



African Policing Civilian Oversight Forum

Submission

Review by the Zambia Law Development Commission of the Public Order Act Chapter 113

12 August 2022

1. Introduction

The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to make this written submission in response to the call for submissions by the Zambia Law Development Commission to inform the process for the Review of the Public Order Act Chapter 113 of the laws of Zambia (hereafter, the Public Order Act). We are a not-for-profit trust based in South Africa, working on issues of police accountability and governance across Africa.

We commend the Commission for inviting public comment in respect of this review process. We also welcome and support the stated overall objective of the review process, which is to repeal and replace the Public Order Act in order to develop a framework that regulates public assemblies and meetings in a manner that gives full effect to constitutionally-guaranteed fundamental human rights and freedoms. Given that the Public Order Act was first developed in 1955, when Zambia was still under colonial administration, this review is an important opportunity to ensure that public order management in Zambia is reformed to align with emerging regional and international good practice, and to ensure the removal of archaic pieces of legislations from the statute book, as per the Commission's mandate under section 4(1)(e) of the Zambia Law Development Act.

African Policing Civilian Oversight Forum

Building 23B, Suite 16, Waverley Business Park, Wyecroft Road, Mowbray, Cape Town, 7925

PostNet Suite 63 Private Bag x11, Mowbray, 7705

Tel: +27 21 447 2415

www.apcof.org.za

Trust no. IT1900/2012

PBO 930041858, NPO 119 688- NPO

Trustees: T Gandidze (Chair), G Cronje (Treasurer), P Tlakula, E van der Spuy, A Van Wyk, S Africa

Under regional and international law, Zambia has an obligation to adopt a rights-based approach to the management of public assemblies and gatherings. This includes under binding international treaties such as Article 21 of the International Covenant on Civil and Political Rights, and Article 11 of the African Charter on Human and Peoples' Rights, which enshrine the right to freedom of assembly, and in soft law instruments developed by the African Commission on Human and Peoples' Rights (ACHPR), as well as at the UN level. This includes, in particular, the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, which were adopted in 2017 by the ACHPR (**attached as annexure 1**), and General Comment 37 on the right of peaceful assembly, which were developed in 2020 by the UN Human Rights Committee, (**attached as annexure 2**).

We observe that, as presently formulated, the Public Order Act is outdated and inconsistent with the free exercise of a number of human rights, including the right to assemble and associate freely with others, as embodied in section 21 of the Constitution of Zambia and other binding regional and international human rights laws. Therefore, we believe that it should be repealed and replaced with a new legislative instrument, to ensure public order management laws and procedures are compatible with Zambia's binding domestic, regional and international human rights obligations. However, given the extensive nature of our concerns, coupled with limited time, our submission is not an attempt to review and comment on the provisions of Act, or an exhaustive analysis of all or some of its potential problematic provisions. Rather, we make a number of focused recommendations aimed at supporting the development of a new legislative instrument on the management of assemblies and gatherings.

2. Recommendations on potential form and content of the new legislative instrument

APCOF believes that any intervention aimed at the development of legislative and regulatory instruments that govern the right to assemble freely with others should seek to strengthen, reinforce and operationalise section 21 of the Constitution of Zambia, and Zambia's regional and international human rights obligations. The following are some key elements that we believe give effect to these constitutional and human rights norms and obligations, and which should inform the development of new, independent legislative and operational instruments on the management of public assemblies and gatherings.

2.1. *Definition clause*

Like most legislative instruments, the proposed Act should define and explain the legal meaning of technical terms that are used in the instrument, to provide clarity and guidance to users, including judicial organs in Zambia. These include definition of key words such “gathering”, “public places”, “law enforcement official” and “notice”.

2.2. *Notification requirement*

APCOF acknowledges that a system of notification of intention to hold an assembly plays a key role in enabling law enforcement officials to effectively facilitate and manage assemblies and gatherings, and at the same time protect and safeguard the rights and freedoms of others. As result, with the aim of facilitating peaceful assemblies, the proposed legislation should establish the obligation of individuals, groups of persons or organisations that intend to hold an assembly to provide notice of such intention to assemble. It should also set out, inter alia, the form and content of the notice, the precise information that should be contained in the notice, the time period within which it should be given, and the authority to whom it should be given. Notification requirements should be underpinned by principles of openness, transparency and non-discrimination, not place undue hardship on organizers and participants, make provision for spontaneous assemblies, and be consistent with Zambia’s constitutional and human rights obligations to facilitate peaceful assemblies. Significantly, the African Commission on Human and Peoples’ Rights has established that a failure to provide prior notification of an impending assembly does not in itself render the assembly unlawful, and should not serve as the sole justification for a decision to disperse the assembly.¹

2.3. *Establishment of effective communication mechanism*

APCOF recognises the importance of planning and engagement between assembly organisers and law enforcement officials to the successful facilitation of peaceful assemblies and gatherings. Communication, consultation and engagement between law enforcement officials and assembly organisers may also foster trust and confidence in the policing of assemblies,

¹ African Commission on Human and Peoples’ Rights, Guidelines for the Policing Of Assemblies by Law Enforcement Officials in Africa, page 14.

and assist with risk assessment and contingency planning activities.²As a result, we believe the proposed legislation should establish a legal requirement for law enforcement officials to establish effective communication mechanism to facilitate communication with, among others, assembly organisers and participants. This mechanism should be governed by principles of transparency, responsiveness and non-discrimination. This obligation to initiate communication should arise as soon as possible following the issuance of notice of intention to assemble, or as soon as knowledge is obtained of an impending assembly.

The specific information and practical guidance that is required to foster the establishment or strengthening of effective and functioning communication mechanism can be set out in a separate internal police regulatory instrument. These could potentially include detail and information about the specific role and functions of law enforcement officials during planning and communication stages; the principles that underpin any potential negotiation and dialogue between the organisers and law enforcement officials; normative guidance about any potential amendment to the notice; and the obligation of the parties to – where necessary – negotiate in good faith and with the objective of facilitating the assembly. Importantly, this instrument should explicitly prohibit any condition or requirements for organisers or participants to make arrangement for, or contribute towards, the cost of policing the assembly, or the issuance of medical assistance or cleaning services, or the provision of any other public services associated with the assembly.³

2.4. Conditions that justify restrictions or limitations on the right to peaceful assembly

We acknowledge that both in terms of Zambia’s constitutional framework and under international human rights system, under certain limited circumstances, restrictions or limitations can be placed on the right to assemble freely with others. Therefore, we believe the proposed legislation should provide guidance to public authorities by providing the legal test to justify any restriction or limitation of the right to a peaceful assembly. The test should require authorities to ensure that restrictions on the right of peaceful assembly is treated as an exception, and demonstrate that each measure and its enforcement is consistent with the principles of legality, necessity, proportionality, and non-discrimination.⁴ Restrictions must

² Ibid., page 15.

³ UN Human Rights Committee, General Comment No. 37 (2020) on the right of peaceful assembly, para 64.

⁴ Note 1 at page 9.

also be decided on a case by case basis, and should not be utilised expressly or tacitly to suppress expression of political opposition to the government or challenges to authority.⁵

In addition, the proposed Act should provide guidance on specific rules that apply to the limitation of assemblies in the vicinity of institutions that provide essential services to the public, such as courts of law and parliamentary buildings. It should also define and circumscribe circumstances and conditions that justify the complete prohibition of assemblies and gatherings. These may include credible information about, *inter alia*, serious threats of physical violence or damage to property. However, the Act should place a clear obligation on duty bearers to ensure that prohibition of assemblies and gathering are considered only as a measure of last resort.⁶

Furthermore, to ensure transparent and accountable decision making, the proposed Act should subject the decision to limit, prohibit or impose any restrictions on a specific assembly to independent oversight and review procedures. This may be achieved by articulating the power and authority of independent courts to exercise oversight over the decision to prohibit, limit, or impose any restrictions on assemblies.

2.5. *Powers and obligations of law enforcement officials during the conduct of assemblies*

APCOF understands that the successful delivery and conduct of assemblies is a complex process that requires effective planning and preparation, and equipment and capacitation of law enforcement officials. Therefore, we believe that the proposed legislation should provide guidance to law enforcement officials about their powers and obligations during the conduct of assemblies, and other key aspects, including operational aspects. These may include the requirement for law enforcement officials to maintain continuous communication with assembly organisers and participants; conduct risk assessment and contingency planning; ensure the visible identification of all officers deployed, to strengthen accountable and transparent facilitation of the assembly; document the assembly in strict compliance with rules and standards that regulate the collection, storage and use of personal data; facilitate the provision of first aid and other essential services; and facilitate simultaneous or counter-assemblies.

⁵ Ibid. See also General Comment No. 37 (note 3 above) para 49.

⁶ General Comment No. 37, para 37.

The proposed Act should also set out the general principles that govern the use of force and firearms during assemblies – as embodied in international law – and conditions that may justify the use of force or firearm, with a clear obligation on law enforcement officials to record all incidents in which force or firearm is used. With an emphasis on the exceptional nature of conditions that may necessitate the dispersal of assemblies, the proposed Act should further explain circumstances that may justify the decision to disperse active assemblies. It should also mandate Zambia Police Service to ensure that only law enforcement officials that are trained and capacitated, and are properly equipped with personal protective equipment and less-lethal weapons, to police assemblies are deployed to facilitate and manage public assemblies and gathering.

Moreover, the Act should oblige law enforcement officials to establish a single and clear command structure for policing of assemblies and gatherings, with clear delineation of operational roles and responsibilities of officers within the chain of command. APCOF also believes that, in accordance with the requirements of regional and international law, save in certain exceptional and temporary circumstances, the proposed Act should prohibit the use of military personnel to police assemblies. Where their deployment is strictly necessary, the proposed Act should require military personnel to be under the command and control of police officers, and be fully trained and suitably equipped to manage assemblies. It should also mandate the development of effective procedures, in the form of internal police control mechanism and external civilian oversight system, for reporting, reviewing and investigation of incidents of unlawful and arbitrary use of force and firearm during assemblies.

2.6. Regulations

APCOF believes that, for the provisions of the proposed Act to translate into a rights-based policing practices that responds to the needs and expectations of the public, it will be necessary to operationalise its provisions, through the adoption of internal police policy instrument. Therefore, it is necessary for the proposed Act to require the management and leadership of Zambia Police Service to develop, within 60 days of the adoption of the Act, comprehensive regulations that operationalise and give full effect to the Act, and provide specific and detailed guidance to law enforcement officials on the use of a rights-based approach to the policing and management of assemblies. These regulations could cover and

explain broad areas, and provide guidance to law enforcement officials on, among other things, preparation and planning for the policing of assemblies, policing during assemblies and policing after assemblies. The specific information that should be reflected in the regulations include, inter alia, information and guidance on command structures during policing of assemblies; establishment of communication mechanisms; the role of internal police oversight and accountability architecture; detail and guidance about information gathering, risk assessment and contingency planning; documentation of assemblies and applicable principles; conditions about stop, search and arrest during assemblies; information about facilitation of first aid and other essential services, facilitation of counter or spontaneous assemblies; guidance on use of force or firearm and de-escalation; dispersal of assemblies; and debriefing requirements.

2.7. Police instructions

APCOF believes that there is need for police operational procedures to reflect and provide clear operational guidance to police officers on the management of assemblies in a rights-compliant manner. Therefore, the proposed Act should mandate the Zambia Police Service to adopt, or review and align with international standards, internal operational procedures and instrument to ensure they provide clear operational guidance to police officers to manage assemblies and gatherings in a manner that is consistent with the proposed Act and regulations, and Zambia's regional and international human rights obligations.

2.8. Police training

We believe the impact of the proposed Act will be enhanced significantly if there is an alignment and consistency of approach between the proposed Act, regulations, operational procedures and the provision of training to law enforcement officials. However, given the complex and lengthy nature of processes that traditionally precede the successful development of legislative instruments and their operationalisation, we think existing police training programmes and curriculum should be reviewed for alignment with international standards. In this regard, guidance can be drawn from relevant regional and international human rights instruments, including Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, and Model Police Law for Africa. In particular, the provision of training to police officers should include, inter alia, training on the following aspects:

- The normative framework for the right to assemble freely with others, which should include relevant regional and international laws that are binding on Zambia
- Effective communication skills
- Techniques in minimizing conflicts
- Alternative dispute resolution mechanisms
- De-escalation Techniques
- Use of force and firearms, in accordance with domestic, regional and international human rights laws
- Principles that govern the use of less lethal weapons
- The roles and mandate of internal police control mechanism, and external civilian oversight system, and the concomitant obligation of police officers to cooperate with these oversight and accountability systems
- Principles of accountability, and its role in strengthening the provision of professional and rights-compliant policing services

3. Conclusion

We thank the Zambia Law Development Commission for its efforts to facilitate the repeal and replacement of the Public Order Act. Our submission supports the objective of the review process, and provide recommendations on the possible form and content of a new legislation. The development of a new legislative tool is always a complex and lengthy process. However, in developing a new legal framework for the management of public order in Zambia, guidance can be drawn from existing regional and international human rights law, including Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, Model Police Law for Africa (**attached as annexure 3**), and General Comment 37 on the right of peaceful assembly. APCOF is available and interested in providing additional information, advice or technical assistance.

Submission made on behalf of APCOF by:

Sean Tait

Director

E: sean@apcof.org.za

T: +27 21 447 2415

W: www.apcof.org.za