, police fired tear gas and shot into the air to disperse a meeting of the Free and Fair Elections Campaign in Mbale⁷⁵. In the same month, POM Act was again used in Kabale to block Zac Niringiye, an activist of the Free and Fair Elections Campaign and retired Assistant Bishop, from speaking on the radio or at a university lecture since he was publicizing an illegal meeting that "might incite violence"⁷⁶.

Public order is necessary and it's a constitutional mandate of the police⁷⁷, however while maintaining law and order, the police should protect, defend and uphold the Constitution instead of violating it, even though police is vested with power to arrest any person who breaches public peace, such power should not be permanently exercised to prohibit political actors in the name of the law. Betty Namboze of the DP was arrested after notifying the Police, MP Mathias Mpuuga said "The police received our letter and stopped us from organizing a rally, but Okayed the indoor meeting, which we agreed. Why are they blocking us now?"⁷⁸

⁷³"Police Crackdown on Unemployed Youth Protest", Chimp Reports, 27 October 2014,

<http://www.chimpreports.com/unemployed-youth-movt-leaders-arrested-2/> Accessed 5 June 2017

⁷⁴ "Journalists Assaulted As Police Arrest Members of Unemployed Youth Group", Daily Monitor, 12 January 2015, <http://www.monitor.co.ug/News/National/-/688334/2586744/-/72h622/-/index.html>, Accessed 5 June 2017

⁷⁵"Rule by Law. Discriminatory Legislation and Legitimized Abuses in Uganda", Amnesty International, 16 October 2014, <https://www.amnesty.org/en/documents/afr59/006/2014/en/>, Accessed 5 June 2017

⁷⁶Ibid

⁷⁷ Article 212(b) of the 1995 Constitution of the Republic of Uganda

⁷⁸ Daily monitor of March 2017

CHAPTER FOUR

COMPARATIVE ANALYSIS OF PUBLIC ORDER MANAGEMENT BY OTHER COUNTRIES AND THEIR INTERNAL MANAGEMENT MECHANISMS FOR THE MANAGEMENT OF PUBLIC ORDER

4.0 Introduction

Public order has been portrayed as, people behaving in an orderly, thoughtful and respectful way in public spaces, but of course much depends on whose definition of good behavior, order and respect; and whose definition of illegitimate crowd violence is to be relied on, (as opposed to legitimate revolt). For some, public order policing is about protecting communities and citizens from serious threats, such as violent demonstrations and strikes. Others argue that it should also include managing large events such as processions and sports fixtures, and take into account terrorist threats (as have occurred: Nairobi 1998 and 2013; East Kenya 2014; Kampala 2010, 2012, 2015, 2016 and 2017; Kigali 2012; Arusha 2013). In this chapter we shall comparatively analyze Public Order Management by other countries like United Kingdom and Nigeria.

4.1 United Kingdom

United Kingdom public order Management is regulated by The Public Order Act 1986, **The Public Order Act 1986** (c 64) is an Act of the Parliament of the United Kingdom. It creates a number of public order offences. They replace similar common law offences and parts of the Public Order Act 1936. It implements recommendations of the Law Commission. It's an Act that is aimed to abolish the common law offences of riot, rout, unlawful assembly and affray and certain statutory offences relating to public order and further to create new offences relating to public order. Part 1 establishes new offences vide;

Section 1 - Riot

Section 2 - Violent disorder

Section 3 - Affray

Section 4 - Fear or provocation of violence

Section 4A - Intentional harassment, alarm or distress added by section 154 of the Criminal Justice and Public Order Act 1994

Section 5 - Harassment, alarm or distress

Processions and assemblies are provided for under part 2 of the Act, which provides for the following;

Notice

Unlike the public Order Management Act of Uganda that provides for 3 days' notice, Section 11 of the Public Order Act Of UK provides for the need of an advance notice of public processions, which requires at least 6 clear days' written notice to be given to the police before most public processions, including details of the intended time and route, and giving the name and address of at least one person proposing to organize it; it further creates offences for the organizers of a procession if they do not give sufficient notice, or if the procession diverges from the notified time or route.

Conditions imposed

Section 12 of the same Imposes conditions on public processions, it provides police with the power to impose conditions on processions in order "to prevent serious public disorder, serious criminal damage or serious disruption to the life of the community"

Section 13 provides for the Prohibition of public processions, and it provides to the effect that the Chief Police Officer has the power to ban public processions up to three months by applying to local authority for a banning order which needs subsequent confirmation from the Secretary. It should be noted that in Uganda unlike UK, under 6 of the POM Act any authorized officer can notify an organizer within 48 hours that it is not possible to hold the proposed public meeting without applying to or consulting any other body.

Section 14 of the Public Order Act of UK, Imposes conditions on public assemblies, it provides that the police has the power to impose conditions on assemblies "to

prevent serious public disorder, serious criminal damage or serious disruption to the life of the community". The conditions are limited to the specifying of:

- the number of people who may take part,
- the location of the assembly, and
- Its maximum duration.

The Ugandan POM Act does not give conditions, they can only stop such assembly based on the reasons provided for in section 6(1) (a) and (b).

Section 14A Prohibits trespassory assemblies this is added by section 70 of the Criminal Justice and Public Order Act of 1994, to control "raves"

Section 16 of the Public Order Act provides for Public Assembly, it goes ahead to define public assembly to mean an assembly of 20 or more persons in a public place which is wholly or partly open to the air. This definition is very fundamental because of the number, even though the Ugandan law (POM Act) does not give a specific number, however it uses the word any gathering or assembly...this vagueness means that a group of friends that happen to discuss politics whilst walking to a cafe could constitute a public meeting, and, in accordance with the Act, be acting illegally if they do not have permission to meet. This is a blatant breach of the basic human rights. Although the Act allows an exception for people meeting for social reasons, it is possible that the police could say it was a meeting for political purposes instead of social reasons. It's therefore highly recommendable that the Public Order Management of Uganda should be amended to suit international standards by civilized nations such as United Kingdom, only then will the human rights abuses be mitigated

4.2 Internal Management mechanisms for order in a country where public Assembly is a commonly practiced

Nigeria

Events in Nigeria have made Nigerians to query the standing of the constitutional right to freedom of assembly and association in the light of the provisions of the Public Order Act, laws of Nigeria. There have been various instances in the recent

past where the police have disrupted public gatherings that appear peaceful and harmless.

The instances that are still fresh in the minds of many include the following: The police disruption of a solemn procession convened in Lagos by a group of Concerned Mothers, led by Professor Jadesola Akande, former Vice Chancellor of the Lagos State University, to mourn the tragic death of youngsters that perished in the Sosoliso Plane crash that occurred in 2005.

The police violently dispersed the procession with tear gas, which led to some of the women being hospitalized. Equally, the police also forcefully dispersed a gathering of politicians who are opposed to the attempt to elongate the tenure of the President, popularly known as the third term agenda. Among them were the current Head of State, Muhammadu Buhari before he won the elections and some prominent legislators. The meeting, which was scheduled to hold at the Abuja Sheraton Hotel, was dispersed by a contingent of the police led by the Commissioner of Police in the Federal Capital Territory Mr. Lawrence Alobi. In the process, a lawmaker Francis Amadiogwu was assaulted.

It is also noteworthy, that on 29th of April 2013, the police in Umuahia, the Abia State capital, prevented members of a faction of the Ohaneze Ndigbo believed to be sympathetic to the anti-third term cause, from holding its meeting at the Michael Okpara Auditorum, Umuahia.

A Country Report on Human Rights Practices in Nigeria, released by the Bureau of Democracy, Human Rights, and Labor in February 25, 2013 revealed some startling abuses of the right to assembly. In all these instances, the police cited and relied on the Public Order Act and the Police Act, article 45 of the Constitution includes the right under article 40 as one of the restricted rights that could be derogated by any law that is reasonably justifiable in a democratic society in the interest of defense, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons.

The case of Chukwuma & Ors Vs Commissioner of Police

What is the right to peaceful assembly?

The right to peaceful assembly is the freedom to associate with, organize any groups, meetings, alliance, or unions that one desires. It is held to be a key right in liberal democracies, whereby citizens may form or join any political party, special interest group or union without government restrictions. In legal systems without freedom of assembly, certain political parties or groups can be prohibited with harsh penalties for any members. Public protests against the government are usually banned.

The Public Order Act Laws of Nigeria defines assembly as a meeting of five or more persons, while an association is anybody of persons who agree to act together for any common purpose and includes any political party as defined in section 151 of the Electoral Act Laws of Nigeria, assembly of worshipers have been institutionalized in the church or mosque. Social and recreational assemblies have also adopted institutionalized forms, for example, social clubs, football or basketball matches, town meetings, weddings, etc.

Legal Framework

The right to peaceful assembly is recognized in a variety of international, regional and domestic frameworks. Section 40 of the Constitution of Nigeria provides that every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interests.

The Public Order Act, 2 Cap. P.42 Laws of the Federal Republic of Nigeria, 2004

Section 1 (2) of the Public Order Act, provides that any person who is desirous of convening any assembly or meeting or of forming any procession in any public road or place of public resort shall, unless such assembly, meeting or procession is permitted by a general license granted under subsection (3) of section 1, first apply to the Governor for a license not less than 48 hours before the assembly, meeting or

procession. If the Governor is satisfied that the assembly, meeting or procession is not likely to cause a breach of the peace, he shall direct any superior police officer to issue a license not less than 24 hours before the event, specifying the name of the licensee and defining the conditions on which the assembly, meeting or procession is permitted to take place. Where the Governor is not satisfied, he is to convey his refusal in like manner to the applicant within the stipulated time. This is different from that of Uganda where application is not for a license but authorization though they serve the same purpose, in Uganda it's to be made within 3 days.

The right to assembly has been hindered most of the time by the police, who claim that the persons involved failed to obtain a police permit. A careful study of the relevant portions of the Public Order Act⁷⁹ reveals that the application for a license is made to no other person than the Governor. It is only the Governor that may direct any superior police officer to issue a license. The police can only grant the license directly, where the Governor had delegated his powers to the Commissioner of Police or any Superior police officer of a rank not below that of a Chief Superintendent of Police .**The Case of Chukwuma v. Commissioner of Police**

The case of Chukwuma v. Commissioner of Police, have been subjected to public debates. In this case, the appellants who were the plaintiffs before a Federal High Court Ilorin belonged to a social cultural association, which was meant to promote the welfare of its member's resident in Kwara State. The Association was to host a meeting of Igbo delegates' assembly, which comprises of all the Igbo community associations in the Northern States of Nigeria in Ilorin, Kwara State in a private hotel. On the scheduled day of the meeting, the officials, men and agents of the respondents came to the venue of the meeting and forcefully dispersed the appellants and their members and sealed-off the venue. Aggrieved by the action of the respondents, the appellants instituted an action at the Federal High Court Ilorin, seeking a declaration that the action of the respondent was a violation of their constitutional right of association, freedom of movement and assembly, a claim of N2 million for damages and an injunction restraining the respondent from stopping,

⁷⁹By Ani Comfort Chinyere (Mrs.) Research Fellow, Nigerian Institute of Advanced Legal Studies, Lagos. A. Ajomo, Fundamental Human Rights Under the Constitution, in Kalu A & Osinbajo Y, (Ed.) Perspectives on Human Rights (Federal Ministry of Justice, 1992) p.88

intimidating or harassing the appellants from holding their meetings in Kwara State. The trial court dismissed the action on the ground that the action of the police was justified as they had powers to do so. Being dissatisfied with the judgment, the appellants appealed to the Court of Appeal.

The issues for determination at the appeal were, whether the appellant required a police permit to hold a meeting of their association and whether the police was justified to disrupt the appellants meeting and seal off the venue of the meeting. The Court considered the provisions of article 40 and 45 (1) of the Constitution; sections 1 (1), 2 and 12 (1) of the Public Order Act, and section 4 of the Police Act. The Court held inter-alia that any meeting for which no license was issued, or which violates any condition of the license, may be dispersed by the Police. That the police were trying to maintain law and order in preventing the holding of the meeting and that their action was justifiable. The Court emphasized the fact that the leadership of the Igbos in the State wrote to the Commissioner of police, complaining of the dire consequences of allowing the meeting of the appellants to be held.

Some commentators believe that the decision of the Court of Appeal, which had not been challenged at the Supreme Court is the law and must be enforced by all authorities and persons under article 287 (2) of the 1999 Constitution. The case of **Chukwuma v. Commissioner of Police** establishes that a Nigerian citizen does not require a police permit to hold a private meeting in a private place, but that the meeting of the appellants was a public meeting, being one for all the Igbos residing in the entire Northern States of Nigeria, notwithstanding that it was to be held in a private place. The meeting was also described as a public assembly, since section 12 (1) of the Act defines an Assembly as a meeting of five or more persons.

The Court failed to consider whether the Inspector-General of Police was the rightful person to issue the permit referred to in the Act. The determination of this particular issue would have considerably affected the ultimate decision of the Court. The Act specifically provides for the issuance of a Governor's License for public meetings and

does not mention anything like a police permit. This position received judicial backing in the Federal High Court case of **ANPP v. Inspector-General of Police**. This case was an aftermath of a police disruption of a solidarity political rally, held in Kano on September 22, 2003, during which the police fired tear gas at the persons in the gathering. In this case, wherein the plaintiffs challenged the violent disruption of the rally by the police, Justice Chikere considered the provisions of articles 38 and 40 of the Constitution; Article 11 of the African Charter on Human and Peoples Right and the Public Order Act. Justice Chikere brought to the fore the fact that the Inspector-General of Police was not competent to exercise any power under the Public Order Act. He held that the requirement of police permit or any other authority for the holding of rallies or processions in Nigeria is illegal and unconstitutional as it violates article 40 of the 1999 Constitution. He went on to issue a perpetual injunction restraining the Inspector-General of Police, his agents privies and servants from further preventing the plaintiff and other aggrieved citizens of Nigeria from organizing or convening peaceful assemblies, meetings and rallies. Another major shortcoming of the decision in Chukwuma v. Commissioner of Police is that the Court did not affirmatively and positively address the issue of the constitutionality of the Act. It did not consider the vital issue of whether the Public Order Act was a law that is reasonably justifiable in a democratic society, as to come within the exception made under article 45 of the Constitution.

The Court appeared to have based its ultimate decision on the fact that there was a petition to the police by one of the two opposing factions of the Igbo Community Association in Kwara State that the meeting should not be allowed to hold, as it would threaten the peace and security of the area. This decision cannot be taken as relevant in every case involving the constitutionality of the Public Order Act, as the facts that informed the decision are quite peculiar to the case. One has to look at the Court of Appeal decision within the context of what it decided, rather than applying it in an ominous manner to issues, events, circumstances and scenarios, which it did not and does not contemplate. It was in keeping with this constitutional mandate that the National Assembly after reviewing the recent events of the blatant abuses of the right to peaceful assembly by the police, who rely on the obnoxious

provisions of the Public Order Act, decided to amend the Act. The Public Order (Amendment) Bill reportedly passed through the second reading in the Senate with the senators supporting the need to amend the Act. The amendment sought to withdraw the power of the President to make regulations and issue guidelines for the conduct of public meetings and processions. Under the new amendment sought, Governors and High Court Judges will have the power to prescribe where public processions and meetings can be held. Section 2 (2) of the proposed amendment provided as follows:

Any person who is desirous of convening or collecting any assembly or meeting or forming any procession in any public road or place of public resort shall, unless such assembly, meeting or procession is permitted by a general license granted under the sub-section 3 of this section, first make an application for a license to the Governor or any High Court Judge of a state not less than 48 hours thereto.

The section goes further to provide that the Governor is to direct any superior police officer to issue a license, not less than 48 hours thereto, if the Governor is satisfied that the assembly, meeting or procession is not likely to cause a breach of the peace. In the case of an application to a High Court Judge, if such a judge is satisfied upon an application by originating summons that the assembly, meeting or procession is not likely to cause a breach of the peace, he shall make an order directing on how and where the assembly, meeting and procession shall hold or pass, not less than 48 hours thereto.

Either the Governor or the High Court Judge issuing the license must specify the name of the licensee and the conditions upon which the public meetings and processions are to take place.

The novel thing in the amendment is the fact that an application may be brought before a High Court Judge for the issuance of a license. The Bill as it currently stands does not appear to be a veritable solution to the abuse of the right to peaceful assembly, since it is still subject to licenses being granted by a Governor or

High Court Judge. This may give rise to situations where perceived political enemies/opponents of the Governor are denied licenses to assemble.

The right to peaceful assembly is considered among the basic rights protected in the Constitution of Nigeria. The importance of the right to assembly cannot be over emphasized. It is a universal and innate human right underpinning civil society and respect for the individual. The Public Order Act has been relied on by the police to regulate assemblies and processions in Nigeria, It is very important that the amendment of the Act dispensed the need to obtain any license whatsoever before a meeting, assembly or procession is held. This will truly assure Nigerians of the preservation of their right to peaceful assembly and association.

Police response to public protest has been seen as stemming from both threats to the interests of political and financial elite as well as threats to the maintenance of public order. Indeed, many of the same features of protest events are used as indicators of both types of threat, leading to substantial uncertainty regarding the interpretation of threat at public gatherings. We conclude by placing these findings firmly within a public order management approach to protest policing, thereby clearing up some of the ambiguities in existing protest policing research.⁸⁰

⁸⁰ An International Journal of Research and Policy Volume 24, 2014 - Issue 5 Whatever can go wrong will: situational complexity and public order policing Cody Warner & John D. McCarthy Pages 566-587 | Received 05 Jun 2012, Accepted 01 Nov 2012, Published online: 17 Apr 2013

CHAPTER FIVE

KEY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This Chapter has discussed and highlighted some of the recommendations that I believe if put into consideration through amendments and enforcement of the already existing laws, where there is a gap, the country will achieve a successful public order management system without necessarily violating fundamental human rights, it has also concluded on the findings of the objective of the research.

5.1 Need to sensitize the population in order to get compliance,

The public needs to be sensitized about the disadvantages of indulging in unlawful gatherings and causing public disorder through violence, they can be advised to express their grievances through other means or several hundred possible tactics such as, sit-ins, massive noncooperation, and internet blog postings in opposition to the regime or any other public interest without necessarily going to the street or public places where the day to day business takes place from

5.2 Need to review the Public Order Management Act

As discussed at the beginning of these submissions, there is a need to review the Public Order Management to properly meet constitutional requirements and international standards, The Public Order Management Act (POMA) should be adjusted to bring it into consonance with the Constitution in relation to the limitations, provisions such as an application to the courts of law other than the IGP could reduce on abuse of power by the police or political discrimination therein. Government should come up with guidelines for interpreting the POMA

5.3 The enforcers of the law should reduce on discrimination

This has been emphasized on earlier, police should avoid discrimination as far as allowing other gatherings and stopping others on the basis of economic, religious, ethnic or political status

5.3.1 Enforcers must work on an independent image

The Police should not allow any interference from any other organ or person, they should try to be neutral or at least look neutral because impartiality is very important for public image

5.3.2 Zero tolerance to corruption

It's trite that the Police in Uganda are ranked among the most corrupt institutions in the country, thus sometimes they are bribed or influenced to stop other public meetings or gatherings for reasons that are not prohibited by law, such unlawful orders are undermined by the public thus inciting violence

5.3.3 There should be a favorable and accessible gazetted assembly grounds to all parties

The government can identify one strategic and favorable location in which most of the political activities can be carried out from, a location that may not disrupt the business activities in the business centers, however such a venue should be accessible by all political parties or public activities without any discrimination

5.3.4 Internal Mechanism: success depends on the strength of legal, policy and institutions

The Uganda Police should strengthen its legal, policy and institutions especially as far as disciplining the officers is concerned, responsible committee should take appropriate administrative and disciplinary mechanisms against police officers of the police force who act and conduct themselves in such a grave illegality by sanctioning them in order to avoid compromising the ethical conduct of the profession.

Furthermore, the Police officers need to be trained to understand when nonviolent movements will stay nonviolent, and when they are likely to break down into violence. Not every public meeting or gathering results into disorder, Police can use very many different methods to analyze the possibilities including the, The Nonviolent and Violent Campaigns and Outcomes (NAVCO) Data Project method

which is a multi-level data collection effort that catalogues major nonviolent and violent resistance campaigns around the globe from 1900-2011

The project, which involves Korb Professor Erica Chenoweth and Orion Lewis of Middlebury College, receives generous support from the International Center on Nonviolent Conflict.

This data collection project seeks to look inside both nonviolent and violent campaigns, public meetings, gatherings and demonstrations notably at the type, sequence, and outcomes of different tactics employed by unarmed civilians and armed insurgents. The project is the first of its kind to systematically explore the sequencing of tactics and their effects on the strategic outcomes of the campaigns and public assemblies.

5.4 Role of Politics in the Assemblies

The police have been criticized for discriminating political gatherings based on the political parties, favoritism based on political affiliations by the police need to be avoided at all times, as the saying goes, "justice needs not only to be done but seen to be done", The Uganda Police has to be non-partisan and thus should exercise equality as guaranteed under article 21 of the constitution regardless of their political sentiments. The same procedure that warrants uninterrupted assemblies of the National Resistance Movement (NRM) should equally apply to the Forum for Democratic Change (FDC) and the Democratic Party (DP), or any other political party for that matter

5.5 Need for comprehensive law on the use of force and firearms

The United Nations Basic Principles on the Use of Force and Firearms which states that:

1. Law enforcement officials may only use force when strictly necessary and only to the extent required to fulfill their lawful duty⁸¹;

⁸¹Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

2. Use of force must be exceptional, proportional, necessary in the circumstances and limited to the prevention of crime or apprehension of suspects⁸²;
3. The use of firearms is an extreme measure and must only to be used when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspect⁸³.

Giving police officers the power to use firearms when they (or another person) faces threat of any injury (grave or not) during public assemblies, is much too broad—it should be limited to only when the suspected offender offers armed resistance or otherwise jeopardizes the lives of others.

Additionally the power to use firearms in the following circumstances also clearly breaches the principle of only using firearms when the suspect poses a threat to the life of another:

1. In arresting a person presenting danger, and resisting the officer's authority;
2. Preventing the escape of a suspect from lawful custody;
3. Where a person, through force, rescues another from lawful custody;
4. Where a person with the use of force:
 - a) resists lawful arrest; or
 - b) Prevents the lawful arrest of another person.

When the Basic Principles are considered, it can be seen that the practice of using firearms during these assemblies mainly on the opposition requires significant revision and improvement to be in line with international standards. Any action would need to be much more comprehensive, and to that end the following points are worth noting:

- I. The POM Act needs amendments that will outline the fundamental responsibility of the Police to protect people's right to life, liberty and security of the person and to maintain public safety by keeping the peace.
- II. Officers are permitted to use force and firearms in self defense, but it needs to be specified that this is only permissible where the force used is

⁸² Commentary to Article 3, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

⁸³ Ibid

proportionate to the threat faced. In relation to the use of firearms, that is only permissible when no lesser alternatives are viable in the circumstances. Further, if lethal force is to be used intentionally, that can only occur when strictly unavoidable and only to protect life.

- III. Officers are permitted to use force and firearms in defense of others only where there is a threat of imminent death or serious injury.
- IV. Officers are permitted to use force and firearms to prevent the perpetration of a particularly serious crime involving grave threat to life.
- V. Officers are permitted to use force or firearms to arrest a person presenting a danger to life or of serious injury, and resisting their authority, or to prevent his or her escape. Again, this is only when less extreme action is not sufficient to achieve the objective of the officer and lethal force is only to be used to protect life and when there are no other alternatives.
- VI. In relation to the use of firearms generally, this is only permitted when less extreme means are insufficient to achieve the lawful objectives of self defense/protection of others etc.

There should also be specific guidelines and safeguards in place to cover the practicalities of decision-making and appropriate procedures in the event that force or firearms are employed. The following must be covered in legislation(amendment):

- a) The decision to use firearms must be taken by a senior officer. The law should specify the particular rank, and should also take into account the fact that officers involved in making the decision of whether or not to issue firearms should have received a level of training which is sufficient to allow them to make a sound judgment on the matter.
- b) Once the decision to use firearms has been taken certain safeguards need to be followed -i.e. in the circumstances provided, the police shall, where the circumstances permit:
 - i) identify themselves as police;
 - ii) give a clear warning of their intent to use firearms;
 - iii) ensure there is sufficient time for the warning to be observed before using firearms unless it would:

- a. Unduly place the police at risk;
 - b. Create a risk of death or serious harm to other persons; or
 - c. Be clearly inappropriate or pointless in the circumstances of the incident; and
- Further the police should not fire warning shots.

•When the use of lethal force is necessary, police will:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved. This would mean that wherever possible minimum force will be used;
- (b) Minimize damage and injury and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible opportunity; and
- (d) Ensure that a relative or close friend of the injured or affected person is notified at the earliest possible opportunity.

•If there has been lethal use of force, the police will report all such instances promptly to their superiors, in accordance with established procedures.

Further, the UN standards also enshrine requirements for legislation on this issue concerning the nature of the firearms themselves as well as their storage and control. They standards cover the following:

- i) Rules that specify which officers are authorized to carry firearms, and when;
- ii) Rules that specify what kinds of firearms and ammunition are authorized, as well as to limit or prohibit the use of those weapons and ammunition that cause unwarranted harm;
- iii) Regulations to govern the storage, control and issuing of firearms to ensure accountability; and
- iv) Procedures to be in place for reporting whenever firearms are used by officers in their duties (and not just when lethal force is used).

The above points describe the limits of the use of firearms outlined in the UN Basic Principles. All of these provisions apply to the use of force and firearms by police generally, and this includes the policing of public order. As such, enforcement of any

section in this Public Order Management Act should adhere to these principles though reports of death as result of Gun shots have been reported.

5.6 RECOMMENDATIONS AND CONCLUSION

Concerns regarding restrictions on the right to freedom of expression

The force should;

- 1)** Ensure prompt and impartial investigations into the physical attacks on journalists and damage to their equipment, and ensure the victims of these violations have access to legal remedy;
- 2)** Immediately put an end to the practice of arbitrary arrests and detention of journalists and access to information and movement to create an enabling environment for reporting;
- 3)** Hold accountable police and security officers responsible for attacks on journalists during the post-2011 and 2016 election periods;
- 4)** Refrain from imposing bans on social media and the broadcasts and publications of media houses; and
- 5)** Accept the request of the UN Special Rapporteur for Freedom of Opinion and expression to conduct an official visit to assess the situation of freedom of expression in Uganda.

Concerns over restrictions on the right to freedom of association

- i) Amend Sections 44(d)(f) and 30(1)(a) of Non-Governmental Organizations Act (2016) that can be misinterpreted to target civil society;
- ii) Clarify and define the vague terminology included in the NGO Act, including the "security of Uganda" and "the dignity of the people of Uganda";
- iii) Ensure prompt and impartial investigations into break-ins of NGO offices and make these investigation findings public; and
- iv) Domesticated the UN Declaration on Human Rights Defenders (1998) to ensure a national legal protection mechanism for HRDs.

3 (C) Concerns over restrictions on the right to freedom of peaceful assembly

- i) Respect Ugandans' rights to peaceful assembly and refrain from preventing or disrupting peaceful public gatherings;
- ii) Amend sections 5(2)(c), 6(1), 7(2), 8, 9(2)(f) 10(e), and 13 of the Public Order Management Act (2013) to repeal restrictions against freedom of assembly;
- iii) Ensure that victims that have been denied their right to peace assembly or faced arrest or abuse during the dispersals of public gatherings have access to remedy and reparation;
- iv) Publicly call for police to refrain from using excessive force even in the event that organizers have not complied with Public Management Act;
- v) Ensure impartial investigations into human rights violations committed during the dispersal of public assemblies are undertaken and suspend officers suspected in involvement of violations until investigations are independently and thoroughly completed; and
- vi) Adopt the best practices on freedom of peaceful assembly prescribed by the UN Special Rapporteur on Freedom of Peaceful Assembly and Association in its March 2016 joint report to the Human Rights Council (A/HRC/31/66).

Policing is not only about protecting people from crime and responding to crime. It is also about ensuring public order and maintaining the peace when social ordering and control is insufficient. Since public order is a contested concept, capturing what it is in police doctrine is tricky.

Public order policing is normally conceived in terms of policing designed to deal with Political demonstrations, protests and riots so that people and property are not endangered. According to its political nature a regime will weigh the degree of freedom of expression and assembly to be allowed, against the interests of public safety, the prevention of crime and the security of the state, It will also determine how much force it is prepared to use in any given circumstance, whether enforcement will be civilian or military, and what will be its policy should security

personnel break the law while undertaking a public order role. These decisions are primarily political. Regimes of all colours use the police and the criminal law to maintain their chosen political order. Any actual or threatened breach of this order is not only impermissible, it is also punishable. 'State power', as Pietro Toggia observes, comes to be 'identified as one and same with order and normalcy, even when the state itself often engages in disorderly conduct'(2008: 122).

5.7 CONCLUSION

The question of Public Order and the coming into force of the POM Act has become a phenomenon and it has been a continuous feature in national and international concern, debates, and discussion. However the foregoing analysis is not meant to suggest, in any way, that there should not be some scheme or system designed that encourages advance notice and cooperation between police and event organizers either by way of legislation, regulations or policy and practice. The police/government can provide a framework within which notice of planned events can be given and so the police can prepare in a way which protects and safeguards both the right of persons to participate in public assemblies, and also the human rights and safety of all persons when such an assembly takes place. Communication and, if relevant, negotiation can also be encouraged between police and organizers provided that the police recognizes that, ultimately, they have no power to put a stop to a peaceful gathering, even if for example, they would prefer it occurred at a different time or place. What cannot be a feature of any such scheme or system, however, if international and national laws and standards are to be complied with, are those things that have been noted above (chapter 2) namely, that the police should not have power to disallow a peaceful assembly; that the giving of notice should not be a mandatory requirement, the absence of which attracts a possible prosecution and penalty; that particular kinds of public assemblies or groups of people should not be targeted, if consensus is built to that effect, surely the public order of Uganda shall become not only a theoretical expectation but a practical reality with no unreasonable restrictions for the benefit of all.

5.8 Areas for Further Research

Given the time and the scope of study, this research could not digest all the necessary information to cover the researcher gap .so, further research needs to be done on the impact of the relationship between the police and the citizens who have been involved in situations where the POM Act has been evoked

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