THE ANALYSIS ON IMPACT OF THE PUBLIC ORDER ACT ON THE FREEDOM OF SPEECH, ASSEMBLY AND ASSOCIATION

BY

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A Dissertation submitted in Fulfillment of the Requirement for the Award of Bachelor of Law Degree (LLB) Cavendish University

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ABSTRACT

The existence of the Public Order Act (POA) has been seen by a broad section of the Zambia populace as an obstacle to the enjoyment of political rights such as the freedom of assembly, association and expression and deepening of the democratic process in Zambia. The Public Order Act, inherited from the colonial government, has been widely seen as a mere tool by the government, in power to suppress political dissent and discourage civil society from actively participating in matters of national interest. The police force has been used by the Government in power to deny permits to the opposition and civil society to hold meetings and many citizens have been arrested in the past on trumped up charges in connection with the public Order Act. What has been the impact of the POA on constitution rights in Zambia since independence? Can the POA be reformed? Can the Zambian legal system alone be counted on to offer solutions to this problem? What must be done to maintain the balance between upholding law and order on the one hand, and upholding the constitutional rights of freedom expression, assembly and association on the other?
DEDICATION

I devote this paper to the loving my father and mother, N .H Bingu, G. Bingu and the whole.
ACKNOWLEDGEMENT

To my beloved mothers and father, for your steady and unchanging support,

To my family, for always believing in me,

To my close friends and dearest family, for always being there for me, especially when it counted most.

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LIST OF ACRONYMS

UDHR   Universal Declaration of Human Rights, 1948
ICCPR  International Covenant on Civil and Political Rights, 1966
POA    Public Order Act
1.0 CHAPTER ONE
1.1 PROPOSAL
1.2 INTRODUCTION
This research proposal investigate on the definition of Public Order, the impacts of Public Order Act of Republic of Zambia on freedom of expression, assembly and association which is the constitutional fundamental rights, explains the historical background of the Public Order act in Zambia and comparing with other countries Public Order Act. It will also create understanding of Public Order Act in line with the Constitution, the supreme law of the land. It will further discuss how Public Order Act has been applied pre-colonial and post- independence in Zambia and how Public Order Act can be applied in line with the Constitution to promote civil rights and it will discuss reasons for appeal some sections of Public Order Act in Zambia.

1.3 BACKGROUND TO THE STUDY
Public Order has been defined as "the state of peaceful co-existence among members of the public generally in which there is an absence of breach of the peace, fighting, rioting disturbance or conduct which causes unreasonable interference or disturbance to quiet living. The main component of the above definition of public order has been defined by specific statutes, notably; The Public Order Act, The Penal Code and The Societies Act. The Public Order Act (POA) regulates public meeting and processions anyone who participates in a meeting or procession for which Notice has not been issued may be arrested without warrant and charged with unauthorized assembly the power given to the police are vast and not amenable to any effective check. This is considered to be unconstitutional as they violate the freedom of expression, assembly and association.

The Public Order Act was adopted in 1955 from British colonial rule as Public Order Act, chapter 113(19 August 1955). An act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order. In effect and practice the act is basically intended to regulate public assemblies, demonstrations and processions by notifying the police and involving them to ensure that there is peace and order at such events.
The requirements by the police are outlined in various sections of the act thus. 5 (4) of the Act, every person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days’ notice of that person's intention to assemble or convene such a meeting, procession or demonstration;

(5) Without prejudice to the generality of the provisions of the preceding subsection, the conditions which may be imposed under the provisions of the said subsection may relate to all or any of the following matters: (a) the date upon which and the place and time at which the assembly, public meeting or procession is authorized to take place; (b) the maximum duration of the assembly, public meeting or procession; (c) in the case of an assembly or public meeting the persons who may or may not be permitted to address such assembly or public meeting and the matters which may not be discussed at such assembly or public meeting;

(d) the granting of adequate facilities for the recording of the proceedings of such assembly or public meeting in such manner and by such person or class of person as the regulating officer may specify: Provided that such conditions may not require the convener of the assembly or public meeting to provide equipment; and (e) any other matter designed to preserve public peace and order.

The foregoing requirements do not apply in case of any meeting convened or organized to be addressed by the republican president, vice president, any cabinet or junior minister of the speaker or deputy speaker of the national assembly, as provided for in sub-section 5(6).

There are penalties for failing to comply with the police requirements as stipulated in subsection 5(7), as follows: Any assembly, meeting or procession- (a) for which a Notice is required under subsection (4) of section five and which takes place without the issue of such a Notice; or (b) in which three or more persons taking part neglect or refuse to obey any direction or order given under subsection (3) or (7) of section five; shall be deemed to be an unauthorized assembly, and all persons taking part in such assembly, meeting or procession and, in the case of an assembly, meeting or procession for which no notice has been issued, all persons taking part in convening, calling or directing such assembly, meeting or procession may be arrested without a warrant and shall on conviction be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.
Whereas the provisions of the Public Order Act seem to ensure law and order at public assemblies, demonstrations and processions, the application has serious implications on the freedoms of expression, assembly and association. The Act gives the police absolute discretion to decide who should be given chance to exercise their fundamental constitutional rights of expression, assembly and association as provided for in Zambian Constitution under Articles;

Article 20: Protection of Freedom of Expression

1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

2. Subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.

3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision—— a. that is reasonably required in the interests of defense, public safety, public order, public morality or public health; or

b. that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or

That imposes restrictions on public officers; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.
Article 21: Protection of Freedom of Assembly and Association

1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

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

a. that is reasonably required in the interests of defense, public safety, public order, public morality or public health;

b. that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

c. that imposes restrictions upon public officers; or

d. for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

The police are also at liberty to offer any lame reason, in the book, for advising the conveners against holding the public rally or procession. Although the emphasis is on ‘giving seven days’ notice to the police’, the police, from experience, are free to interpret this to mean conveners require applying for a ‘permit’.

The fact that as stipulated in sub-section (5)(c), the conveners are expected to indicate persons that would address the public rally and what they would talk about implies need for prior clearance and therefore a threat on expression of views that are divergent from those in power. From the perspective of the terms and spirit of the Declaration of Principles on Freedom of Expression in Africa, the provisions of the Public Order Act may be ideal for dictatorships, or
one-party states, but not for multiparty democracies like Zambia. They provisions do not serve a legitimate interest and are not necessary in a democratic society. Furthermore, the requirement of seven days’ notice to the police does not take into account any emergency need for the public rally.

Some sections of the Public Order Act are unconstitutional, according to Zambian legal system the constitution is the supreme law of the land as provided in the Constitution under;

Article 1. (1) This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.

(2) An act or omission that contravenes this Constitution is illegal.

(3) This Constitution shall bind all persons in Zambia, State organs and State institutions.

(4) The validity or legality of this Constitution is not subject to challenge by or before a State organ or other forum.

(5) A matter relating to this Constitution shall be heard by the Constitutional Court.

The interpretation of Public Order Act is inconsistency with the constitution which makes it invalid and illegal to be the law. It is impossible to delegate the power of regulating practice of fundamental right into hands of any institution or state organ because they are also subject to same constitution. No institution or organ of the state or a person is above the constitution the rule of the law is the quality of the Constitutionalism of the state, it applies to all equal. All constitutional matter will be only dealt with the High court and Constitutional court not any other institution such as police.

1.4 THE STATEMENT OF THE PROBLEM

There is growing awareness of impact of Public Order Act on Constitutional fundamental Rights in Zambia. One of the most controversial and contested laws on Zambia's Statutes is the Public Order Act. This is owing to the manner in which subsequent governments have continued to unreasonably use it to prevent citizens from holding public gatherings. Devised by the British government in colonial times to control nationalistic politics, this law was carried over into the first and second republics of Kenneth Kaunda’s reign. In 1991, the MMD upon assuming office
found the same law which had seen most of the champions of democracy being detained or their freedoms curtailed¹.

Ironically, in office, the MMD did not see anything wrong with the Act that outlaws free assembly without a permit. During the MMD reign the constitutionality of the Public Order Act was adjudicated by the Courts of Law in the case of Christine mulundika and 7 others v The people², leading to its amendment in Parliament. The amended Public Order Act of 1996 thus has a provision that allows meetings to be held without permission (just a formal notification to the local police is what is provided for).

However, this is not how it is currently being applied leading to anxieties by opposition parties and civil society groups, who are of the view that this law, in practice, is being applied in its original form.

1.5 PURPOSE OF THE STUDY
The main reason for writing on this topic is to help facilitate the dissemination of knowledge and to create awareness on impacts played by Public Order Act on Constitutional Fundamental Freedom and Rights, among students and public in general, to create knowledge on how Public Order Act can be used as tool for promotion of fundamental Freedom and Rights in the Constitution.

The impacts of Public Order Act on Constitutional fundamental Rights are a subject which is important and should be thoroughly examined and understood for most of people in Zambia. The impact of public order act on Constitutional Rights is alien concept or a concept that is vaguely understood or taken for granted all together. Both students and public ought to know more about it so that they can be enlightened on how to tackle public issues in balance with Constitutional Fundamental Rights, through the tools offered by Public Order Act.

² (1990-1992) ZR 82 (JSC)
1.6 OBJECTIVES OF THE STUDY
The main objectives of the research are to bring out reasons for opposing how Public Order Act is applied against human rights in The Constitution of Zambia:

- To learn and know the history of Public Order Act in Zambia;
- To understand and grasp the impact that Public Order Act has on the Constitutional Fundamental Rights;
- To learn how Public Order Act can be used as tool to promote Constitutional Fundamental Rights.
- To learn how Public Order Act applies in Zambia.
- To learn the Constitution in line with Public Order Act.

1.7 RESEARCH QUESTIONS

- What is the origin of the Zambia’s Public Order Act?
- What are the impacts the Public Order Act on Constitutional Fundamental Rights?
- How can Public Order Act be used as a tool for promoting Constitutional Fundamental Rights?
- How is the Public Order Act applied in Zambia?
- What is the importance of the Constitutional in line with Public Order Act in Zambia?

1.8 SIGNIFICANCE OF THE STUDY
This study will be significant in adding to limited literature available on how to apply Public Order Act in line with the Constitutional fundamental Rights in Zambia. It will also contribute to existing knowledge in that it provides the reader with an insight into Public Order Act application situation in Zambia and its human rights implications.

The scope of paper will mainly consist of the following elements: The definition of public order act, a brief history of public order act in Zambia, the impacts of Public Order Act on the Constitutional fundamental Freedom and Rights and how Public Order Act can be used to harness the fundamental Freedom and Rights in Constitution. The context of study shall also draw emphasis from how other countries have succeeded in achieving this vice with a specific focus on developing on nations. The study finally draws a realistic evaluation of how Zambia can exploit Public Order Act and Proposal suggested.
1.9 RESEARCH METHODOLOGY
This discourse is qualitative in nature. The methodology to be employed therefore consists of primarily desk research attained through the collection of primary and secondary data sources. The primary sources to be used include local legislation, decided cases and other relevant laws applicable to the subject matter of the research.

Further primary sources will be generated from pertinent foreign law reports, cases, statutes and parliamentary debates. Secondary sources include international instruments, articles, journals, textbooks, dissertations and research reports based on the subject matter.

1.10 STRUCTURE OF THE RESEARCH
Chapter one is a general introduction, definition of concepts of the title and illustrates the aim of the research. It further shows and provides a brief understanding of the problem onto which this research is based. Chapter two discusses the historical background of Public Order Act pre-colonial and post-independence in Zambia. Chapter three will discuss application of the Public Order during the first republic, second republic and during the third republic. Chapter four will discuss the application of the public order act by the English courts and Chapter five will give the conclusion on the topic.

1.11 CONCLUSION
Chapter one has laid a general introduction concerning the impacts of the Public Order Act in Zambia on the constitutional freedom of association, expression and assembly. It has also given the brief background of Public Order Act and remedies available to solve to problems around the Act. It has further outlined what the research seeks to achieve by giving an overview of Public Order Act in with Constitution in Zambia. The next chapter addresses the historical background of Public Order Act pre-colonial and post-independence in Zambia.
2.0 CHAPTER TWO
2.1 LITERATURE REVIEW
2.2 INTRONDUCTION
The maintenance of public order is a fundamental responsibility of every Government, the responsibility stems from the fact that Government exists to serve and protect the people of its country. Nonetheless, this may only be achieved through maintenance of public order in the state by the government of the day. Hence, this chapter defines constitution, equality before the law, bill of rights, and the Zambian constitution, international and regional instrument for protection of human rights and highlights the salient provisions of the Public Order Act to mention a few. Keeping on mind that, the laws enacted and prescribed for maintenance of public order are in Conflict with individual’s rights and freedoms guaranteed/protected by the constitution³.

2.3 THE CONSTITUTION
The constitution can be defined as document having the force of law, by which a society organizes a government for itself: defines and limits its powers and prescribes the relations of various organs interest and with its citizens.⁴ At the core, constitutionalism is meant to empower legitimate authorities to act for the public good in the management of common concerns while protecting people against the arbitrary power of rulers whose powers would otherwise be used for their own benefit and not for the public good.⁵

This is because constitutional government ensures ‘the fair and impartial exercise of power’; it ‘enables an orderly and peaceful society, protects the rights of individuals and communities, and promotes the proper management of resources and the development of the economy’.⁶ To this point, the Constitution is regarded as the Supreme Law of the land it gives life and meaning to any other piece of legislation in Zambia.

³ B.O. NWABUEZE, CONSTUTIONALISM IN THE EMERGENT, STATES(LONDON BILLINGS AND SONGS LTD (1973)P.2
⁴ PART iii OF THE CONSTITUTION OF ZAMBIA, 2016.
⁵ Ibid:p.5
This is to say all other laws are to be consistent with it, failure to which they are considered as void to the extent of their inconsistency\(^7\). The rationale for this supremacy is that the constitution is (or is supposed to be) an original act of the people directly; an act of Government is derivative and ipso facto a subordinate act.

2.4 The Constitution at the Intersection of Legal, Social and Political arenas.
As legal, political and social documents, constitutions are at the intersection of the legal system, political system and society.

Constitutions as legal instruments: A constitution ‘marries power with justice’ it makes the operation of power procedurally foreseeable, upholds the rule of law, and places restrictions on the arbitrariness of authority\(^8\). Thus it is the supreme law of the land, and provides the standards that ordinary statutes have to comply with\(^9\).

Constitutions as social declarations: Constitutions often attempt, to varying degrees, to reflect and shape society for instance, by expressing the (existing or intended) common identity and ‘aspirations of the people or by proclaiming shared values and ideals\(^10\). These provisions are generally found in preambles and opening declarations, but can also be found in oaths and mottos or on flags and other symbols that are defined by the Constitution. Other substantive provisions of the constitution, particularly those defining socio-economic rights, cultural or linguistic policy, or education, might also belong to this category\(^11\).

Constitutions as political instruments: The constitution prescribes a country’s decision making institutions: constitutions ‘identify the supreme power’, ‘distribute power in a way that leads to effective decision making’ and ‘provide a framework for continuing political struggle’\(^12\). The political provisions show how state institutions (parliament, executive, courts, head of state, local authorities, independent bodies, etc.) are constituted, what powers they have and how they relate to one another.


\(^11\) Ibid. p17.

\(^12\) Ibid. p17.
2.5 EQUALITY OF ALL BEFORE THE LAW

There is no express mention or provision for the right of equality of all before the law in the Zambian constitution. However, there are some provisions in respect of criminal proceedings Under Article 18(1) and 18(2) of the constitution. Article 18(1) stipulates:

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Article 18(2) provides, in part, that ‘every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.’ In addition, Article 23 contains provisions against any discrimination on grounds of race, tribe, and sex, place of origin, marital status, political opinions, colour or creed thus:

23(1) Subject to clause (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. The provisions of the article are limited by clause (4) where the effect of other laws that respectively provide for such aspects as appropriation of the general revenues of the country; persons that are not citizens of Zambia; and adoption, marriage, divorce, burial, devolution of property on death are concerned.

2.6 BILL OF RIGHTS

A Bill of rights is contained in the Constitution amendment of 2016. It was incorporated for the first time in Northern Rhodesia’s (now Zambia) history in the self-government constitution of 1963. It was reproduced with minor amendment in both the independence constitution of 1964 and the one party state constitution of 1975; today it exists in the 1991 constitution amendment of 1996 as amended in 2016.

13 PART iii OF THE CONSTITUTION OF ZAMBIA, 2016
15 A.W. CHANDA, ZAMBIA: A CASE STUDY IN HUMAN RIGHTS IN COMMONWEALTH AFRICA (J S D THESIS, YALE, 1992) P. 2
The Bill of rights guarantees an individual’s fundamental rights and freedoms. It is renowned that the constitution\(^{16}\) recognizes an individual’s rights and freedoms regardless of his race, place of origin, political opinions, colour, creed, sex or marital status as:

(a) Life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, expression, assembly, movement and association;

(c) Protection of young persons from exploitation;

(d) protection for the privacy of his home and other property and from deprivation of property without compensation; and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. The bill of rights need not be exhaustive as all human rights are predicated on the common law. According to an eminent African constitutional scholar professor Nwabueze quotes that, ‘the bill of rights create no rights de vivos but declares and preserves already existing rights which they extend to legislative born out by the negative sociology of some of the provisions. He believes that to say that no person shall be deprived of his personal liberty clearly presupposes existing rights, for it would be an abuse of language to talk of depriving a person of the rights which he does not have.’\(^ {17} \)

Regardless of whether there exists a constitution, an individual’s fundamental rights and freedoms exist\(^ {18} \). In England, for example, there is no written constitution but a bill of rights exists. Even in countries such Libya which is governed and influenced by military Junta, certain rights and freedoms continue to exist, whereas, the constitution has been suspended at one time\(^ {19} \).

\(^{16}\) Article 11 of 1996 constitution, amendment of 2016.

\(^{17}\) Ibid:p.10


2.7 THE CONSTITUTION, INTERNATIONAL AND REGIONAL INSTRUMENTS FOR PROTECTION OF HUMAN RIGHTS

However, a numbers of eminent writers have endeavored to illustrate the impacts of the Public Order Act on the Constitutional Fundamental Rights. Impacts of the Public Order Act on the freedom of Assembly, expression and association are the main issue in Zambia. Human rights in Zambia are protected by the Constitution and International Conventions which it has domesticate, ratified and signed.

One of the most important conditions for the existence of a democratic society is respect for fundamental rights and freedom. The freedom expression is considered the most precious and, indeed, the very foundation of a democratic society. As pointed out by Marcus and Spitz, "the exercise of democratic self-government, both indirect and representative forms, affords the citizenry the capacity to make informed judgments about the manner in which they are to be governed."

Extensive and participatory debate in turn requires free and open access to all available and relevant ideas and policies. It is through their ability to express themselves that the governed people can voice judgment on government action, and thus ensure that they are properly and democratically governed.

Freedom of expression consists of two elements: the first is the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers and the second is the right to choose the means to do so. Thus, the right to freedom of expression protects not only the substance of ideas and information, but also their form, their carriers and the means of transmission and reception. This view was supported by the European Court of Human Rights when it expressed the opinion that freedom of expression "applies not only to the content of

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20 Handyside v United Kingdom (1976) in EHRR 737 at para. 49 and Supreme Court of Zimbabwe, in Retrofit (PVT) v PTC & ANOR, 1995 (2) ZLR 199 (S) 210H-211A. See also Feltoe, G., 'Just How Precious is Freedom of Expression?' in Legal Forum (Vol. 9 No. 3, 1997) 23–32, 23.


23 4ICCPR, Article 19(2).
information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information 24.”

This opinion was endorsed and adopted by the Supreme Court of Zimbabwe in the case Retrofit (Pvt) Ltd. Under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) which Zambia has ratified as party member, ideas and information may be received or transmitted "either orally, in writing or in print, in the form of art, or through any other media chosen by the communicant or recipient. Thus this list of means is not exhaustive.

The choice of means for communication of ideas depends on several factors, including the nature of the ideas to be communicated and the level of technological advancement in a given society. In developed countries, the principal media of communication are television, radio and print media and electronic mail 25. In parts of the developing countries like Zambia, these means are still unavailable to the majority of the population.

The principal method of transmitting information and ideas is still via oral communication, in most cases unaided by any technological devices 26. For people to communicate in this way they must be able to come together and it is for this reason that the enjoyment of freedom of expression in Zambia is dependent on the extent to which freedoms of assembly and association are guaranteed. Therefore freedom of assembly and association has been described as being not only cognate to freedom of expression, but as essential element of any democratic system 27.

The principal sources of legal standards relating to freedom of assembly and association are human rights instruments both of a general and specialized nature, as well as instruments of regional scope. Among the former are the Universal Declaration of Human Rights, 1948 (UDHR) and the International Covenant on Civil and Political Rights, 1966 (ICCPR). Article 20(1) of the UDHR provides that "Everyone has the right to freedom of peaceful assembly and association" while sub-article (2) of the same Article provides that "No one may be compelled to belong to an association". Under the ICCPR, the right of peaceful assembly is recognized and

24 Article 10(1) of the European Convention on Human Rights
25 Retrofit (Pvt) Ltd vs. Posts and Telecommunications Corporation (Attorney General intervening) 1995 (9 BCLR 1262 (ZS), 196 (1) SA 847 (ZS)).
26 Ibid
27 Kabudi, op. cit., 297.
protected under Article 21, while freedom of association is enshrined in Article 22 which provides: (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

The right to freedom of peaceful assembly and association is also provided for under Article 5(d) (ix) of the Convention on the Elimination of Racial Discrimination of 1966. In addition to instruments of a global nature, the rights of peaceful assembly and freedom of association are provided for under various regional instruments on human rights such as the European Convention on Human Rights, 1950, the American Convention on Human Rights, 1969 and the African Charter on Human and Peoples’ Rights, 1981.

This freedom and rights have not been sufficiently enforced in the Republic of Zambia and other developing countries, because of the inadequacy of the laws that are supposed to give effect to these constitutional rights; oppressive practices by ruling parties against opposition groups; and legal regimes relating to public order. The requirements by the police are outlined in various sections of the Public Order Act of Zambia thus: section 5 (4) every person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days’ notice of that person's intention to assemble or convene such a meeting, procession or demonstration. The issue of giving discretionary power to institutions such as police to regulate the practice of Constitutional Rights and Freedom is the way of taking away the same rights and freedom from people.

To set as a reminder, this issue undermines the supremacy of the Constitution. There is a need to appeal or amend the Public Order Act to promote human rights provided by the constitution and other international and regional conventional.

2.8 THE CONSTITUTIONALITY AND NECESSITY OF THE PUBLIC ORDER ACT IN THE DEMOCRATIC OF ZAMBIA

As a result of constant police refusal to issue permits to Government opposition members for assemblies, processions, and meetings. Many people have started to question the compatibility of certain provisions of the Public Order Act in comparative to the Bill of rights in Zambia. This is

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29 Ibid
30 Ibid
due to abuse of the Public Order Act. The police are more like to take advantage by misinterpreting the Act in their favour/ruled government. This may lead to infringement of the bill of rights, especially the ‘right to assembly, expression and association’, thus making it unconstitutional31.

To illustrate such occurrences, the courts have attempted to examine the constitutionality of the Act due to questioning/fears raised by the public regarding salient provisions of the Public Order Act. For instance, these fears were first expressed in the following landmark cases herein; THE PEOPLE V CHRISTINE MULUNDIKA AND SIX OTHER32 and THE PEOPLES V DR KENNETH KAUNDA33; which was brought before the High court by way of reference under article 28(2) of the constitution. There were three legal issues for the determination of the court. Respectively:

(1) Whether the provisions of the public order Act requiring a person to apply for a police permit, to hold a public meeting, to a regulating officer are null and void for being inconsistent with Articles 20 and 21 of the constitution.

(2) Whether those provisions of the Public Order Act granting ‘absolute power’ on the regulating officer to ‘grant or refuse’ a police permit are ‘null and void’ for being inconsistent with Articles 20 and 21 of the constitution.

(3) Whether the provisions of the Public Order Act exempting the ‘president, Vice president, ministers, junior ministers, the speaker of the National Assembly and Deputy speaker,’ from obtaining a police permit are null and void for being inconsistent with Article 23 of the constitution.

Professor Mvunga argued the first two grounds on behalf of the applicants. He argued that section 5(4) of the Act, which requires one to apply for permit, can be construed as granting absolute powers to the regulating Officer therefore making it, to that extent, ultra vires Articles 20 and 21 (freedom of expression, assembly and association respectively) and hence null and void. Professor Mvunga argued that the Articles are only subject to regulation, reasonably

required, as per the derogatory clauses in them. He said this is not the case with section 5(4) which he argued extinguishes, diminishes and denies the freedoms.

The professor further argued that the provision leaves the issuance of a permit to the subjective determination of regulating officer which therefore makes it subject to abuse. He stated that this is not justifiable in a democratic society in which plural politics is practiced. Mr Zulu, who argued the 3rd ground on behalf of applicants, submitted that section 5, 7 and 8 of the Public Order Act were discriminatory in relation to the applicants and ultra vires Article 23 of the constitution. He argued that section 5(6) which exempts the president, his cabinet and the speaker of the National Assembly and his Deputy, from the requirement to apply for permit is discriminatory of itself and in its effect therefore making it ultra vires Article 23( protection from discrimination) and hence null and void.

The rationale for Mr Zulu’s argument was that in a plural political society like Zambia in which members Government are from the ruling party, undue advantage is given to the ruling party in elections as, unlike the opposition, and they do not need to obtain a police permit before holding a political rally. He therefore concluded the provision was not reasonably justifiable in a democratic society.

In reply, Mr Kinariwala who argued on behalf of the respondents submitted the section 5(4) of the Public Order Act is not a hindrance to the applicants in the enjoyment of their freedom of assembly as long as they apply for and obtain a permit. He argued that the freedom is not absolute, hence the provision of the Act. Mr Kinariwala submitted that the Regulating officer must satisfy himself that the assembly is unlikely to cause or lead to a breach of peace and once and once he is satisfied, he has no alternative but to issue a permit. Therefore, he argued that the power is discretionary which must be exercised judiciously and not capriciously.

Mr Kinariwala argued that the real effect and impact of section 5(4) neither extinguishes nor diminishes nor denies the said freedom but merely restricts it because the freedom is not absolute. Mr Kinariwala submitted that section 5(6) of the Public Order Act is not discriminatory. He argued that “discrimination” referred to in Article 23 of the constitution refers only to discrimination based on race, tribe, and sex, place of origin, marital status political opinion, colour or creed therefore or creed therefore making it exhaustive and not illustrative.
Judge David Lewanika held the following;

(1) That the power conferred on the Regulating officer is not an absolute one but discretionary, which discretion must be exercised judiciously and if not properly exercised, it can be challenged and corrected.

(2) That although section 5(4) of the public order Act limit the freedom of assembly, it does not do so excessively or arbitrarily, but within the derogations contained in the constitution.

(3) That Article 23 (3) in its definition of discrimination is exhaustive and not illustrative and therefore the discrimination argued about by the application within its ambit.

(4) That section 5(4) of the Public Order Act is intra vires Article 20 and of the constitution and that section 5(6) of the same Act is intra vires Article 23 of constitution.

It is submitted that it was correct for the judge to hold section 5(4) of the public Order Act intra vires Article 20 and 21 of the constitution. This is because the derogatory Clauses allow for the limitation of the rights and freedoms guaranteed by the Bill of rights which the Public Order Act merely does.

The power granted to regulating officer is a discretionary power which gives him only one consideration to take account of determining whether to issue a police permit or not. He is to consider whether such an assembly, procession or meeting is likely to lead to or cause a breach of peace. If the assembly, procession or meeting is unlikely to lead to a breach of peace then the regulating officer has no choice but issue a permit.

Section 5(4) of the Public Order Act does not extinguish, diminish or deny the freedoms of assembly and association but merely regulates them because, as Mr Kinariwala correctly pointed out, political parties may wish to hold rallies at the same venue, on the same date, at the same time which could lead to a breach of peace. The police therefore, as the custodians of peace and security must regulate assemblies and the custodians of peace and security must regulate assemblies and processions to avoid anarchy and chaos.

In separate interviews this author conducted with chief justice Matthew Ngulube and Justice Bobby Bwalya the same view that the Public Order Act is a necessary requirement. The justices expressed the opinion that the Act merely regulates order rather than restrict it as the Regulating
officer has no choice but to issue a permit unless there is likely to be a breach of peace. It is submitted that judge Lewanika wrongly held that Article 23 is exhaustive. By reference to discrimination on the political opinion, Article 23 therefore includes the dissemination of that political opinion. There cannot be discrimination on the ground of political opinion, if people are not aware of the political opinion.

The president and vice president obviously do not need to apply for a police permit because by virtue of their respective offices there will be a police presence at their assemblies which therefore will be a breach of peace. However, as for ministers and junior ministers undue advantage is given over numbers of the opposition as they easily express their political opinion without restrictions or conditions. It is a fallacy to think that there cannot be a breach of peace at an assembly being addressed by a Minister or Junior Minister; therefore a police permit should be obtained. The police must be present, but not by way of notice but by the way an application as provided for under section 5 (4) of the public order Act.

2.9 THE PUBLIC ORDER ACT
The public order Act was enacted for the maintenance of public order. However, to an extent some of its salient provisions do have a bearing on the enjoyment of human rights under the constitution. These salient provisions fall under section 5 of the Act which regulates assemblies, public meetings and processions. The section empowers the commissioner of police to appoint a police officer above the rank of Assistant inspector to be the regulating officer, for the assemblies, public meetings and processions, in respect of an area as the commissioner may define:

5. (1) The Inspector-General of Police may, by Gazette notice, appoint by name or office any police officer of or above the rank of Sub Inspector to be the regulating officer for the purposes of this section in respect of such area as the Inspector General may, by the same or any other Gazette notice, define.

(2) In any area in respect of which no police officer has been appointed to be the regulating officer under the provisions of subsection

(1), the District Secretary of the District in which such area is situated shall be the regulating officer for the purposes of this section: Provided that in the absence of such District Secretary
from his headquarters the senior Assistant District Secretary present at such headquarters may exercise the powers conferred upon a regulating officer by subsections (3) and (4).

(3) Any regulating officer may issue directions for the purpose of-

(a) Regulating the extent to which music may be played on public roads and streets within his area on the occasion of festivities or ceremonies; or

(b) Directing the conduct of assemblies and processions in any public place within his area, and the route by which and the times at which any procession may pass.

(4) Every person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days’ notice of that person's intention to assemble or convene such a meeting, procession or demonstration.

(5) Without prejudice to the generality of the provisions of the preceding subsection, the conditions which may be imposed under the provisions of the said subsection may relate to all or any of the following matters:

(a) The date upon which and the place and time at which the assembly, public meeting or procession is authorized to take place;

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

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

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

Provided that such conditions may not require the convener of the assembly or public meeting to provide equipment; and

(e) Any other matter designed to preserve public peace and order.
(6) The provisions of subsections (4) and (5) shall not apply to any public meeting convened by or at the request of and intended to be addressed by the President, the Vice-President or any Minister or Junior Minister or the Speaker or Deputy Speaker of the National Assembly.

(7) Where in any proceedings against a person for an offence against section seven it is necessary so to prove, the burden of proving that the said public meeting was convened by or at the request of and was intended to be addressed by the President or the Vice-President or any Minister or Junior Minister or the Speaker or Deputy Speaker of the National Assembly shall lie on the accused.

(8) Any police officer, magistrate or any District Messenger may stop any procession for which no permit has been issued under this section or which, if such a permit has been issued, contravenes or fails to comply with any conditions specified therein, and may order any such procession or any assembly or public meeting for which a permit is required and which has been convened in a public place without such a permit or which, if such a permit has been issued, contravenes or fails to be convened in a public place without such a permit or which, if such a permit has been issued, contravenes or fails to comply with any condition of such permit, or which contravenes or fails to comply with the provisions of subsection (1) of section nine, to disperse.

This is done by Gazette notice. The regulating officer has the power to issue directions for the conduct of assemblies and processions in any place within his area and the route by which and the time at which any procession may pass. The notable feature of section 5 is that it exempts the president, the vice president, Ministers, junior minister, the speaker of the National Assembly and his Deputy, from the application of section 5(4) and section 5 (5) in intended to be addressed by any one of them. (Sub section 6).

2.10 THE PUBLIC ORDER ACT AND THE CONSTITUTION
The requirement of giving a notice to a police before holding an assembly, public meeting or procession, with set conditions, conflicts with the freedoms of assembly, association and expression. And the fact that there are people exempted from this requirement (section 5(6) is in conflict with the constitutional protection against discrimination on political grounds.
2.11 FREEDOM OF ASSEMBLY AND ASSOCIATION

It was stated in the case of MC ARA V EDINBURGH\textsuperscript{34} MAGISTRATES that freedom of assembly arises essentially from the fact that no permission is needed from any public authority before a group of individual meet to discuss a matter of common concern; nor do public authorities have the power to ban in advance the holding of assemblies. Freedom of association is a principle of law which imposes no restrictions upon the freedom of individuals to associate together for political parties, action groups, and campaign committees and so on without any official approval or registration.

Article 21(1) of the constitution guarantees the freedom of association and assembly. It states that except with his own consent no person shall be hindered in the enjoyment of his freedom of assembly and association that is to say, his right to assemble freely and associate with others persons and in particular to form or belong to any political party, trade union or other association for protection of his interests. However, this freedom, is not absolute as Article 21(2) allows for laws to be enacted limiting this freedom, that are reasonably required in the interest of defense, public safety, public order, public morality or public health; and laws that are reasonably required for the purpose of protecting the rights and freedoms of other persons.

The key for the enactment of laws limiting freedom of assembly, and association is their ‘reasonable requirement’ in public interest. In Zambia, a number of laws have been enacted which do not seem to be reasonably required in the public interest. An example of such a law is the Societies Act (10) which requires all political parties and non-government organizations to be registered. This is a breach of freedom of association as the registrar of societies has the power to refuse under section 8 which states that:-

Any society where it appears that such a society has among its objects, or is likely, to pursue or to be used for, an unlawful purpose or for any purpose prejudicial to or incompatible with peace, welfare or good order in Zambia or that the interests of the peace, welfare or good order in Zambia otherwise be likely to suffer prejudice by reason of the registration of a society\textsuperscript{35}.

\textsuperscript{34} (1973) SC 1059

The registrar has wide discretionary power which may be subject to abuse. The government may influence the registrar in order to deny registration to organizations it is against. In addition, Minister of Home Affairs may in his absolute discretion, where he considers it to be essential in the public interest, to declare to be unlawful any statutory society which in his opinion;

(a) Is being used for any purpose prejudicial to or incompatible with the maintenance of peace, order and good government; or

(b) Is being used for any purpose at variance with its declared objects.

The power given to the Minister of Home Affairs is not reasonable required in a democratic society as all opposition parties and non-government organizations, therefore, exist on his goodwill. In a multi-party democracy people should be free to associate, assemble and express without fear of disappointing any authority.\(^{36}\)

2.12 FREEDOM OF EXPRESSION

Freedom of expression is fundamental to an individual’s life in a democratic society. It has a specific political content. The freedom to receive and exercise political opinions, both publicly and privately, is linked closely with the freedom to organize for political purposes and to take part in free election.\(^{37}\)

The 2016 constitution protects the freedom of expression under Article 20(1) which provides that except with his own consent no person shall be hindered in the enjoyment of his freedom of expression, that is say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons and freedom from interference with his correspondence.

Like the freedom of assembly and association, freedom of expression is not absolute. Article 20(3) limits it by allowing laws to be enacted that are reasonably required in the interest of defense, public safety, public order, public morality or public health public; or that are reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings preventing the disclosure

\(^{36}\) Ibid.

\(^{37}\) Ibid.
of information received in confidence, maintaining the authority and independence of the court and any such laws in public interest.

The rationale behind the limitations is that there must be a process of balancing whereby the public interest in freedom of expression is weighed against other public interests in freedom of expression is weighed against other public interests such as the administration of justice or the protection of confidentiality. In Zambia, a number of laws have been enacted which limit freedom of expression;

A. PRESIDENTIAL POWER TO BAN PUBLICATIONS
The president of Zambia has the power under section 53 (1) of the penal code to ban any publications published within or outside the country, that he considers to be contrary of public interest. The provision makes it an offence for any person to import, sell, distribute, offer for sale or reproduce any prohibited publication. This seriously limits freedom of expression as ‘public interest’ is not defined; it determined by sole, subjective, discretion of the president.

In the case of SHAMWANA V ATTORNEY GENERAL 38, Mr. Edward Shamwana and Mr. Valentine Musakanya sent a petition to parliament asking it review its semi state of emergency. This petition was banned by the president and the court held that he had the power under section 53(1) of the penal code to do so and further, that he was not under any obligation to state his reasons for doing so.

Although the court in case correct on the position regarding the presidential powers and discretion, it is obvious that it failed to address the question with regards to whether the ban was in the public interest and not merely in executive interest.

B. DEFAMATION OF THE PRESIDENT
Section 69 of the penal code limits freedom of expression by making it an offence for any person to bring the president into hatred ridicule or contempt, publishes any defamatory or insulting matter whether by writing, printing, word, of mouth or in any other manner.

This provision, therefore, strictly prohibits criticism of the president as justification is not considered as a defense.

38 (1980)
C. DISCRIMINATION ON POLITICAL GROUNDS

Discrimination is prohibited by Article 23(1) of the constitution. It is defined in Article 23(3) as affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place or origin, marital status, political opinions colour or creed. The exemption of cabinet members, the speaker and his deputy, from the requirement to give notice, with set conditions, is discriminatory in multi-party democracy on political grounds. Political opinions of members of opposition are regulated by this provision whilst those of numbers of the ruling party are easily disseminated. Campaigning, therefore, cannot be considered as fair because the president and his colleagues have a clear advantage over their opponents. They are not restricted by time and able to address any issue.

2.13 THE POLICE AND THE PUBLIC ORDER ACT

Any policeman who is appointed as regulating officer has the power to issue a permit for public assemblies, meetings or processions to any person who applies for one unless such an officer is convinced that there is likely to be a breach of peace at such an assembly, meeting or procession. This power given to the regulating officer is a discretionary power as he must be satisfied that such an assembly, meeting or procession is unlikely to lead to a breach of peace, before he can issue a police permit.

In Zambia there has been a number of cases in the courts of law alleging an infringement of the rights and freedoms guaranteed and protected by the constitution because of the police refusal to issue a permit, not surprisingly, these cases have been brought to the courts of law by Government opponents, who are almost always the one denied police permits because of the Government’s influence over the police force.

The public order Act has been abused by Zambian Government in the first, second and third Republics and by the colonial Government in Northern Rhodesia. They have all done so by exercising influence over the police in order to suppress the opposition. Police permits are not given to persons protesting or demonstrating against Government, for example, on the 1st August, 1995 students of the University of Zambia were denied a permit to protest against a Government decision to rename their institution, Henry Mwaanga Nkumbula University.
However, permits are easily obtained by persons who wish to demonstrate in favour of Government; such demonstrations would not be thwarted even if the participants do not have a police notice. This has been evidenced by the instances in the women on the copperbelt, in support of president Chiluba, were advocating for the banning of the post Newspapers on 15th June, 1995 and when pupils from various schools proceeded to state House to demonstrate support for president Chiluba 24th July, 1995. Very recently on 13th September 1995 the police denied cadres of the movement for multi-party democracy (MMD) a permit to hold a demonstration in support of president Chiluba’s exposure of state house tunnels. This police denial was highly publicized which therefore gave warrant to the thought that it was merely a publicity stunt to salvage the credibility of the police force and to make it look independent.

The Government opposition has, however, not sat back and accepted the abuse of the public order Act. On number occasions, both in the second and third Republics, members of the opposition have challenged the police over their refusal to issue permits.

2.14 THE SECOND REPUBLIC
In 1990, advocates for the re-introduction of a multi-party system in Zambia were being denied permits by the police. Members of the movement for multi-Party Democracy (MMD) challenged the police over their refusal to issue them with permits the case of **ARTHUR WINA AND SIX OTHERS V ATTORNEY GENERAL**

The facts of this case are that on 24th September, 1990 President Kaunda held a press conference at which he announced a Government decision to cancel a planned referendum and hold general elections after a change to the constitution to allow for multi-party politics. Three days later the ruling United National Independence party (UNIP) announced that no campaign or meetings, from other than its party, will be held until the constitution was changed. Mr Mwanawasa, one of the petitioners, reacted to this statement from UNIP ON 28th September, 1990 by saying that the statement, if effected, is contrary to Articles 22 and 23 of the constitution. Therefore, in order to put the position clear as to the holding of meetings and campaigning, the Minister of Legal Affairs on 1ST October, 1990 announced that meetings could be held as long as police issued a permit. However, the police refused to issue the petitioners with permits in consequence of the UNIP statement.

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39 1990/HP/1511
The petitioners therefore sought declarations from the Government that their rights as members of M.M.D are likely to be constrained or alternatively that their rights as citizens of Zambia individually and severely are being and are likely to be contravened, by the decision of the party and its government not to allow to campaign. They also asked the court to make any declaration that it may deem fit to make for the effective enforcement of the said rights.

In cross examination, the police admitted to having received instructions ‘from above’ in the exercise of their duties. They argued that they refused to issue permits to the petitioners because the M.M.D. was not a registered society.

Justice Bobby Bwalya held that the refusal by the police to grant permits to the M.M.D constituted a violation of Articles 22 (freedom of expression) and 23 (freedom of assembly and association) of the constitution because the decision of regulating officer was invalid and illegal as instructions came from above. The judge correctly stated that there is no need for registration under the societies Act as the position of an unincorporated body or the society or association is recognized in law.

Justice Bwalya explained that section 5(4) of the public order Act did not stipulate that in the exercise of his discretion the Regulating Officer shall do so under the instruction from his superiors or higher authority. To explain the use of discretionary power he cited the case of COMMISSIONER OF POLICE V GUORD HANDAS; in which it was stated that; “the exercise of discretionary power when a discretion is vested in an administrative authority or person is that it must be exercised by that very authority or person in its or his own independent judgment and not under directions of others, including Government, to whom the administrative authority or officer is subordinate.”

2.15 THE THIRD REPUBLIC

In spite of the challenges made by members of the M.M.D against the buses of Public Order Act in the second Republic by the Government, they as Government in the 3rd Republic have not changed the scenario. Police have continued to deny Government opponents’ permits and hence the challenges have continued. In the case of WILLIAM BANDA V ATTONEY GENERAL 40; a member of UNIP on 15th April, 1992 submitted an application for the police permit to authorize the party to hold a rally in Lusaka. Among the list of speakers was the name of petitioner who

40 92/HP/1005
was the District party chairman of UNIP. All the names on the list were approved except that of
the petitioner on 30th March 1992 the petitioner submitted another application for a permit to
hold array which was accepted by the Regulating officer of police Mr Ndhlovu.

The petitioner therefore petitioned alleging that he had been prevented from enjoying his
fundamental rights relating to freedom of expression and association. He asked that the court
award him damages and such other order or other relief as it may deem fit. In cross examination
Mr Ndhlovu gave evidence to the effect that he as regulating officer denied the petitioner a
permit because he was believed to be a non-Zambia, whose speeches members of both M.M.D
and UNIP were against as they were considered to be provocative. He argued that the petitioner
was likely to be beaten by members of both M.M.D and UNIP had a permit been issued.

Judge Chitoshi held the following;

(1) That the petitioners rights under Article 20 and 21 of the constitution were violated
because the discretionary power granted to the police was abused by the use of an irrelevant
consideration that the petitioner was a non-Zambian, as the protects the rights of every person
in Zambia.

(2) That the fact that certain people did not want the speaker to speak and could have beaten
him an unacceptable ground because it was those who had planned to cause trouble who ought to
have been stopped and not the speaker.

(3) That the police had no power under the constitution or the Public Order Act to exercise
prior restraint of the expression of views unless it is demonstrable on a record that such
expression would immediately and irreparably create damage to create damage to the public.

(4) That the ordinary murmuring and objections of a hostile audience cannot be allowed to
silence a speaker unless he goes overboard as incite the crowd.

The case of ALFRED ZULU V ATTORNEY GENERAL 41; demonstrates abuse of discretionary
power by a regulating officer in order to satisfy the executive. In this case, students from the
University of Zambia applied for a permit for a procession and rally which they were granted by
the regulating officer, inspector Buchisa. The students then began to advertise for the rally which
was to be held at the Kafue roundabout but to their surprise inspector Bushisa purported to

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4192/HP/1005
cancel their permit the next day in pursuance of instructions from then Assistant commander Francis Ndhlovu. The students, however, decided to go ahead with the procession. Unfortunately, they were stopped along the way to their destination by the police, who arrested them.

The petitioner, on behalf of the students, sought declaratory orders that the cancellation by the police of the permit issued to them was invalid and that the alleged cancellation of the planned procession and rally was a violation of the students freedoms of expression, assembly and association.

Mr Ndhlovu claimed during cross examination that he did not cancel the permit but merely changed the venue to the university grounds from the Kafue roundabout because he did not have enough men to cover the rally.

The trial judge held that the permit had not been cancelled as only the venue was changed. He further held, therefore, that the rights of the students had not been violated. The Judge stated that the permit was issued by inspector Buchisa, Mr Ndhlovu had the right as a superior Officer to attach conditions to it.

The Supreme Court upheld the holding of the lower court. It held that Mr Ndhlovu as superior officer was responsible for giving instructions and orders to Mr Bushisa about the issuance and cancellation or variation of permits which Mr Buchisa had a duty to obey. The court found no impropriety on the part of the police and therefore it held that the students’ rights had not been infringed by the cancellation or variation of the permit.

It is submitted that the ALFRED ZULU case was wrongly decided by both the High court and the Supreme Court. As was established in the cases of ARTHUR WINA AND WILLIAN BANDA\(^\text{42}\), once a regulating officer is granted with a discretionary power, he is to exercise this power independently. However, in this case, the regulating officer obeyed an instruction from Mr Ndhlovu which therefore made his decision null and void because of the improper exercise of discretionary power. An officer may consult his superiors but what they say is merely to be taken as advice because the final decision rests on the officer granted the power.

\(^{42}\) (1994)SCZ NO.5
The court should have considered the evidence showing that the police were acting on orders from politicians as the president had invited the student leader to state where he requested that they cancel the rally or hold it on the University grounds.

2.16 THE PROTECTION OF CONSTITUTIONALLY GUARANTEED RIGHTS BY THE ZAMBIAN COURTS
The primary judicial function is to determine disputes whether between private persons or between a private person and a public authority. This is done by judges assessing the facts and applying the law. It is clearly of great importance that justice be dispensed even-handedly in the courts and that the general public feels confident in the integrity and the impartiality of the judiciary. This can only be checked through the independence of the judiciary.

Independence of the judiciary means that the judiciary must be secure from undue influence, able to act without fear of reprisals and autonomous within its own field. This is only possible if it is independent of the executive, the legislature and of wealthy corporations.

2.17 INDEPENDENCE OF JUDICIARY IN ZAMBIA
Zambia has a judiciary, headed by the chief justice, made up of four courts organized in a hierarchical order. These are Local courts, subordinate court, High Court, and Supreme Court. Its independence is guaranteed by the constitution.

The executive has publicly recognized the independence of the judiciary, in 1972 President Kaunda stated, “…….the independence of the judiciary is the freedom from interference by the executive or the legislature with the exercise of judicial function…. "

It must be noted, however, that independence of the judiciary does not mean isolation of judges from society; there is no reason why they should be immune from public opinion and the discussion of current issues in the media.

An eminent author, Ben Nwabueze, correctly stated that the method of appointment and security of tenure of judges are of vital importance to administration of justice and hence form the gist for ensuring the independence of the judiciary. This is because the quality of justice depends more upon the quality of the men who administer the law then on the content of the law they

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administer. In addition, the remuneration of judges and their immunities and protections from part of the gist for ensuring the independence of the judiciary.

**APPOINTMENT**

The president has power to appoint the Chief Justice, the Deputy chief justice and all other judges of the Supreme Court subject to the ratification by the National Assembly\(^44\). He also has the power to appoint puisne judges and commissioners of the High court, on the advice of the judicial service commission, subject to ratification by the National Assembly.

The executive may nominate members judiciary, but once the legislature has ratified the nominations, the executive has no power over them. Therefore, in existence is a loophole with regard to commissioners of the High Court as such persons are not confirmed puisne judges and therefore they may try to appease the executive. In addition, commissioners of the High court, being practicing lawyers, may use their positions in order to attain an undue advantage over other lawyers\(^45\).

### 2.18 THE PROTECTION OF CONSTITUTIONALLY GUARANTEED RIGHTS BY THE ZAMBIAN COURTS

It is incumbent upon the courts to protect all constitutionally guaranteed rights of all individuals in the republic. This duty must be exercised without fear or favour.

Zambian courts have not had much opportunity to adjudicate over cases involving constitutionally guaranteed rights as most Zambians are illiterate and cannot afford the costs that come with judicial proceedings. Most cases that have come up before the courts have had to do with detention by the executive but this chapter will concentrate on three major cases involving the infringement of the bill of rights.

The case of **KACHASU V ATTORNEY GENERAL**\(^46\) was one of the first before the courts alleging the infringement of one the rights guaranteed by Bill of rights. In this case the applicant, a Jehovah’s Witness, in her upbringing was taught that it was against God’s law to worship idols or to sing songs of praise or hymns to anyone else other than God himself. The refusal by the

\(^{44}\) THE CONSTITUTION OF ZAMBIA

\(^{45}\) Ibid.

\(^{46}\) (1967) Z.R.145.4.
applicant, at school, to sing the national anthem resulted in her suspension in accordance with regulations 25 and 31(1) (j) of the Education (primary and secondary school) regulations, 1996. Regulation 25 makes it compulsory for all pupils at Government schools to sing the national anthem and salute the national flag on certain occasions and regulation 31(1)(j) empowers the headmaster of all such schools the right of suspend any child who refuses to do the aforesaid. The applicant raised two constitutional issues, namely;

1. That the suspension from school and subsequent refusal of her application for unconditional readmission thereto, constituted a hindrance in the enjoyment of her right to freedom of conscience, thought and religion, guaranteed to her by section 13 and 21 of the 1964 constitution.

2. That the regulations by which she was suspended were themselves in conflict with section 21 of the 1964 constitution and consequently invalid.

The court found that the applicant had been hindered in the enjoyment of freedom of conscience upon being coerced to sing the national anthem against her beliefs but held that the regulations were reasonably required interest of public safety as singing the national anthem and saluting the flag promote national unity and national security. The judge correctly stated that the applicant could only succeed if it was established that it was not in the interest of defense, public safety or public order but he wrongly put the onus on the applicant to establish this.

Similarly, in the case of; **PATEL V ATTORNEY GENERAL**

; although strictly speaking the applicants’ rights were violated, the court found otherwise. In this case, Patel was charged with contravening Regulation 35 of the Exchange Control Regulations, 1965 by Airmail envelopes containing Zambian currency which were discovered by a customs officer. The customs officer opened, examined and seized the postal articles without a search warrant. On Patel’s complaint of a violation of his rights, the High court had to determine whether the opening, examining and seizure of the postal articles constitute a contravention of the applicants;

1. Right to privacy of property as then guaranteed by section 19 of the 1964 constitution.

2. Freedom of expression as guaranteed by section 22 of the 1964 constitution.

3. Right to protection from deprivation of property as then guaranteed by section 18 of the 1964 constitution

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Regulation 35 of the Exchange Controls Regulations allowed a customs officer who reasonably suspected postal articles containing foreign currency or Zambian currency are being imported or exported, to open and examine such postal articles. The court held the following;

1. That the applicant’s right to privacy was not infringed as Regulation 35 was reasonably required for the development or utilization of the property for a purpose beneficial to the community.

2. That the applicant’s freedom of expression had not been infringed as the packets containing money did not constitute a correspondence within the meaning of section

3. That the applicant’s right to protection from deprivation off property was expedient for a scheme of exchange control which was designed in order to secure the development of the nation’s financial resources for a purpose beneficial to the community.

The court in both the KACHASU and the PETEL; cases found the respective statutes to be within the permitted derogations. Derogations appear on most of the constitutionally guaranteed rights, which therefore limits these rights and freedoms. They allow for the enactment of laws reasonably required in the interest of defense, public safety or public order or for the purpose of protecting the rights and freedoms of others. What is ‘reasonably required’ can, obviously, not be defined. Hence, a person’s rights may clearly have been violated per se but because of the derogations, the violation becomes permissible.

In the case of NKUMBULA V ATTORNEY GENERAL a petition was brought by Mr Nkumbula for redress on the grounds that section 13, 22 and 23 of the 1964 constitution were likely to be contravened in relation to himself with the government announcement of its intention to set up a one part system in Zambia and the appointment of a commission to recommend changes to bring about a one party system in Zambia. The terms of reference of the commission were restricted to discussion of how to bring about a one party system. Further, a party official of the ruling party, the United National Independence Party (UNIP) had announced that his party would crush all those who opposed the formation of a one party state.

48 5 ZAM. L.J. 147(1973)
Chief of Justice Doyle held against Mr Nkumbula as he observed that although the set up on a one party state would be contrary to section 23 of the constitution, which guaranteed freedom of assembly and association and therefore the formation of political parties, there was no indication that the rights would be infringed when introduced as parliament had the right to change the constitution.

He further denied that the petitioner’s freedom of expression section 22 was prohibited by the terms of reference of commission as the petitioner could freely air his opposition to the one party state in another arena. In addition, chief Justice Doyle said that the UNIP official did not prohibit the freedom of expression of the petitioner as he was merely a junior party official and a member of government. These cases indicate that the court tried to play its role in the protection of constitutionally guaranteed rights but because of the derogatory clauses and other strict factors, it is very difficult for the complainant to succeed unless the Attorney General fails to show that the statutes are reasonably required. In another case of EDITH NAWAKWI V ATTORNEY GENERAL 49 which the petitioner, a single mother of two boys, petitioned to the High court on the ground that she had been discriminated against due to her sex, the petitioner succeed because it was proved that she had been discriminated against and there was no derogatory clause under which a statute could have enacted, to justify this discrimination.

2.19 CONCLUSION
In summary, the study has discussed the following aspects in reference to the study title, respectively: defines constitution, equality before the law, bill of rights, and the Zambian constitution, international and regional instrument for protection of human rights and highlights the salient provisions of the Public Order Act to mention a few.

Meanwhile, the constitution may guarantee an individual’s fundamental rights and freedoms but the limitation it places makes them subject to other legislation. Many statutes such as the public order act, the Societies Act, the penal Code and other statutes, contain provisions which seriously limit the rights and freedoms of individuals, not necessarily in the public interest. It is therefore recommended that the courts of law protect constitutionally guaranteed rights and freedoms by

ensuring that the limitations placed on them are reasonably required in the public interest and in a democratic society.
3.0 CHAPTER THREE

3.1 METHODOLOGY

3.2 OVERVIEW

This section describes the methodology that was used to collect the data from the 50 respondents. Nonetheless, it will rely on various forms of methods in order to acquire desired outcome, specifically, it outlines the research approach and philosophy (quantitative and qualitative), research design, the study site, target population and sample, sampling procedures, the data collection instruments and data analysis strategies (for example, thematic or analysis). Lastly, draws the conclusion of chapter.

3.3 RESEARCH APPROACH AND PHILOSOPHY

Considerably the study bunked on the two famous methods herein; the quantitative (for information that is measurable) and qualitative method (to describe information), for the acquisition of information relevant to the cause. Further, explained in preceding paragraphs.

3.4 RESEARCH DESIGN

The research adopted a largely qualitative exploratory survey design, but it also borrowed from the quantitative design in data collection and analysis. However, the study leaned more on the qualitative design and less on the quantitative, this was done because the paradigm’s inherent plausibility to help elicit as much information on the impact of POA on freedom of expression and freedom of assembly in Zambia. The design was chosen because, the study aimed at providing the impact of the Public Order Act and its impact on various human rights using multiple sources of evidence. The study was considered appropriate since it created room for the researcher to adopt questionnaires and analyze documents to obtain and triangulate responses from participants and gain useful insight.

The combination of both the qualitative and quantitative paradigms in data collection and analysis was envisioned to reduce on the biases that come with the use of only one paradigm. Hybrid approach increases the validity of the findings and quality of the final result and provides a more comprehensive analysis of the phenomena being investigated. Integrating methodological approaches strengthens the overall research design, as the strengths of one approach offsets the

\[50\] (Teddlie and Tashakkori, 2009).

\[51\] (Yin, 2008).
weakness of the other and can provide more comprehensive and convincing evidence than purely mono-method studies.

3.5 TARGET POPULATION
The target population represents the entire research subject within the catmint area of the research undertaking from which the sample size is selected from\(^{52}\). The target population from which the sample was drawn included: police officers, political party leaders, civil society organization and lawyers in Lusaka.

3.6 SAMPLE SIZE
The sample size of the research was 50 individuals composed of police officers, political parties’ leaders, civil society leaders and lawyers.

3.7 SAMPLING TECHNIQUES
The sampling technique is the procedure taken to draw the sample size from the target population so that the sample size is as much representative as possible\(^{53}\). This research used non-probability sampling which is convenient and purposive sampling technique. This is because the stakeholders are considered to be among the members of the community who are more involved in the public order act implementation and are more affected. The police officers, lawyers, political party leaders and civil society bodies were selected purposively because they are perceived to have the knowledge of the public order act and its administration.

3.8 SOURCES OF DATA
In this study both sources of data were used, namely; primary and secondary sources. Under the primary sources, information was generated from questionnaires. Under secondary sources the researcher used information from internet, books, journals and other sources of information.

3.9 RESEARCH INSTRUMENTS
Data collection was done using semi-structured questionnaires and was administered by the researcher to gather information from participants. Collected data was summarized using SPSS and presented in tabular form.

Questionnaires and document analysis were the techniques used to elicit data for the study. These techniques were used to complement and supplement each other so as to induce

\(^{52}\) (Siakacha, 2014).
\(^{53}\) (Lemba, 2015).
triangulation. Even so, questionnaires were the main source of data for the study. Questionnaires comprised of open ended items, the aim of those items was to allow respondents to put across their views without restriction\(^\text{54}\). Closed ended items offered options from which participants selected responses they deemed appropriate. Closed ended questions were envisaged to allay fears of researcher and/or respondent bias.

Questions were asked in a way as to obtain responses which would be recorded accurately and completely. Questionnaires enhance positions of neutrality and anonymity which certain respondents, more especially public officials like police officers are expected to assume in charge of their official assignments. Thus, the questionnaire helped the participants to maintain some degree of anonymity, which the researcher believes increased the level of their objectivity.

To further assist the researcher access more data, or clarify and/or confirm some response, document analysis was employed. This was envisaged to further enhance the researcher’s position to better appreciate the responses that were given based on the respondent lives experience\(^\text{55}\).

### 3.10 DATA ANALYSIS

Data from the respondents was collected in quantitative form and was analyzed using a computer packaged known as Statistical Package for Social Sciences (SPSS). The answered quantitative questionnaires were checked for uniformity, accuracy and completeness. The responses were coded and entered into the code sheets to facilitate computation. This helped in establishing, analyzing and interpreting the various relationships between variables. This also necessitated good presentation in diagram forms.

The analysis of the data is critical part of a research study\(^\text{56}\), state that data analysis contains three linked sub processes. Data reduction, data display and conclusion drawing. A mixed approach method was used to analyse the data collected. This approach allowed for concurrent analysis of both qualitative and quantitative data. Qualitative data collected through questionnaires were analyzed using constant comparative method of analysis\(^\text{57}\). The constant comparative method

\(^{54}\) (Creswell and Plano, 2011).
\(^{55}\) (Brickman and Rog, 2009).
\(^{56}\) Miles and Huberman (1994)
\(^{57}\) (Glaser and Strauss, 1967).
involves breaking down data into discrete units and coding them into categories. Categories arising from this method generally take two forms, those that are derived from the participants’ customs and language, and those that the researcher identified as significant to the study.

Using this method, data were continually analyzed and re-analyzed for emerging conceptual categories, sub-components of categories, and inter-relationships of categories and concepts based on the research questions. Similar responses were grouped into categories. Later categories were analyzed for various properties that were comprised within them. Data were re-analyzed for comparison of the units to the properties within categories.

As data emerged the content categories, it was placed into themes which encompassed all data collected from the participants. Data was continued until saturation reached. Saturation is the point at which data properties and categories have become rich enough in terms of description and depth, were addition of further data only serves to illustrate what is already established by existing data.

3.11 THEMATIC DISCUSSION
In addition, research findings can be discussed through two approaches, namely; thematic discussion of research findings or content discussion of findings. Content discussion of research findings takes the form of logical flow of discussion from one issue to another in logical paragraphs. Thematic on the other hand make use of themes, and usually themes are represented by respective objectives. In this study thematic approach of discussion was employed.

3.12 ETHICAL CONSIDERATIONS
Some of the Ethical principles which were observed include: objectivity, confidentiality, informed consent and harmlessness. This study ensured that all information collected remained in privacy and observed the moral standards of the country. Confidentiality and anonymity was taken into account by not disclosing names of the participants. Nonetheless, the research avoided use of embarrassing questions, offensive language or threatening questions/statement when collecting data. It also acquired informed consent of the respondents.

58 (Lincoln and Guba, p.15, 1985).
59 (Siakacha.)
60 IBID, P.15.
3.13 LIMITATION OF THE STUDY
Indeed, no study is completely flawless, in this case the limitations to the study are: Lack of literature on the relevance of POA and its impact on the human rights, which is specific to Zambian context.

Inadequate resources such as time and money to enable the researcher to conduct a longitudinal study; hence a one off survey was conducted

Lack of reformation teams, reviewing sub-ordinary statutes to research further, give information during field work and to also check the existence of mischief originating from old problems/decided cases involving constitutional rights. This is done in order to keep adequate adherence to rights. As illustrated in; case of; Mulundika; and section 5(1) of the POA.

Development of Corona virus (COVID-19) pandemic during research made it hard to access office based institutions.

3.14 CONCLUSION
Thus, this area of the study elaborated on the main means in which data collection was acquired in the field. At the core is qualitative and quantitative explained the meaning and difference, also observations and interviews where used to get firsthand information. In addition, it proved that ethical consideration was put at the pinnacle of the study to observe and respect moral concerns involved in completing of decent assignment. It also rendered out the limitations to the study among others is resource constraints.
4.0 CHAPTER FOUR
4.1 FINDINGS AND DATA ANALYSIS
4.2 OVERVIEW
This section discusses the findings of the study in line with its objectives. The purpose of the study was to explore the impact of public order act on the constitutional fundamental human right, how the act is used as a tool to promote fundamental human rights and how the act is applied in Zambia.

Meanwhile the research is about the impact of public order act on the freedom of assembly, association and expression in present day Zambia. The main objective embarks on examining how POA continues to infringe the fundamental human rights.

Table .1 DEMOGRAPHICS OF RESPONDENTS

<table>
<thead>
<tr>
<th>GENDER</th>
<th>FREQUENCY</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MALE</td>
<td>28</td>
<td>56%</td>
</tr>
<tr>
<td>FEMALE</td>
<td>22</td>
<td>44%</td>
</tr>
</tbody>
</table>

| TOTAL  | 50 | 100% |

<table>
<thead>
<tr>
<th>EDUCATIONAL LEVEL</th>
<th>FREQUENCY</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>GRADE 7-12</td>
<td>20</td>
<td>40%</td>
</tr>
<tr>
<td>TERTIARY</td>
<td>30</td>
<td>60%</td>
</tr>
</tbody>
</table>

| TOTAL  | 100% |

Table 1 shows that out of 50 respondents 28 were male representing 56% and 22 were female. It also shows that 40% of the respondents have gone through grade 7 to 12, whilst 60% of respondents have reached tertiary level in their education. In another words a table signifies that Human rights and POA awareness is still below average, due to illiteracy levels in the education system at grade 7 and 12. Although human rights are supposed to be taught at early stages childhood.
Figure 1: Level of conversant with POA

Figure 1 shows the level of conversancy of respondents about the public order act, out of the total respondents 42% reported to have average knowledge on the subject matter. 48% of respondents reported to be conversant with the act and its provisions.
Figure 2

Shows the view of respondents on whom they think is responsible of administering the public order act. 70% reported that police officers are mandated to administer the public order act, whilst 28% believed it is the political party and executive organ of the government is responsible. Whereas 2% reported that they were not sure of person administer the act.

LEVEL OF INTERFERENCE BY POLITICAL PARTY IN POWER
Figure 3 shows the level of interference by political party in power over the administering and application of the public order act. Out the total respondents, 30 (60%) reported that party in power largely interferes in the application of the act. 17(34%) reported that political party do not interfere in the application and administering of the act, 3(6%) reported not knowing whether party in power interferes or not.

**POA AND FUNDAMENTAL HUMAN RIGHTS**

<table>
<thead>
<tr>
<th></th>
<th>FREQUENCY</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
<td>10</td>
<td>20%</td>
</tr>
<tr>
<td>NO</td>
<td>25</td>
<td>50%</td>
</tr>
<tr>
<td>NOT SURE</td>
<td>15</td>
<td>30%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>50</td>
<td>100%</td>
</tr>
</tbody>
</table>

**TABLE 2**

It shows that 10 respondents which represents 20% of the total respondents were of the view that public order act was legislated in order to promote the fundamental human rights. 50% of the
respondents were of the view that it does not promote fundamental human rights, whilst 30 % were not sure if it does promote or not.

![UNDERSTANDING OF POA BY ADMINISTERING OFFICERS](image)

Figure 4

Show that 40% of the respondents believed that police officers who are mandated to administer the act do not know completely the provision of the public order act, while 32% of the respondents were of the view that administering officers have average information about the provision of the act. 28 % were in support that actually the administering officer fully understands the public order act and its provisions.
Figure 5 shows the level of understanding provision of the public order Act by party political members and their party leadership. It was shown that out of the total respondents, 18 were of the view that party leaders understands the public order act, 15 believed they have average information and 17 believed political party leaders do not understand the provision of the act.
Adherence to the public order act was reported high, having 25(50%) reporting high adherence to the public order act. 18 was for average and 7 represented low adherence.

Figure 6
A number of respondents believed the application of public order act infringed on fundamental human rights, representing 60%, while 40 % believed it does not.

### MORE EDUCATION ON POA PROVISION TO ADMINISTREING OFFICERS

<table>
<thead>
<tr>
<th></th>
<th>FREQUENCY</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
<td>40</td>
<td>80%</td>
</tr>
<tr>
<td>NO</td>
<td>10</td>
<td>20%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>50</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 3

Shows that more education should be provided to administering officers to equip them understand the provisions of the public order act, remarkable 40 out of 50 believed more education to police officer was needed. Lastly, 10 of the respondents believed that no further education about the provision is necessary.
4.3 Conclusion

In summary, this research has taken keen examination on the existence of constitutional human rights and the Public Order Act in Zambia. It also finds it necessary for the researcher to critically analyze certain aspects of the law in support of the research title, *inter alia*: administering of the POA, Unfettered Discretion of Police, Incidences were human rights have been infringed in regard to the POA in Zambia, Difficulties faced in administering and application of Public Order Act. Along the line the study explains necessity of discretion power by applying case law to it for instance: the *Law Association of Zambia v. the Attorney General* and *New Patriotic Party vs. Attorney-General*\(^6\), it can be seen from learned counsel’s arguments in the cases above, that the infringements of human rights exists in the administration of discretionary power.

\(^6\) Ibid.
5.0 CHAPTER FIVE
5.1 CONCLUSION

The first chapter has outlined the historical background of the Public Order Act, Constitution and Bill of rights in Zambia. The same chapter explains the nature, sources and importance of freedom of expression, association and assembly. This has been done with the view of emphasizing the importance of having such rights in democratic society such as Zambia. As it was stated in chapter one, the freedom of expression, assembly and association is lifeblood of democracy. It creates a method of securing the participation of the members of a society in political and social decision making and it further serves as a means of maintaining the balance between stability and change in society.62

It has further been shows that the freedom of expression, association and assembly are ‘negative’ freedom in as it requires the state to refrains from interfering with the exercise of constitutional rights, but that there are also ‘positive’ rights. This means that in as much as the government needs refrain to from interfering with this right, they should also create a platform for enhancing the exercise of this freedom.

Chapter two outlines the development of the freedom of expression, association and assembly and the Public Order Act and other statutes in Zambia. It also explains the constitution and the Bill of rights in line with the application of the public order act by Zambian police. It further explains the historical outline of constitution from colonial times to first republic, second republic, third republic, up to the present constitution in Zambia, 1996 amendment act of 2016. It explains salient features of the public order act and the impacts of the act on constitutional rights. The constitution may guarantee an individual’s fundamental rights and freedoms but the limitation it places makes them subject to other legislation. Many statutes such as the Public Order Act, the societies Act and the penal code, contain provisions which seriously limit the rights and freedoms of individuals, not necessarily in the public interest. It is therefore important that the courts of law protect constitutionally guaranteed rights and freedoms by ensuring that the limitations placed on them are reasonably required in the public interest and in a democratic society.

Chapter four gives clear information on the infringement of freedom of expression, association and assembly by the Public Order Act. Section 5 (4) of the Act give regulating power to the police which is discretionary in nature. This section gives power without any rules to regulate the police when exercising this power. Since the power given to the police has no control it makes this power to be subject to abuse by the police and which result in making this section unconstitutional, therefore the Act is null and void. This section is contrary to the Article 20 & 21 of the constitution and this is contrary to supremacy of constitution.

Section 5(6) & (7) of Public Order Act is contrary to Article 23 of the constitution, since it exempt other people from being subject to section 5 (4) basing on political status which is discriminatory in nature. This also makes the Act unconstitutional and null and void.

The main issue is that the police do not apply the this statute with the goal to promote constitutional rights but to silence the people opposing the government while knowing that people in power doesn’t need to give notice to the police. The main problem police institution is not independent from executive arm of government. The issue of regulating exercise of constitutional rights cannot be left in the hands of police this the work the court not any institution. To promote constitutional rights in Zambia we need to unholy promote independence of the judiciary. This is the main way of securing the constitutional rights through courts only.

5.2 RECOMMENDATIONS

Recommendation it is accordingly that various aspects of laws that are ambiguous and broadly defined should be revised and fame in a clearer manner. Experience has over the years shown that while various stakeholders or interested groups are keen to step up the campaign for law reforms, including Public Order Act, Penal Code, media law reforms in the absence of the government driving the reforms bold initiatives are lacking to effectively propel the campaign for results. Here are possible two options that need reform or repeal as a way of sharing the information with the wider crosses section of the citizenry ensuring mustering maximum support. Two, the office of the UN special Rapporturs could assist through bilateral meetings.

In this regard, it is predicted that a well-structured meeting between a representative of the UN Special Rapporteur and representatives of the Zambian government and some of the interest groups focused on possible review of the selected laws is likely to yield better results and attention than written reports. It is also recommended as follows:
Public Order Act should be amended to prove for clear parameter for professional and objective police role in administering the provision of this act, if it must continue to exist in the statute books. The amendment should provide space or voice for all rather than restrict other.
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**APPENDIX 1: Sample of Questionnaire administered to the respondents in the field.**

1. What is the significance of the Public Order Act in Zambia?

2. How best can the Zambia police and Human Rights Commission work together to create awareness of the POA?

3. How often do the police deal with complaints raised by the general public?
   
   To a great extent □  To a moderate extent □  To a very little extent □

4. What can be done to promote constitution right in Zambia?

5. What are some of the benefits in promoting Human rights in Zambia?

6. Do you think Zambia is benefiting from Public Order Act?
   
   To a great extent □  To a moderate extent □  To a slight extent. □
   
   To a very little extent □
APPENDIX 1.2: Sample of Questionnaire administered to Central Police of Zambia.

1. What is the role of the police in relation to Public Order Act?

2. What is the relevance of the police in Zambia?

3. How do the police administer the Public Order Act in line constitution in a state?

4. What are some of the challenges faced by the police in ensuring compliance with the Public Order Act in Zambia?

5. How often do the Zambia police deal with Public Order issues?
   - To a great extent
   - To a moderate extent
   - To a very little extent

6. What can be done to encourage and educate the police on how to deal with public order issues in the country?

7. Do you think Zambia is benefiting from the existence of the Public Order Act?
   - To a great extent
   - To a moderate extent
   - To a slight extent
   - To a very little extent
APPENDIX 1.3: Sample of Questionnaire administered to Human Rights Commission.

1. What role does the Human Rights Commission play in relation to Public Order Act?

2. What is the relevance of Human Rights Commission in Zambia?

3. How does Human Rights Commission promote fundamental human rights?

4. What are some of the challenges faced by the Human Rights Commission promoting human rights in ensuring compliance with the constitution?

5. How often does the Human Rights Commission deal with constitutional matter?

   To a great extent □   To a moderate extent □   To a very little extent □

6. Do you think Zambia is benefiting from Human Rights commission in relation to POA?

   To a great extent □   To a moderate extent □   To a slight extent □
   To a very little extent □