

WHERE THREE OR MORE ARE GATHERED: DEMYSTIFYING THE IMPACT OF ENFORCING THE PUBLIC ORDER MANAGEMENT ACT ON CIVIC LIBERTIES

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I. Background to the Public Order Management Act

The need for a comprehensive legislation regulating public meetings cannot be over emphasized in a democratic society where citizens have a constitutional guarantee to freely assemble, express themselves and demonstrate. The Public Order Management Act (POMA) was passed to regulate this very need. In the earlier stages of the Act's enactment, fear was expressed by a number of Members of Parliament (MPs) arguing that public resentment towards the legislation would be immense. MPs repeatedly warned the Speaker of Parliament during the second reading of the Act that extensive consultations with the citizenry had not been sufficient and yet the Act was eventually passed before amending this irregularity in the law making process.² Indeed the enactment of POMA was received with abhorrence and criticisms from Ugandans and the international community at large.

Civil society has been at the forefront of decrying the injustices occasioned by the POMA which includes curtailing rallies organized by opposition leaders and NGOs.³ Before the international community, the law is seen as yet another draconian law passed to conglomerate the undemocratic intolerance to opposition and it was suggested that perhaps with more effective engagement of all stakeholders, a better law could have been drafted.⁴

The ominous criticism regarding POMA was that it sought to return a ghost of the past; the extensive powers of the police to prohibit the convening of an assembly. In *Muwanga Kivumbi v AG*⁵ the constitutional court declared section 32(2) of the Police Act unconstitutional because in

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² Parliament of Uganda Hansard, Tuesday, 2nd April 2013, page 8,12 and 14.

³ HURINET-Uganda, *Ugandans still Have the Right to Assembly and Expression Irrespective of the Public Order Management Act*. Available at <http://www.hurinet.or.ug/press%20release.pdf> Accessed on 23rd October 2015

⁴ ARTICLE 19, *Uganda: Public Order Management Act, October 2013* Available at <http://www.article19.org/resources.php/resource/37331/en/uganda:-public-order-management-act> Accessed on 23rd October 2015.

⁵ Constitutional Petition No. 9 of 2005

giving the police powers to prohibit public assemblies, the provision violated Article 29(1) (d) of the constitution which guarantees the freedom to assemble and demonstrate.

During the debates that preceded the passing of the law, the Speaker of Parliament expressed that she did not know about the case⁶ and the Attorney General embarrassingly misinterpreted the court's ruling. He argued that the court only outlawed the absolute powers of police to prohibit assemblies and that to introduce benchmarks as a basis for the prohibitive powers of police would not be unconstitutional.⁷ In *Muwanga Kivumbi v AG*, Byamugisha J.A was very emphatic in her judgment, noting that the powers of the police in limiting the freedom to assemble should only be regulatory and never prohibitive. This means that the introduction of benchmarks would not vindicate the unconstitutional prohibitory powers of the police.

That was the rather dramatic unfolding of events before the enactment of the law and the drama did not end there. Although clause 8 of the Public Order Management Bill which embodied the prohibitory powers of police was not incorporated into the final draft of the Act, different stakeholders believe that the Act is nevertheless in contravention of the Constitution. Article 92 imposes a restriction on retrospective laws that seek to alter the decision of a court of law.

On 10th Dec 2013, *Constitutional Petition No. 56 of 2013* was filed in the Constitutional Court challenging the constitutionality of POMA. However, till now the case is yet to be heard.⁸ The implication of this constitutional petition on the continued application of POMA is not clear however guidance may be got from the Supreme Court decision in *Charles Onyango Obbo & anor v Attorney General*⁹ a case that challenged a Penal Code Act provision. Mulenga JSC in that case clarified that where the determination of the constitutionality of a law is pending before the Constitutional Court, the constitutional petition must be decided expeditiously to avoid applying a law or taking actions whose validity is questionable. Why *Constitutional Petition No. 56 of 2013* has not yet been determined and why POMA is being enforced as though there never was a petition challenging its constitutionality, are questions beyond the scope of this paper.

⁶ *Supra*, note 2 at page 14

⁷ *Ibid*, at page 17.

⁸ Amnesty International Report 2014/2015, Available at <https://www.amnesty.org/en/countries/africa/uganda/report-uganda/> Accessed on 25th October 2015

HURINET-Uganda, *Human Rights Concerns as we Begin 2014*, Available at <http://www.hurinet.or.ug/beginning%20of%202014.pdf> Accessed on 25th October 2015

⁹ Constitutional Appeal No.2 of 2002

It is against this background that the next section of the paper discusses the enforcement of POMA and its impact on fundamental freedoms of assembly and civic and political participation.

II. Upon the Weighing Scale: POMA against Civil Liberties

Every Ugandan citizen has a right to participate in peaceful activities through civic organizations,¹⁰ the freedom of association¹¹ and the freedom to peacefully assemble and demonstrate.¹² These civic liberties are subject to limitations within the context of Article 43 of the Constitution. In enjoying them, the rights and freedoms of others should not be prejudiced and the public interest should not be abused. POMA in its short title is described as an Act to regulate public meetings and section 2 elucidates further that the underlying principle of the Act is to regulate the freedom to assemble and demonstrate. This shows a clear correlation between POMA and civic liberties.

At the center stage of POMA enforcement are three actors, the enforcement body, the organizers of public meetings and the participants. According to section 3 of the Act, the Inspector General of Police (IGP) or an authorized officer is responsible for enforcing the Act with powers to stop or prevent a public meeting and powers to disperse one if it is contrary to the Act. These powers are too extensive and are a replica of the unconstitutional section 32(2) of the Police Act that allowed Police the discretion to prohibit assemblies, only smartly distorted. The role of the organizers is to notify the IGP at least three days before the event on the venue, date, participants and purpose of the event. However, even where the police has been notified in advance it is not uncommon for it to halt a public meeting on “*orders from above*” and to disperse participants using disproportionate force including live shooting and tear gas.¹³

The play out of events since the enactment of POMA have revealed a pattern of discriminate application of the law against the opposition and civil society organizations.¹⁴ More recently, the Forum for Democratic Change (FDC) Rukungiri Mobilization on 9th October 2015 was blocked

¹⁰ Article 38(2) of the 1995 Constitution of the Republic of Uganda.

¹¹ Article 29(1)(e)

¹² Article 29(1)(d)

¹³ David Mafabi, *Police Blamed on Public Order Law*, Daily Monitor, Monday September 21 2015

¹⁴ Human Rights Watch, *World Report 2014, Uganda* page 2.

because FDC allegedly did not meet all the conditions prescribed in the POMA.¹⁵ No wonder the party president Rtd Col Dr. Kiiza Besigye was released without any charges being opened against him because he has committed no crime.¹⁶ POMA continues to be used to frustrate and distract the opposition and to perpetrate undemocratic practices in Uganda. Civil Society such as Non Governmental Organisations (NGOs) play a crucial role in offering civic education to the citizenry yet their activities such as literacy rallies, radio talk shows and workshops are constantly blocked by police under the auspice of POMA.¹⁷

The second shortcoming is that the Act is ambiguous on who can be an authorized officer with powers to regulate public meetings. While the IGP is a designated individual, the lack of a definitive description of an authorized officer under section 3 and 8 of the Act is problematic.

Ahead of the 2016 elections, new challenges arise. There is a growing trend of using other operatives other than police such as the vigilante crew dubbed Crime Preventers, Rt. Maj. Kakooza Mutale's 'militia' known as Kalangala Action Plan and Kampala Lord Mayor Elias Lukwago's 'Solida Crew'.¹⁸ This makes it even harder to hold the police accountable for violations of civil liberties that may transpire at public rallies. The mentioned groups have no clear regulatory framework and yet it is alleged they work together with the police to disperse public rallies.

The intention that informed the enacting of the Act may have been good; to regulate the exercise of the freedom to assemble and demonstrate. Unfortunately the reality is far from this as can be observed from the use of brutal means by police and army to instead prohibit public meetings and in essence depriving the very right that the Act purposed to protect. Upon the weighing scale, the balance tilts to the police and the incumbent government that have successfully used POMA to their advantage while the opposition, civil society and other stakeholders remain disgruntled at the play of events that continues to violate fundamental liberties protected by the 1995 Constitution.

¹⁵ Andante Okanya and Umaru Kaskaka, *Besigye, FDC Leaders Arrested*, The New Vision, 10th October 2015

¹⁶ Wandera Ogalo, *Electoral Commission's Mandate cannot Override Besigye's Rights*, Daily Monitor Wednesday October 21st 2015

¹⁷ Ibid, note 3

¹⁸ Joseph Kato, *Activists' Plans for Peaceful 2016 General Election*, Daily Monitor, Thursday, October 22 2015.

III. Way Forward

The government must harness democratic principles in its operations and activities keeping in mind that all power is derived from the people of Uganda. This calls for extensive consultations with all stakeholders particularly the ordinary citizens and civil society. As discussed earlier the MPs were not content with the civic engagement carried out prior to enactment of POMA. With more input from the citizens and civil society the move to amend the contentious sections of the law will be well informed and democratic.

POMA should be amended particularly section 3 and 8 that give extensive undefined powers to the IGP or any authorized officer. This paper proposes the establishment of an independent council as the enforcement body of the Act. The council should have representatives from the Parliament, the Opposition, civil society, the Law Council, representatives of vulnerable groups such as PWDs, the youth and women, and representatives from the police. This would mitigate the immense power placed solely in the hands of one state organ; the police, to prevent or stop or disperse a public meeting.

Lastly, the Constitutional Court should expedite the determination of constitutional petitions challenging the constitutionality of legislation. Emphasis is placed on *Constitutional Petition No. 56 of 2013* that was filed in 2013 challenging the constitutional validity of POMA but the same has not been determined to date. Such inordinate delays in the justice system perpetuate human rights violations and undemocratic governance.