

LEGISLATION

THE PUBLIC ORDER ORDINANCE 1970

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The *Public Order Ordinance* 1970¹ was introduced into the House of Assembly on 8th October 1970 and came into force on 8th April 1971. The Ordinance is divided into six main parts: preliminary; processions and meetings; provisions relating to breaches of the peace; security for keeping the peace and good behaviour; persons unlawfully on land; and a miscellaneous part.

The *Public Order Ordinance* has two main purposes. First, it was enacted to control processions and demonstrations, and, to provide that where a breach of the peace will result, the demonstration should not take place at all. Second, it was designed to protect persons and their properties.

It is instructive to compare the ordinance with similar enactments in other countries. The aim of the ordinance is somewhat similar to the amended Public Order Act 1936 in England and in some ways related to parts of Ghana's Preventive Detention Act of 1958 and Nigeria's Criminal Code. In England, an Englishman's right of assembly has long been considered of great importance. The right of assembly has been termed one of the "chief methods of influencing public opinion on big issues."²

However, as early as 1800, England experienced demonstrations and processions, particularly religious processions, which resulted in riots and breaches of the peace. It was decided to take stronger measures against such demonstrations

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1 No. 76 of 1970.

2 Street, H. *Freedom, the Individual and the Law* (1963).

by introducing a public order act. As a result of this act, prosecutions did occur. In 1882 a procession by the Salvation Army resulted in a disturbance and the case of *Beatty v. Gillbank*.³ The court held that the Salvation Army members were not responsible for the riot, which had been incited by onlookers. The court did, however, not state clearly whether the organisers and marchers were liable under the act.

Another case important to the development of judicial attitudes towards the right of assembly, *Wise v. Dunning*,⁴ resulted from a Protestant crusade in Liverpool. Wise was charged with using insulting and abusive language of a kind likely to provoke others to commit breaches of the peace. The Court of Appeals decided that a person responsible for such words could be bound over to keep the peace. In Papua New Guinea, the connection of language to breaches of the peace is explicitly stated in the ordinance.

The last case of interest is *Duncan v. Jones*.⁵ Jones was charged with obstructing a police officer in the execution of his duties, because after being ordered from a meeting, Jones refused to leave and continued his speech. The court held that Jones did not obstruct the officer, but it did not decide whether any person refusing to leave a meeting was guilty of an offence under the act.

Section 5 of the ordinance allows processions and meetings to be held according to native custom and "in good faith", but it is an offence if there is a breach of the peace or unlawful damage in the course of such meetings. This section is too general: it does not specify whether a permit must be granted to a group of village people, or who is responsible if there is a breach of the peace. If, for example, a clan or group holds a meeting to launch an attack on another clan and the clan that is being attacked takes up arms for the purpose of retaliation, self-defence, or even deterrence, all who participated may be prosecuted under this section. There is a section in the Nigerian Criminal Code that could serve as a replacement for this section: "Any person who, without

3 (1882) 15 Cox C.C. 138; 51 L.J.M.C. 117; 9 Q.B.D. 308.

4 (1902) 71 L.J.K.B. 165; (1902) 1 K.B. 167.

5 (1936) 105 L.J.K.B. 71; (1936) 1 K.B. 218.

lawful authority, carries on or makes preparation for carrying on or aids or advises the carrying on of a preparation for any war or warlike undertaking with, for, by or against any band of natives, is guilty of a felony".⁶ Most disturbances, both in the city and in rural areas, begin when one clan plans to attack another group to fulfil some dissatisfaction about land or property or as payback.

Section 7 of the ordinance provides that the Administrator may exempt certain classes of processions. To the author's knowledge, from the ordinance's permit requirements, no procession has been exempted.

Section 8 of the ordinance empowers the Administrator to impose a curfew in certain areas, forbidding processions and meetings there for a month. However, the renewal or revocation of such an order must be made by the House of Assembly, and any such order can be dissolved in the House. If it can be assumed that such power of the Administrator is now vested in the Chief Minister in Cabinet, it would appear dictatorial that he can make such an order, without consulting the House of Assembly. He need consult the House only after the order has been given and then merely for the purpose of further extension or resolution of the order.

Under the ordinance, a permit to hold a procession or meeting must be sought from the Administrator or someone appointed by the Administrator.⁷ While it is essential for the government to ensure that processions and meetings occur without breaches of the peace, the permit requirements are too stringent and require too much information, thus constituting a severe restriction on freedom of speech. The listing of names and the purpose of the meeting could allow officials to refuse permits on political grounds. The ordinance makes the organisers of public processions and meetings liable if they convene a procession without a permit.⁸ An organiser, however, is not liable if he convenes a meeting or procession without a permit and if he takes reasonable steps to prevent the meeting or procession resulting in a breach of the peace.⁹ It seems illogical and contradictory to provide that a person cannot hold a meeting or procession without a permit, but can hold it if he takes reasonable steps to prevent a breach of

6 Criminal Code of Nigeria, s. 47.

7 S. 9(5)

8 S. 9(1)

9 S. 9(2)

the peace. The section also provides that anyone taking part in the procession where a permit has not been granted is liable.¹⁰ He has no defence except that he was a bystander and did not participate or was unaware that a condition of the permit was breached.¹¹

The ordinance vests the police with wide discretionary power to allow or refuse any procession or meeting. They need to establish merely that a procession or meeting is being held without a permit or that it appears, to a senior police officer, on "reasonable grounds", that a procession or meeting could result in a breach of the peace in order to stop or disperse the procession.¹² The section does not provide any restriction on the police, such as the requirement that a police officer be present at the procession or meeting to evaluate his grounds of suspicion.

The power of the police is further enlarged by the provision empowering police to search any person without a warrant in order to arrest or confiscate fighting instruments.¹³ It does not provide whether such items are to be returned after the search and seizure or after an offence has been dealt with as required by the Criminal Code. Innocent persons could lose valuable possessions.

In the conduct of a procession, an individual is barred from using any threatening, abusive, or insulting words or behaviour to provoke a breach of the peace, any statement intended to cause disaffection, any inciting words or intimidation.¹⁴ While this catalogue may be essential to ensure that demonstrations are peaceful, it is both vague and extensive and may prevent anyone from saying anything abusive or insulting. Despite any dissatisfaction, one can safely say only compliments by way of demand or criticism of authorities.

The ordinance allows a person to be bound over by a Magistrate on information to the Magistrate that such a person is likely to commit or in fact did commit a breach of the peace.¹⁵ The person may be summoned before the court or a

10 S. 9(3)

11 S. 9(4)

12 S.11(1)

13 S.17

14 S.13

15 S.22(1)

warrant may be issued for his arrest.¹⁶ If the case is proved, a person may be ordered to leave an area in the District or remain in a specified area for a certain period upon certain conditions.¹⁷ Before a repatriation order can be made, the evidence must be corroborated and a person may not be prosecuted except by consent of the Secretary for Law.¹⁸ Prosecution may be instituted only in the District Court presided over by a Stipendiary or Resident Magistrate.¹⁹

There are in the ordinance no provisions that give a right of appeal to the Supreme Court for any conviction. By implication, however, this right could be drawn from the *District Court Ordinance*.²⁰ There is, on the other hand, an appeal from a refusal to issue a permit. Where a person has been refused a permit, he may ask for review by the Police Commissioner.²¹

An important lack in the ordinances is its failure to provide for those who, though not participants in a procession or meeting, are responsible for the meeting resulting in a breach of the peace. On being prosecuted, they could successfully argue that they did not take part in the meeting.

Although the Public Order Ordinance was enacted to deal with political demonstrations, it does not explicitly provide remedies for massive political upheavals. It is not a political detention act and Papua New Guinea lacks such an act. How, then, can the government deal with an anti-government political uprising? In an emerging society undergoing a transition into nationhood, the government might face more problems in this area than in general internal disorder. The potential already exists in the secessionist movements. The government should enact legislation capable of quelling major disturbances before they endanger the country's precarious stability. The government could pass a separate bill or add an amendment to the present Public Order Ordinance. Alternatively it could take the same form used in Ghana: an Act of

16 S.22(1), (2)

17 S.23(3)

18 S.35(1)

19 S.35(2)

20 District Court Ordinance s. 225.

21 S.10

Preventive Detention including provision for public disorder.

The *Public Order Ordinance* as a whole prompts some general criticism. The ordinance was drafted in a hurry to cope with the events during 1970, primarily land troubles in the Gazelle Peninsular, which had taken the administration by surprise. It was drafted without considering future changes in government, like the present stage of development. The ordinance is grossly paternalistic and colonialistic in its outlook. For example, the provisions plainly permit one politely and in good faith to point out errors and defects in the government but this may not be done by abusive or insulting words lest it cause dissatisfaction with the government authorities and their policies.

Further, the ordinance was intended for the protection of both rural and urban communities, but it has failed to provide adequate protection for the rural areas. It includes stringent measures to limit disturbances in urban areas where planned processions and meetings are often likely to take place, but its machinery affords no means of preventing rural disturbances, which seldom begin with a parade or permit request.

The ordinance is also at fault in failing to protect freedom of speech, which is essential in a democratic government. It is one sided: that is, it protects the government much more strongly than it protects individual rights.

In operation, the ordinance presents practical problems. Organisers of public processions and meetings are liable to criminal prosecution merely because their supporters will not behave themselves. Moreover if supporters are peaceful, but outside forces are responsible for the breach of the peace, organisers and members are still liable. Whether a public procession or meeting can be peacefully held depends to a large measure on the police exercising their discretion in a reasonable manner. Disobedience of police orders will result in criminal prosecution. Thus the organisers cooperate with the police in the expectation that the police will treat them fairly. The ordinance relies perhaps too heavily on the judgment and forbearance of police officers who are given sweeping arrest and search powers.

In conclusion, it is not intended to give the impression that the *Public Order Ordinance* should be repealed or that disorders should not be attended to and appropriate action taken. However individual freedom of speech must be protected. And, where a man is liable for a criminal offence, justice must not only be done but appear to be done. At present, the ordinance has failed to prevent or provide remedies for public

disorders, but has denied the right of defendants to be dealt with fairly by the courts. Precautions must be taken by lawyers and the courts that defendants are not convicted unjustly. The burden of proof should be shifted to the prosecution which should be required to prove its case beyond a reasonable doubt for any offence brought under the ordinance.

To be truly effective, the ordinance requires drastic amendments and this is a task Papua New Guinean lawyers and legislators can and should perform.