

[SB. 298]

A BILL FOR

AN ACT TO AMEND THE PUBLIC ORDER ACT IN ORDER TO MAKE IT
APPLICABLE ONLY IN THE FEDERAL CAPITAL TERRITORY AND BRING IT IN CONFORMITY WITH THE
CONSTITUTION AND DEMOCRATIC GOVERNANCE
AND FOR OTHER PURPOSES CONNECTED THEREWITH

Sponsored by SENATOR TOKUNBO AFIKUYOMI

[]

Commence-
ment.

WHEREAS the Public Order Act was first promulgated by the colonial administration as an Ordinance for the purposes of subjugating the Nigerian people, denying them their freedom of association and expression as free-born citizens and the right to participate in government;

WHEREAS the Public Order Act was made applicable to the whole Federal Republic of Nigeria as a Federal Act on the 16th of February, 1979 as a fallout of military unitarism which repealed all the Public Order Laws in the States of the Federation;

WHEREAS "Public order" is not listed as an item under the Exclusive and concurrent legislative lists and is not mentioned in any provision of Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 on Fundamental Objectives and Directive Principles of State Policy in respect of which the National Assembly can legislate for the whole of the country;

AND WHEREAS the existing Public Order Act is incongruous with our new constitutional order and democracy and is regarded by an overwhelming majority of Nigerians as obnoxious;

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria and by the authority of same as follows —

- 1 1. The Public Order Act (in this Bill referred to as "the Principal Act") is
- 2 hereby amended as set out in this Bill.
- 3 2. Sections 1, 2, 4 and 11 of the Principal Act are deleted.
- 4 3. Section 3 of the Principal Act is amended by substituting therefor the
- 5 following new section, that is —
- 6 “(1) Any assembly, meeting or procession within the Federal Capital
- 7 Territory at which or in which persons present or participating therein
- 8 behave in such a way as to give a Superior Police Officer reasonable ground
- 9 to fear a breach of the peace or fear a breach of any provision of the Penal
- Code shall be deemed to be an unlawful assembly”.

Amendment
of the Princi-
pal Act.
Amendment
of Sections 1,
2, 4 and 11.
of Section 3
Amendment
Insertion of

	1	“(2) An otherwise lawful assembly, meeting or procession shall not be
	2	deemed unlawful under this section on the ground that the Police or
	3	Superior Police Officer fear that any other group or persons may oppose
	4	the assembly, meeting or procession”.
	5	and renumbering it as section 1.
	6	4. A new section 2 is inserted, that is —
new Section	7	“Any Police Officer of the rank of Assistant Superintendent of Police may
2.	8	stop any assembly, meeting or procession deemed to be an unlawful
Amendment	9	assembly under section 1 of this Act”.
	10	5. Section 6 of the Principal Act is amended —
of Section 6.	11	(a) in subsection 2, by substituting for the words “Attorney General of the
Amendment	12	State” the words “Attorney General of the Federation”;
	13	(b) in subsection 3 by substituting for the words “High Court of that State”
	14	the words “High Court of the Federal Capital Territory”.
	15	6. Section 7 of the Principal Act is amended —
of Section 7.	16	(a) in the proviso to subsection 1 by substituting for the word “State” the
Amendment	17	words “Federal Capital Territory”;
	18	(b) by substituting for subsections (2) and (3) the following new subsections,
	19	that is —
	20	“(2) The powers conferred on the Commissioner of Police under
	21	subsection (1) of this section are hereby conferred upon and shall be
	22	exercisable in an Area Council by any police officer”.
	23	“(3) Every association registered as a political party pursuant to the
	24	Electoral Act, may fly the approved pm1y flag in any part of the Federal
	25	Capital Territory and any such party may display party flags at public
	26	assemblies and meetings.
	27	Provided that nothing in this subsection shall be construed as authorizing the
	28	display of flags by any individual or association on any vehicle or carriage or
	29	at any place or on any building or otherwise howsoever except to the extent
	30	authorized herein and under the Flags and Coats of Arms Act 1960, the Flags
	31	and Coats of Arms Act, and the Flags of Nigerian Ships Act”.
		7. Section 8 of the Principal Act is amended by substituting a new

Public Order (Amendment)

- 1 subsection (1), that is —
- 2 “(1) Any person who, in the Federal Capital Territory while present at any of Section 8.
3 public assembly or meeting or on the occasion of any public procession, Amendment
4 has with him any offensive weapon or missiles, otherwise than in pursuance of Section 10.
5 of lawful authority, shall be guilty of an offence and liable on conviction
6 to imprisonment for 12 months without the option of a fine”.
- 7 8. Section 10 of the Principal Act is amended by substituting a new
8 section, that is —
- 9 “The Minister of the Federal Capital Territory may prescribe additional forms
10 to be used for the purposes of this Act by order published in the Federal Amendment
11 Capital Territory Gazette”. of Section 12.
- 12 9. Section 12 of the Principal Act is amended by inserting in alphabetical
13 sequence the following new interpretation, that is —
- 14 “association” means any body of persons who agree to act together for any
15 common purpose and includes any political party as defined in section
16 229 of the Constitution of the Federal Republic of Nigeria, 1999. Amendment
of Sections 5,
6, 7, 8, 9, 10
- 17 10. Sections 5, 6, 7, 8, 9, 10 and 12 of the Principal Act are amended by
18 renumbering them as sections 3, 4, 5, 6, 7, 8, and 9 respectively.
- 19 11. This Act may be cited as the Public Order (Amendment) Bill, 2006. and 12.

20 EXPLANATORY NOTES

- 21 1. The amendment abolishes the requirement of Police Permit or licence
as a precondition for holding a public meeting, assembly or procession.
2. The amendment limits the operation of the Public Order Act to the
Federal Capital Territory on the authority of the Supreme Court decision in
Fawehinmi vs Babangida (2003) 3 NWLR (Pt. 808) 604 which held that any item
not included in the exclusive or concurrent legislative list is a residual matter
for which the National Assembly cannot make laws for the whole country,
except for the Federal Capital Territory (see also the Supreme Court case of
AG. Lagos vs AG. Federation (2003) 12 NWLR (Pt. 833) 1).
3. The Penal and Criminal Codes contain adequate provisions to deal
with unruly and riotous behaviour likely to cause a breach of the peace. There
is therefore no warrant in our constitutional democracy to enact a law that
runs contrary to the guaranteed rights of our people to assemble and express
themselves freely as citizens.

Citation.

Public Order (Amendment)

4. This amendment expressly abolishes the powers of the Police to abort a public meeting, assembly or procession on the ground simply that another group is opposed to the meeting or assembly (cf. Chukwuma vs Cop (2005) 8 NWLR (Pt. 927)278).